ADVOCATES FOR FAITH & FREEDOM
Robert H. Tyler (SBN 179572)
btyler@faith-freedom.com
Julianne Fleischer (SBN 337006)
jfleischer@faith-freedom.com
25026 Las Brisas Road
Murrieta, California 92562
Telephone: (951) 304-7583

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SAVE GIRLS' SPORTS, an unincorporated California association; T.S., a minor by and through her father and natural guardian, RYAN STARLING, individually, and on behalf of all others similarly situated; and K.S., a minor by and through her father and mother and natural guardians, DANIEL SLAVIN and CYNTHIA SLAVIN, individually, and on behalf of all others similarly situated;

Plaintiffs,

v.

TONY THURMOND, in his official capacity as State Superintendent of Public Instruction; ROB BONTA, in his official capacity as State Attorney General; RIVERSIDE UNIFIED SCHOOL DISTRICT; LEANN IACUONE, Principal of Martin Luther King High School, in her personal and official capacity; and AMANDA CHANN, Assistant Principal and Athletic Director of Martin Luther King High School, in her personal and official capacity;

Defendants.

Case No.: 5:24-cv-02480 SSS (SPx)

PLAINTIFFS' OPPOSITION TO DEFENDANTS RIVERSIDE UNIFIED SCHOOL DISTRICT'S, LEANN IACUONE'S, AND AMANDA CHANN'S MOTION TO DISMISS

Date: May 16, 2025
Time: 2:00 p.m.
Dept: Courtroom 2
Judge: Honorable Sunshine Sykes

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I. INTRODUCTION

Allowing biological men to compete in women's sports "is demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports." *See* RJN ¶1 (Executive Order No. 14201, "Keeping Men Out of Women's Sports"). Yet, California has passed AB 1266 which contradicts the core purposes of Title IX by allowing biological boys to complete in girls' sports. While AB 1266 operates to deny biological girls sports opportunities, there is no comparable in boys sports that operate to deny biological boys opportunities in sports. AB 1266 is the root cause of the Plaintiffs' injuries in this case and must be enjoined. California Attorney General ("AG") and State Superintendent of Public Instruction ("SPI") ("State Defendants") are the statutory enforcers of AB 1266, and their involvement in this case is necessary to allow California to defend its law.

Plaintiffs have suffered concrete particularized injuries in this case. Plaintiffs T.S. and K.S. are biological girls who lost spots on the cross-country team ladder due to the presence of a biological boy on their cross-country team. Plaintiff Save Girls Sports has standing as their members have standing and it has been injured itself as an organization. Because Plaintiffs were dropped on the team ladder, they also lost opportunities to run in more prestigious races. When they did race against the biological boy, they did not finish as high in the standings. And during practices, the presence of the biological boy resulted in individualized attention from the coaches, thus lessening the coaching and instruction opportunities for Plaintiffs. Finally, the presence of a biological boy on the girls' team meant that the Plaintiffs had to share locker rooms and dressing facilities with biological boys. These harms were not speculative, but real. They were not generalized but actually endured by the Plaintiffs. These harms are directly traceable to the State Defendants as AB 1266 caused these violations to occur.

Finally, this Court can give meaningful judicial relief to the Plaintiffs. The Plaintiffs are seeking nominal damages, compensatory damages and injunctive relief. As the court noted in *Soule v. Connecticut Ass'n of Sch., Inc.*, 90 F.4th 34, 51 (2d Cir. 2023) (en banc), in an identical case involving a Title IX challenge to the presence of a biological boy on girls' teams, the court should use "its discretion to fashion appropriate injunctive relief" when it gets to that stage of the litigation.

And just like the En Banc court ruled in *Soule*, Plaintiffs have sufficiently plead a Title IX violation by allowing biological boys to take spots and opportunities from girls on the girl's sporting teams.

State Defendant's Motion to Dismiss should be denied.

II. STANDARD OF REVIEW

A Rule 12(b)(1) motion to dismiss for lack of standing "can only succeed if the plaintiff has failed to make 'general factual allegations of injury resulting from the defendant's conduct.'" *Young v. Crofts*, 64 F. App'x. 24 (9th Cir. 2003) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). The Ninth Circuit takes the plaintiffs' "allegations as true and draw[s] all reasonable inferences in the plaintiff's favor . . . [and] determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

When deciding a Rule 12(b)(6) motion, "all well-pleaded allegations of material fact are taken as true and construed in a light most favorable to the non-moving party." *Wyler Summit P'ship v. Turner Broad Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). If a complaint provides fair notice of the claim and the factual allegations are sufficient to show that the right to relief is plausible, a court should deny the defendant's motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III. STATEMENT OF FACTS[1]

In 1976, the California legislature enacted California Education Code § 221.5, which prohibits elementary and secondary schools from discriminating against students based on their sex in both academic and non-academic courses. *Id.*, ¶ 71. In 2013, it was amended to state that "a pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records." *Id.*, ¶ 73 (emphasis added); Cal. Educ. Code § 221.5(f). Under AB 1266, biological males are permitted to compete in girls' athletic teams and use girls' locker rooms and bathrooms. *Id.*, ¶ 4-5.

As the State's top law official responsible for enforcing state law, Defendant Rob Bonta is responsible for enforcing AB 1266. *Id.*, ¶ 78. As the California Department of Education's ("CDE") main executive officer responsible for creating, adopting, and implementing CDE polices and guidance documents, Defendant Tony Thurmond is responsible for the implementation of AB 1266. *Id.*, ¶ 79.

IV. ARGUMENT

A. Plaintiffs T.S. And K.S. Have Standing To Bring The Title IX Claims Against The State Defendants

"Article III of the Constitution requires a party to have standing to bring its suit." *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 865 (9th Cir. 2014). Article III standing requires (1) injury in fact—an invasion of a legally protected interest, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision. *Bras v. California Pub. Utilities Comm'n*, 59 F.3d 869, 872 (9th Cir. 1995). Plaintiffs T.S.

[1] In addition, Plaintiffs incorporate the Statements of Facts in Plaintiffs' Opposition To Defendants Riverside Unified School District's, Leann Iacuone's, And Amanda Chann's Motion To Dismiss, 3-5.

and K.S. allege specific, individualized harms attributable to the State Defendants, who bear responsibility for the implementation and enforcement of AB 1266. These harms are not abstract—they are well-pleaded and supported by factual allegations in the First Amended Complaint.

1. Plaintiffs T.S. and K.S. have alleged concrete and particularized injuries

The Supreme Court has "constru[ed] 'discrimination' under Title IX broadly" to ensure that women and girls benefit equally from educational programs. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005). And the Courts of Appeals have followed suit, characterizing Title IX as "a dynamic statute," *Neal v. Bd. of Trs. of California State Universities.*, 198 F.3d 763, 769 (9th Cir. 1999), that mandates "real [athletic] opportunities, not illusory ones." *Williams v. Sch. Dist. of Bethlehem, Pa.*, 998 F.2d 168, 175 (3d Cir. 1993). Title IX requires that girls have "genuine athletic participation opportunities." *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 101 (2d Cir. 2012) (emphasis added). So any "measure [ ]" of Title IX "compliance" must account for "whether [athletic programs actually] achieve . . . equal opportunity" for both sexes. *Horner v. Ky. High Sch. Athletic Ass'n*, 43 F.3d 265, 273–74 (6th Cir. 1994). Due in large part to Title IX, girls and women benefit from "being physically strong," "developing the myriad skills associated with competitive sport," and "attending college on athletic scholarships." Doriane Coleman, Michael Joyner, & Donna Lopiano, Re-Affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule, 27 DUKE J. GENDER L. & POL'Y 69, 72 (2020) ("Re-Affirming the Value of the Sports Exception"). "Title IX has successfully changed the lives of girls and of women . . ., protecting their rights, broadening their horizons [,] and setting them up for success in later stages of their education and careers." Id. at 70 (quotation omitted).

MLKHS's sponsorship of a boys' cross-country team triggers the obligation to provide a comparable opportunity for "members of the other sex" – here, female athletes. FAC ¶¶ 335–339. Yet, there is no comparable opportunity at MLKHS where

biological boys are losing opportunities to biological girls. This structural imbalance deprives T.S., K.S., Save Girls' Sports members, and all female athletes at MLKHS of an equal athletic opportunity, as required under applicable law.

As alleged in the FAC, "[w]hen M.L. finishes a race, each girl who finished after M.L. finishes one placement lower than M.L. otherwise would have finished." FAC, ¶ 368. In at least three instances, M.L. finished in the top bracket on the girls' team which qualified M.L. to receive a medal, meaning that, had M.L. not been permitted to race, the female athlete outside the bracket would have earned the medal." FAC, ¶ 368; *see also* FAC, ¶ 150 ("On or about October 19, 2024, at the Inland Empire Challenge, the top 30 female athletes received medals. M.L. finished 6th place. As a result of M.L.'s placement in the top 30, M.L. pushed a biological female, out of the top 30. As a result, the biological female who finished 31st, did not receive a medal."); FAC, ¶ 151 ("On or around November 8, 2024, at the Big VII League Finals, the top 21 female athletes were awarded medals. M.L. finished in 4th place, which pushed B.E., a biological female, out of the top 21. Consequently, B.E., who placed 22nd, did not receive a medal."); FAC, ¶ 152 ("On or about December 17, 2024, M.L. received the "MLKHS Senior Girl" award for fastest runner due to M.L. having the fastest run time on the girls' cross-country team. Had M.L. not been on the girls' cross-country team, the award would have gone to a biological female.").

By allowing a biological male to compete on the girls' team, Defendants have deprived Plaintiffs and other female athletes the opportunity of a fair and competitive female athletics program, while the boys' team remains composed solely of biological males. This creates unfair competitive balances and frustrates the purpose of Title IX. This unequal treatment has tangible consequences for female athletes. In cross-country, race times and individual placements are objective metrics that determine athletic progression, recognition, and recruitment. Plaintiffs have alleged harms including the loss of the experience of fair competition; loss of correct placements; loss of medals; loss of victories and the public recognition associated with victories;

loss of opportunities to advance to higher-level competitions; and loss of visibility to college recruiters. FAC, ¶¶ 310, 349, 373. These are not generalized grievances—they are specific, measurable, and directly linked to M.L.'s participation on the girls' team. Plaintiffs experience not only lost competitive opportunities but also emotional and psychological harm—including humiliation, stress, and discouragement—despite the time, effort, and training they have invested in their sport.

a. T.S. was directly harmed

Defendants argue that "T.S. was not harmed by M.L.'s participation on the varsity team." State Dft's Mtn., p. 5. This argument is based on a lack of understanding of how cross-country teams work. Teams have spots, and the higher up an athlete is on the ladder, the more opportunities that athlete is given. So, the presence of M.L. on the team meant that T.S. was knocked down a spot and thus was harmed in a concrete way. "[S]tudent athletes have an interest in the accurate public representation of their athletic achievements – an interest equally threatened by record expungement or inaccurate records from the start." *Soule v. Connecticut Ass'n of Sch., Inc.*, 90 F.4th 34, 49 (2d Cir. 2023). Courts of Appeals have recognized that interest for over 40 years. *E.g.*, *McPherson v. Mich. High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453, 458–59 (6th Cir. 1997) (en banc); *Sandison v. Mich. High Sch. Athletic Ass'n, Inc.*, 64 F.3d 1026, 1030 (6th Cir. 1995); *Wiley v. Nat'l Collegiate Athletics Ass'n*, 612 F.2d 473, 476 (10th Cir. 1979). Courts have long recognized that "persons who are personally denied equal treatment" may incur "serious non-economic injuries." *Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984). Often the concrete injury boils down to plaintiffs' "inability to compete on an equal footing." *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993); *accord Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 211 (1995).

Defendants attempt to minimize T.S.'s removal from varsity (State Dft's Mtn., p. 4 n.4), but in competitive athletics, the distinction between varsity and junior varsity is significant. Defendants' claim that "another student-athlete, other than T.S., was

next in line to compete [on the Varsity Top 7]" is not only a red herring. Br. at 5. What ultimately happened to the vacant spot on the varsity team is irrelevant. The harm occurred when T.S. was displaced by M.L. and demoted on the team ladder. For that particular race, it meant M.L. was relegated to the Junior Varsity team, despite having qualified for the Varsity Top 7. Moreover, the only reason there was a vacant spot on the Varsity Top 7 was because an SGS member relinquished her spot *because T.S. had been improperly displaced by M.L.* and she did not want to compete with a biological male. But even in events where T.S. competed against M.L., M.L. suffered Title IX harm by not placing as high as she could have had Title IX not been violated.

The issue is not whether T.S. *might* have earned a spot on the girls' varsity cross-country team, but for M.L.'s inclusion—T.S. *already* held such a position. FAC, ¶¶ 123–25 ("The MLKHS varsity coach initially identified T.S. on the Varsity Top 7 list for the Mt. SAC Invitational."). This is neither speculative nor hypothetical. Furthermore, it is improper for Defendants to dispute T.S.'s varsity standing when the FAC clearly alleges that she met all varsity requirements and was *selected by the coach* to compete at Mt. SAC. FAC, ¶ 123. Crucially, the FAC also alleges that the athletic director intervened, removed T.S. from the Varsity Top 7, and replaced her with M.L., who did not meet the requisite varsity standards, a move that was atypical and an unauthorized departure from regular procedure where the coach determines the varsity lineup. FAC, ¶¶ 100, 114, 123.[2] These injuries are not theoretical—they reflect the real impact of an unfair and discriminatory policy. These facts establish the

[2] State Defendants attempt to shield themselves behind the School District Defendants by claiming they were not directly responsible for the decisions that harmed T.S. State Dft's Mtn., pp. 6-7. However, this mischaracterizes the nature of the claims. It is the enforcement of AB 1266 that empowers and permits school districts to allow biologically male athletes to compete on girls' teams—and to make roster decisions that include male athletes in female categories. The harm to T.S. was a direct and foreseeable result of the State's implementation and enforcement of this statute.

harm suffered by T.S. as a result of M.L.'s inclusion on the girls' varsity team. And M.L.'s inclusion on the girls' team was a direct result of AB 1266.

b. K.S. was directly harmed

Similarly, Defendants contend that K.S. lacks standing because she is not currently on the varsity team and "no facts [are] alleged to show that K.S. has been harmed by M.L.'s participation on the varsity team." State Dft's Mtn., p. 4. Again, this ignores the reality of how cross-country teams operate. The demotion on the team ladder is harm. K.S. consistently ranked second or third on the Junior Varsity team (FAC, ¶ 82), placing her as a strong candidate for the Varsity Top 7 if a spot became available due to injury or illness. FAC, ¶ 137. Her "high ranking on the girls' Junior Varsity Team" made her an "immediate contender []" for varsity openings. *Id.* By assigning M.L. a spot on the Varsity Top 7 in place of T.S., Defendants directly blocked a pathway to advancement for K.S. and similarly situated female athletes. K.S. attended all practices and satisfied varsity eligibility requirements. FAC, ¶ 138. She need not have been on the varsity team at the time to suffer harm; the harm stems (1) from M.L.'s inclusion on the girls' cross-country team and (2) M.L.'s placement on the Varsity Top 7, which displaced a spot that would otherwise be available to T.S., K.S., and other female athletes. If M.L. had not been on the team and a varsity athlete were unavailable to compete, K.S. would have been next in line. Thus, M.L.'s inclusion on the girls' team directly harms K.S. and other female athletes by demoting them on the team ladder.

T.S. and K.S. have alleged clear and individualized harm resulting from M.L.'s inclusion on the girls' cross-country team. T.S. was removed from her rightful place on the Varsity Top 7 and lost the opportunity to compete with the varsity team and both T.S. and K.S. were denied a fair opportunity to advance. These are direct, non-speculative injuries that support Plaintiffs standing.

2. Plaintiffs' injuries are traceable to the State Defendants

AB 1266 mandates that biological males be allowed to participate on female athletic teams. Cal. Educ. Code § 221.5(f). State Defendants are the enforcers of the very state law that is causing the harm at issue. Because a state law is being challenged, it is appropriate that the state be given the chance to defend its laws. The State Defendants are the statutory enforcers of AB 1266. FAC, ¶¶ 78-79. Their participation in this case is not only proper, but necessary. Indeed, they should welcome the opportunity to defend the law's validity.

However, the State Defendants are charged with enforcing AB 1266 statewide, compelling schools like MLKHS to comply with its mandates. This enforcement directly led to the policies and decisions that harmed Plaintiffs T.S. and K.S. and SGS – namely, allowing a biological male to compete on the girls' cross-country team, displacing qualified female athletes, and removing fair competition. Indeed, State Defendants concede that AB 1266 "provides the opportunity for M.L. to participate on the girls' cross-country team." State Dft's Mtn., p. 7. By enforcing this law, State Defendants have created a conflict that harmed to the Plaintiffs.

The traceability requirement under Article III does not demand that the AG or SPI personally dictate school-level roster decisions. It requires only that the injury be "fairly traceable" to the challenged action of the defendant. *Lujan*, 504 U.S. at 560. Here, Plaintiffs challenge the discriminatory impact of AB 1266. The State Defendants enforcement authority provides the necessary causal link between the AG and SPI and Plaintiffs' injuries.

The AG's reliance on *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998) is misplaced. State Dft's Mtn., p. at 6. There, plaintiffs sought declaratory relief alleging that Nevada Commission on Judicial Discipline's ("Commission") contempt threat "chilled" their rights guaranteed under the First and Fourteenth Amendments. *Id.* at 986. Plaintiffs sought to challenge the policy based on the Commission's general oversight authority without pointing to any enforcement mechanism. However, the Ninth Circuit held that the Commission lacked the authority to issue contempt orders,

a power reserved solely for the Nevada Supreme Court. *Id.* at 987. The Ninth Circuit recognized that plaintiffs' rights could not "be alleviated by any pressure" which a court "might seek to apply on the Commission." *Id.* at 987.

In contrast, State Defendants are the enforcers of AB 1266, and Plaintiffs' injuries could be addressed through any relief this Court applies to the State Defendants. Plaintiffs allege a direct connection between enforcement of AB 1266 and the denial of equal athletic opportunities for female athletes, making their injuries traceable to that enforcement. Accordingly, Plaintiffs' injuries are fairly traceable to the AG and SPI's enforcement of AB 1266, and they are proper defendants.

3. Plaintiffs' injuries are redressable by a judicial decision

Redressability focuses "on whether the injury that a plaintiff alleges is likely to be redressed through the litigation." *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 287 (2008) (emphasis omitted). The standard is one of probability, not certainty. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103, 118 S. Ct. 1003, 1017, 140 L. Ed. 2d 210 (1998) ("[A] *likelihood* that the requested relief will address the alleged injury" is enough) (emphasis added). Plaintiffs are not required to "show that a favorable decision will relieve [their] *every* injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982). A "favorable decision" must simply "relieve a discrete injury to" the plaintiff. *Id.* That means a judicial remedy that "at least partially redress[es]" the plaintiff's harm will suffice. *Meese v. Keene*, 481 U.S. 465, 476 (1987).

a. Compensatory or nominal damages are sufficient

In their complaint, Plaintiffs requested "[a]n award of nominal, compensatory damages and other monetary relief to remedy their completed harms. FAC, p. 48. Compensatory damages are likely to redress Plaintiffs' quantifiable damages. And nominal damages, which are "awarded by default," are certain to "independently provide redress" for the unquantifiable injuries resulting from Defendants' violation of Plaintiffs' Title IX rights. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 290-91 (2021).

b. Declaratory and injunctive relief will likely redress the female athletes' ongoing injuries

"Past exposure to illegal conduct" is redressable by declaratory and injunctive relief if plaintiffs show that the legal violation has "continuing, present adverse effects." *Steel Co.*, 523 U.S. at 109 (quotation omitted). Plaintiffs allege just such continuing adverse effects. So prospective relief is appropriate to redress Plaintiffs' "ongoing or future harm." *AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n*, 141 S. Ct. 1341, 1347 (2021).

More specifically, the complaint requests a declaratory judgment that Defendants violated Plaintiffs' Title IX rights "by failing to provide equal treatment, benefits, and opportunities for girls in athletic competition." FAC, p. 48. And to remedy the ongoing harms of that Title IX violation the FAC requests an injunction "enjoining Defendants, their officials, agents, and employees from enforcing and implementing AB 1266." *Id.* So long as AB 1266 is in effect and enforced by state education officials, schools face legal and policy pressure to allow participation based on gender identity – even when doing so violates federal protections for sex-based sports. Enjoining the enforcement of AB 1266 would (1) restore sex-based team protections required by Title IX; (2) remove the pressure on schools to violate federal law; (3) prevent future displacements of female athletes like T.S. and K.S. and members of SGS; and (4) ensure fairness, safety, and integrity in girls' sports.

Further, the Court could correct the records and give credit and/or titles to the female athletes who would have received them but for the participation of biologically male athletes in sports competition designated for girls. *See* FAC ¶¶ 308-11. Corrected records will personally and tangibly benefit the harmed female athletes. *Steel Co.*, 523 U.S. at 103 n.5. The Sixth, Seventh, Eighth, and Tenth Circuits have all recognized that students have an ongoing interest in their athletic placements, records, and awards. *Sandison*, 64 F.3d at 1028–30; *Crane by Crane v. Indiana High School Athletic Association*, 975 F.2d 1315, 1317 (7th Cir. 1992); *Pottgen v. Missouri State*

High School Activities Assoc., 40 F.3d 926, 928–29 (8th Cir. 1994); *Wiley*, 612 F.2d at 474–75. And the Fourth, Fifth, and Ninth Circuits have acknowledged that anything in students' educational records that reduces their level of achievement is likely to impact their career success. *Constantine v. Rectors & Visitors of George Mason University*, 411 F.3d 474 (4th Cir. 2005); *Overdam v. Texas A&M University*, 43 F.4th 522 (5th Cir. 2022); *Bird v. Lewis & Clark Coll.*, 303 F.3d 1015 (9th Cir. 2002).

4. The relief sought addresses the core purpose of Title IX – ensuring equal athletic opportunities and protections for female athletes

The relief Plaintiffs seek does not undermine the principles of equal protection or Title IX – it affirms it. *Cf.* State Dft's Mtn., pp. 8-9. The Equal Protection Clause does not mandate the elimination of all sex-based distinctions in athletics. Rather, the Constitution permits such distinctions when they serve important governmental objectives and are substantially related to achieving those objectives. *U.S. v. Virginia*, 518 U.S. 515, 533 (1996). Protecting athletic opportunities for biological females – who have historically been denied equal participation in sports – is precisely the kind of interest that satisfies this standard and is fully consistent with the purpose of Title IX. *Id.* (Title IX was enacted to ensure that biological women received "equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.") And courts have consistently upheld sex-based classifications in athletics when necessary to ensure fair and equal opportunities. *See Clark, By & Through Clark v. Ariz. Interscholastic Ass'n*, 695 F.2d 1126, 1131–32 (9th Cir. 1982).

Defendants assert that excluding M.L. from the girls' team would violate Title IX, relying on *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020). State Dft's Mtn., p. at 9. But *Bostock*, a Title VII employment discrimination case, explicitly confined its holding to the employment context and expressly declined to address issues involving Title IX or sex-separated spaces such as bathrooms, locker rooms, or

athletic teams. *Bostock*, 590 U.S. at at 661 ("We do not purport to address bathrooms, locker rooms, or anything else of the kind.").

Even assuming arguendo that Plaintiffs' requested relief implicated Equal Protection or Title IX concerns – which it does not – such considerations are irrelevant to the question of Article III standing. When assessing a plaintiff's Article III standing, federal courts "assume that on the merits the plaintiffs would be successful in their claims." *Am. Farm Bureau Fed'n v. U.S. Env't Prot. Agency*, 836 F.3d 963, 968 (8th Cir. 2016); *Sierra Club v. E.P.A.*, 699 F.3d 530, 533 (D.C. Cir. 2012).

The preservation of separate athletic teams for girls is a central tenet of Title IX – not a violation of it. Plaintiffs do not seek to discriminate against transgender students; rather, they seek to uphold the protections guaranteed by federal law that ensure athletic opportunities for girls based on biological sex.

B. Plaintiff Save Girls' Sports Has Standing

Defendants argue that Plaintiff Save Girls' Sports lacks standing in both its organizational and associational capacities. State Dft's Mtn., pp. 9-10. This argument misstates the applicable legal standards and ignores the well-pleaded factual allegations, which are sufficient to establish standing at this stage of the litigation.

1. SGS has organizational standing

The test of whether an organizational plaintiff has standing is identical to the three-part test outlined above normally applied in the context of an individual plaintiff. *La. Asociacion De Trabajadores De Lake v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). An organization establishes the requisite injury upon a showing of "both a diversion of its resources and a frustration of its mission." *Id.* That is so even if the "added cost has not been estimated and may be slight," because standing "requires only a minimal showing of injury." *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008).

An organization alleges an injury in fact where it "expended additional resources that they would not otherwise have expended" to accomplish its mission.

Nat'l Council of La Raza v. Cegavske, 800 F.3d 1032, 1040 (9th Cir. 2015); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) ("Such concrete and demonstrable injury to the organization's activities – with the consequent drain on the organization's resources – constitutes far more than simply a setback to the organization's abstract social interests.").

SGS satisfies this standard. As alleged in the FAC, SGS's core mission is to advocate for and protect female athletic opportunities based on biological sex**.** FAC, ¶ 17. The enforcement of AB 1266, which authorizes and encourages the inclusion of biological males on girls' athletic teams, directly undermines this mission and compels SGS to divert substantial resources toward advocacy, education, and legal support in opposition to the law. *See* RJN ¶8 (containing written resources and webinars addressing the issue of male athletes participating in girls' sports). This diversion of resources constitutes a classic *Havens*-type injury. *See also East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (holding that a diversion of resources suffices for organizational standing).

2. SGS has associational standing

To establish associational standing, an organization must demonstrate three elements: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted, nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). Here, SGS has associational standing:

(1) Its members have standing in their own right: SGS is comprised of parents and female student-athletes in California, including those affected by the enforcement of AB 1266. FAC, ¶ 17. The FAC details injuries suffered by named student-athletes T.S. and K.S., who are members or represented by the organizational interests of SGS. The FAC also alleges injuries to another SGS members who forfeited her varsity spot due to Defendants' decision to replace T.S. with M.L. and

because she refused to compete with a biological male. Because SGS is composed of numerous female student-athletes in California, and AB 1266 remains in effect, its members are directly harmed by the law's enforcement. As a result, SGS athletes are losing competitive rankings, podium finishes, awards, and even opportunities for college recruitment.[3] *See* RJN ¶8. These injuries – including loss of athletic opportunity, fair competition, and emotional distress – are concrete, particularized, and redressable. *See Lujan*, 504 U.S. at 560.

(2) The interests it seeks to protect are germane to its purpose: SGS exists for the purpose of preserving sex-based athletic competition and protecting female athletes from discrimination and displacement. The claims in this case – seeking to bar enforcement of a law that permits male participation in girls' sports – go directly to the heart of SGS's mission. FAC, ¶ 17.

(3) The claims and relief requested do not require the participation of individual members: This case seeks declaratory and injunctive relief against state-level policies and actions. There is no need for individualized proof of damages or testimony unique to each member. *See Ass'n of Am. Physicians & Surgeons v. Texas Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010).

Save Girls' Sports has standing both in its own right – based on the diversion of organizational resources and disruption of its core mission – and in a representative capacity on behalf of its members who have suffered direct harm.

C. Defendants Violated Title IX[4]

Defendants argue that Plaintiffs' Title IX claims must be dismissed because the FAC does not expressly allege that State Defendants are direct recipients of federal

[3] If the Court finds it necessary, Plaintiffs are prepared to amend the complaint to identify additional SGS members who have been directly harmed by M.L.'s participation in female sports.

[4] Plaintiffs have elected to voluntarily dismiss their Seventh Cause of Action (Violation of Education Code § 220) as to the State Defendants only. Plaintiffs continue to pursue this claim against the School District Defendants.

funds. State Dft's Mtn., p. 11. Defendants rely on cases like *Lopez v. Regents of Univ. of Cal.*, 5 F. Supp. 3d 1106 (N.D. Cal. 2013), and *Lipsett v. Univ. of Puerto Rico*, 864 F.2d 881 (1st Cir. 1988), to argue that Title IX does not provide for individual liability. State Dft's Mtn., p. 11. But Plaintiffs are not suing Defendants in their individual capacities, but their official capacities. *See* FAC, ¶¶ 23-24.

Plaintiffs allege that MLKHS receives federal funding and is required to comply with Title IX. FAC, ¶ 218. This allegation is sufficient to establish Title IX jurisdiction over state officials. It is disingenuous for State Defendants to claim they do not receive federal funding, given their role in administering, managing, and directing the substantial federal funds allocated to local school districts throughout the state. *See generally* 20 U.S.C. § 6301 et seq.; Cal. Gov. Code § 11255; Cal. Educ. Code § 14000 et seq.[5]

Defendants contend that Plaintiffs' Title IX claims fail because State Defendants lacked "clear notice" that allowing a male to compete on a girls' cross-country team might violate Title IX, citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981). State Dft's Mtn., p. 12.

However, prelitigation notice is needed only "in cases . . . *that do not involve official policy of the recipient entity*." *Gebser v. Lago Vista Indep. School Dist.*, 524 U.S. 274, 290 (1998) (emphasis added); *accord, e.g.*, *Mansourian*, 602 F.3d 957, 967 (9th Cir. 2010) ("Proof of actual notice is required only when the alleged Title IX violation consists of an institution's deliberate indifference to acts that do not involve official policy of the [institution]." And "[schools'] decisions with respect to athletics are . . . easily attributable to the [institution] and [are] always – by definition – intentional." *Mansourian*, 602 F.3d at 968 (quoting *Jackson*, 544 U.S. at 183).

[5] If the Court finds it necessary, Plaintiffs are prepared to amend the complaint to include additional factual allegations concerning the federal funding allocated through the State Defendants to the School District Defendants.

Decisions to allow biological males to compete in girls' events are official decisions mandated by AB 1266, not practices by individual students or staff. This law "fail[s] effectively to accommodate students of both sexes thus represent[s] 'official policy of the recipient entity' and so [is] not covered by *Gebser*'s notice requirement." *Mansourian*, 602 F.3d at 968 (quoting *Gebser*, 524 U.S. at 290). "Title IX itself" supplies "sufficient notice." *Jackson*, 544 U.S. at 182–83. Recipients have been on notice for over four decades that non-discrimination under Title IX means ensuring equal athletic opportunities and benefits for girls, and effectively accommodating their athletic abilities. 34 C.F.R. § 106.41.

Defendants (prematurely) advance the argument that executive orders do not save Plaintiffs' claims. State Dft's Mtn., p. 13-14. While Defendants reference the principle that the President cannot enact, amend, or repeal statutes (*City and Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1233 (9th Cir. 2018)), they do not explain how any referenced Executive Orders oversteps their bounds. [6] Defendants continue to show a blatant disregard for Executive Order ("EO") No. 14201, "Keeping Men Out of Women's Sports" through its enforcement of AB 1266. *See* RJN ¶1. EO 14201 recognizes that allowing men to compete in women's sports is "demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports."

1. State Defendants discriminated against Plaintiffs on the basis of sex

Congress intended to give Title IX broad reach to protect a wide range of intentional unequal treatment. *See North Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982). To "discriminate" means "[t]o make a difference in treatment or favor (of one

[6] The U.S. Department of Education has initiated multiple investigations into state governments and interscholastic athletic organizations—including the California Interscholastic Federation—for policies permitting biologically male athletes to compete in girls' sports. *See* RJN ¶¶1-7, Further underscoring the seriousness of the issue, on April 16, 2025, the U.S. Department of Justice filed a lawsuit against the Maine Department of Education, alleging that its continued allowance of male participation in female athletic events constitutes a violation of Title IX.

as compared with others)." *Bostock*, 590 U.S. at 657 (quoting Webster's New International Dictionary 745 (2d ed. 1954)). More specifically, it means treating an individual worse than those who are similarly situated. *Id.* at 657. It is enough to show that "but-for the plaintiffs' status as females, would the defendants have treated them more favorably." *Soule v. Connecticut Ass'n of Sch.*, No. 3:20-CV- 00201(RNC), 2024 WL 4680533, at *18 (D. Conn. Nov. 5, 2024). Intentional discrimination may also be shown by demonstrating that an official with authority to address the alleged discrimination had actual knowledge of the discrimination and failed to adequately respond, amounting to deliberate indifference. *Karasek v. Regents of University of California*, 956 F.3d 1093, 1104–05 (9th Cir. 2020). Additionally, the discrimination must be severe, pervasive, and objectively offensive, such that it effectively bars the victim's access to an educational opportunity or benefit. *Id.* at 1105.

As discussed above (Section IV.C.2), the decision to allow biologically male athletes to compete in girls' events is not the result of isolated conduct by individual students or staff members – it is the direct result of official state policy mandated by AB 1266. These decisions do not arise by accident. AB 1266's "fail[ure] [to] effectively [] accommodate students of both sexes thus represent[s] 'official policy of the recipient entity'" *Mansourian*, 602 F.3d at 968 (quoting *Gebser*, 524 U.S. at 290). Recipients have been on notice for over four decades that non-discrimination under Title IX means ensuring equal athletic opportunities and benefits for girls, and effectively accommodating their athletic abilities. 34 C.F.R. § 106.41. Unlike ad hoc decisions, official policies are adopted knowingly and implemented intentionally. AB 1266 intentionally caused the harm suffered here.

2. AB 1266 does not effectively accommodate female athletes

Under the Department's guidance, courts measure schools' compliance with Title IX based on whether the school "effectively accommodate[s] the interests and abilities of members of both sexes." 34 C.F.R. § 106.41(c). Typically, effective accommodation claims focus on either "participation opportunities" or "competitive

schedules and opportunities for men's and women's teams." *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 301 (2d Cir. 2004).

Plaintiffs have alleged instances where, due to AB 1266, they were prevented from participating in athletic competitions that they otherwise would have been entitled to compete in. For instance, T.S. was removed from her varsity position and replaced by M.L. *See* FAC, 119. As a result of this displacement, T.S. lost the opportunity to compete with the varsity team at the prestigious Mt. SAC Invitational. Additionally, M.L. has claimed numerous rankings, podium finishes, and awards that would have otherwise gone to female athletes. *Id.*

Plaintiffs' allegations also show how AB 1266 did not afford them proper competitive opportunities. Under Department of Education's ("Department") guidance, schools must "afford proportionally similar numbers of male and female athletes *equivalently advanced competitive opportunities*." *McCormick*, 370 F.3d at 301 (emphasis added). AB 1266 does no such thing. Male athletes have inherent advantages over female athletes that prevent competition from being "equivalent." FAC, ¶¶ 43-44, 323, 341, 357, 361, 371. Allowing biological males to compete in female athletics will largely displace female athletes from advancing to higher levels of competition and winning championships.

Defendants attempt to shrink their obligations to provide equal accommodations to the provision of mere "opportunities." State Dft's Mtn., pp. 16-17. That ignores both the Department guidance and courts' interpretation of it. In 1979, the Department explicitly stated that athletic programs' compliance with Title IX turns on "[w]hether the policies . . . are discriminatory in . . . effect." *McCormick*, 370 F.3d at 292. Schools must therefore provide "equal opportunity" not only in participation but in "levels of competition . . . which equally reflect [females'] abilities." 44 Fed. Reg. at 71,417–18. Again in 1996, the Department clarified that "the *quality* of competition offered to members of both sexes" factors into "whether an institution effectively accommodates the interests and abilities of its students."

1996 Clarification (emphasis added). Following this guidance, courts have looked at not only the opportunities that athletic programs provide but also the "*quality* of competition provided" and whether athletic opportunities "equally reflect []" women's "abilities." *Roberts v. Colo. State Bd. of Ag.*, 998 F.2d 824, 829 (10th Cir. 1993) (emphasis added). Schools can "provid[e] sufficient opportunities for *participation*" and still fail to accommodate female athletics equally. *McCormick*, 370 F.3d at 301.

3. AB 1266 does not provide female athletes with equal treatment

Plaintiffs have adequately pled facts demonstrating that not only does AB 1266 fail to effectively accommodate female athletes, but it also fails to treat them equally. Title IX prohibits recipients from "[t]reating girls differently regarding a matter so fundamental to the experience of sports—the chance to be champions." *McCormick*, 370 F.3d at 295. AB 1266 allows M.L. and other male athletes to take rankings, podium finishes, recognition from female athletes. That disparity "sends a message to" females that "they are not expected to succeed and that" Defendants do "not value their athletic abilities as much as [they] value [ ] the abilities of boys." *Id.* That is unequal treatment under Title IX. Plaintiffs needed to show that they were "excluded from participation in an education program or activity, denied the benefits of this education, or otherwise were subjected to discrimination because of [their] sex." *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 129 & n.21 (4th Cir. 2022) (en banc). They have done so, and that is all the Federal Rules require at this stage.

D. Leave to Amend Should Be Granted

In the alternative, Plaintiffs should be granted leave to amend their FAC. Leave to amend must be "freely given" unless it is clear that the proposed amendment is brought after undue and unexplained delay; is offered in bad faith; would be futile; or would be prejudicial to the other parties. *See* Fed. R. Civ. P. 15(a)(2); *Foman v. Davis*, 371 U.S. 178, 182 (1962). None of those factors apply here.

If necessary, Plaintiffs are prepared to amend the complaint to include additional allegations of harm suffered by numerous SGS members, further factual details regarding the specific harm incurred by T.S. as a result of being relegated to the Junior Varsity team at the Mt. SAC Invitational, additional factual support concerning Defendants' receipt of federal funding, and expanded allegations demonstrating how the ongoing enforcement of AB 1266 is resulting in widespread violations of Title IX's mandates for effective accommodation and equal treatment of female athletes.

If necessary, to promote judicial efficiency and ensure meaningful relief, the Court should grant Plaintiffs leave to amend.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss. Plaintiffs have standing and have adequately alleged claims under Title IX. Defendants' arguments to the contrary lack merit.

DATED: April 25, 2025

ADVOCATES FOR FAITH & FREEDOM

/s/ Julianne Fleischer

Julianne Fleischer, Esq.
Attorneys for Plaintiffs