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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' RESPONSE IN SUPPORT OF THE STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

Date: June 27, 2025
Time: 2:00 p.m.
Dept: Courtroom 2
Judge: Honorable Sunshine Sykes

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs respectfully submit this response in support of the United States' Statement of Interest ("Statement") (ECF No. 54), which correctly reaffirms Title IX's promise of equal athletic opportunity for biological females. The Statement filed by the United States rightfully interprets Title IX according to its plain meaning and original purpose: to protect and promote athletic opportunities for biological females in federally funded education programs. Defendants State Superintendent of Public Instruction Tony Thurmond's and Attorney General Rob Bonta's ("State Defendants") response (ECF No. 59, Dft's Response) fails to address the merits of the United States' argument and instead urges the Court to disregard the Statement on procedural and doctrinal grounds that are legally and factually unavailing. The Statement provides this Court with valuable context and insight into Title IX's foundational purposes, particularly as applied to the protection of biological girls' equal athletic opportunity.

II. ARGUMENT

A. THE UNITED STATES' STATEMENT OF INTEREST IS APPROPRIATE, TIMELY, AND USEFUL TO THE COURT'S ANALYSIS

Contrary to Defendants' assertions (Dft's Response at 3-6), the Statement was entirely proper. The government submitted it pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to "attend to the interests of the United States in a suit pending in a court of the United States." While State Defendants assert that the Statement was untimely, they provide no established legal rule imposing such a deadline. *See* Dft's Response at 4-5 (citing cases). The only case they reference for any purported timing requirement—*United States ex rel. Martinez v. Orange Cnty. Glob. Med. Ctr., Inc.*, No. 8:15-cv-01521-JLS-DFM, 2017 WL 9482462, at *1 n.1 (C.D. Cal. Sept. 14, 2017)—involved a court-specific directive applicable solely to *future* filings in that *particular* matter. Nevertheless, State Defendants erroneously treat that case-specific order as a binding or generally applicable legal standard. Moreover, they make no showing of prejudice resulting from the filing of the Statement. As in *United States ex rel. Hooper v. Lockheed Martin Corp.*, No. CV 08-00561 BRO (PJWx), 2014 WL 12561070, at *3 (C.D. Cal. Jan. 17, 2014), aff'd, 640 F. App'x

633 (9th Cir. 2016), where the court declined to strike the government's statement of interest, the United States here "does not offer any argument as to the merits of Defendant's motion." The Statement addresses an issue of national legal significance—the interpretation of Title IX in school athletic programs. *See* Statement at 2 ("The United States enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and has a significant interest in the proper interpretation of Title IX."); Statement at 4 ("The United States has an interest in affirming the foundational tenets of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1682 *et seq*. to provide girls and boys equal educational opportunities, including an "equal athletic opportunity" to participate in school athletic programs."). As such, it is "useful" to the Court, especially where the parties raise competing interpretations of a federal statute with nationwide implications.

B. TITLE IX PROTECTS GIRLS' ATHLETIC OPPORTUNITIES FROM THE IMPACT OF MALE PARTICIPANTS

The Statement rightly underscores that Title IX prohibits discrimination "on the basis of sex," a term grounded in biological distinction—not subjective gender identity. *See* Statement at 4 ("The law and its implementing regulations prohibit discrimination solely "on the basis of sex," not transgender status.") Congress did not intend for the term "sex" in Title IX to encompass gender identity or to permit biological males to participate in female athletic programs, and State Defendants offer no evidence to the contrary. State Defendants admit that Title IX and its regulations are silent on transgender participation (Dft's Response at 7) yet urge this Court to extend protections to transgender athletes in direct contradiction of Title IX's core objective: to ensure *equal opportunity* for girls and women.

Title IX permits sex-segregated athletic teams precisely to account for physiological differences that affect fair competition. FAC ¶ 347. As the Statement explains, the regulation at 34 C.F.R. § 106.41 expressly allows separate teams for boys and girls in recognition of these realities. Statement at 3-5. The displacement of female athletes – as alleged here in this matter – demonstrates the real-world erosion of equal opportunity Title IX was designed to prevent.

C. THE UNITED STATES' INTERPRETATION IS CONSISTENT WITH TITLE IX'S TEXT, PURPOSE, AND HISTORICAL APPLICATION

State Defendants improperly claim that the United States' interpretation should not be afforded any weight. Dft's Response at 6. However, the Statement does not invoke Chevron deference or purport to bind the Court – it offers legal analysis from the nation's chief enforcer of federal civil rights laws. Far from being novel or inconsistent, the Statement reflects Title IX's long-standing purpose to ensure that female students are not disadvantaged in education programs receiving federal funds. *See generally* FAC ¶¶ 35-70.

State Defendants' invocation of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), is misplaced. That case concerned judicial deference to agency interpretations of ambiguous statutes. Here, no such deference is requested. Rather, the United States' Statement articulates the plain-text reading of Title IX: discrimination "on the basis of sex" refers to biological sex, not gender identity.

D. STATE DEFENDANTS' RESPONSE MISCHARACTERIZES THE FACTUAL BASIS FOR PLAINTIFFS' CLAIMS

State Defendants argue that Plaintiffs have failed to demonstrate any actual displacement or injury. Dft's Response at 8-9. Not only is this an improper argument to raise in response to the United States' Statement of Interest, but it is also incorrect. The First Amended Complaint ("FAC") alleges concrete harms: For example, Plaintiff T.S. was displaced from the Varsity Top 7 and from competing at the prestigious Mt. SAC Invitational due to the inclusion of a biological male athlete, M.L. FAC ¶¶ 123–124; *see also* ECF No. 46, Plaintiffs' Opposition to State Defendants' Motion to Dismiss at 4-8. M.L. also won awards and a senior team honor that otherwise would have gone to female athletes. FAC ¶ 152; *see also* ECF No. 46, Plaintiffs' Opposition to State Defendants' Motion to Dismiss at 4-8. These are not speculative injuries—they are actual, measurable harms that directly implicate Title IX's protections.

E. DEFENDANTS' RELIANCE ON POST-HOC REGULATORY POSITIONS AND POLICY FLUCTUATIONS IS MISPLACED

State Defendants attempt to undermine the Statement by citing prior positions taken by the U.S. Department of Education and ongoing legal challenges to Executive Order 14201. Dft's Response at 6. However, it is well established that an agency may revise its position, especially to return to the statute's original meaning. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 127 (1962) ("The Department was not foreclosed in the instant cases from changing an interpretation of the statute which was clear error."). The rescission of the 2023 proposed rule allowing gender-identity-based participation, and the adoption of Executive Order 14201, reflect a return to Title IX's foundational commitments – not an inconsistent or arbitrary policy shift.

F. CONTROLLING LAW DOES NOT COMPEL THE EXCLUSION OF THE UNITED STATES' INTERPRETATION

State Defendants rely on decisions such as *Hecox v. Little*, 104 F.4th 1061, 1090–91 (9th Cir. 2024), as amended (June 14, 2024), petition for cert. filed, No. 24-38, and *Doe v. Horne*, 115 F.4th 1083, 1102–07 (9th Cir. 2024), petition for cert. filed, No. 24-449, in support of their argument that the Statement should be disregarded in light of the Ninth Circuit's prior consideration of transgender participation in athletics. Dft's Response at 7. However, those decisions are materially distinguishable and also rest on interpretations of Title IX now in serious tension with both the federal government's position and evolving Supreme Court doctrine.

First, both *Hecox* and *Horne* involved statutes that expressly discriminated only against transgender females, leaving transgender males unaffected—an asymmetry the Ninth Circuit found constitutionally and statutorily problematic. *Horne*, 115 F.4th at 1092 ("The Act prohibits 'students of the male sex,' including transgender women and girls, from participating in women's and girls' sports."); *Hecox*, 104 F.4th at ("Idaho enacted the Fairness in Women's Sports Act, Idaho Code §§ 33-6201–06 (2020) (the "Act"), a first-of-its-kind categorical ban on the participation of transgender women and girls in women's student athletics."). In *Hecox*, the law also required intrusive proof of

biological sex, including genital inspections, raising additional privacy and due process concerns that are not present here. 104 F.4th at 1087.

Second, *Horne* involved plaintiffs who had not undergone male puberty: one was 11, the other 15, and both were on puberty blockers – one for nearly four years. 115 F.4th at 1096-97. The Ninth Circuit emphasized the deferential standard of review and affirmed the district court's factual findings that pre-pubertal transgender girls did not enjoy a meaningful competitive advantage over biological females. *Id.* at 1101-02. Importantly, the Ninth Circuit emphasized the narrow scope of its holding, stating: "*Given our limited and deferential review* and the district court's well-supported factual findings, including its finding that 'transgender girls who have not undergone male puberty do not have an athletic advantage over other girls….'" *Id.* at 1091.

Moreover, the Ninth Circuit's extension of *Bostock v. Clayton County*, 590 U.S. 644 (2020), to Title IX is neither binding on this Court nor controlling. *Bostock* explicitly limited its holding to Title VII and expressly declined to extend its reasoning to other statutes, such as Title IX, particularly in contexts like athletics where biological differences are legally recognized.

Accordingly, Defendants' reliance on *Hecox* and *Horne* is misplaced, and nothing in current precedent forecloses this Court from giving due consideration to the United States' authoritative interpretation of Title IX, especially in light of materially different facts and legal concerns presented here.

III. CONCLUSION

The Court should reject State Defendants' request to disregard the Statement of Interest and instead consider it as a valid and clarifying interpretation of Title IX. Plaintiffs respectfully request that the Court give weight to the United States' interest in preserving girls' equal athletic opportunity.

DATED: June 19, 2025

ADVOCATES FOR FAITH & FREEDOM

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