IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

WASHINGTON EDUCATION ASSOCIATION, et al.,

Plaintiffs,

vs.

STATE OF WASHINGTON,

Defendant,

and

FEMALE ATHLETES UNITED,

Proposed Intervenor-Defendant.

CASE NO. 26-2-36880-5 SEA

PROPOSED INTERVENOR-DEFENDANT FEMALE ATHLETES UNITED'S MOTION TO INTERVENE AS DEFENDANT

ORAL ARGUMENT REQUESTED

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RELIEF REQUESTED

Elections matter. Just over a week ago, Washingtonians decisively stood up for women by passing Initiative 638 ("I-638") to ensure fairness and safety in women's sports. Now, activists want to subvert the people's will, deny biology, and roll back advances women have made since the passage of Title IX.

Female Athletes United ("FAU") respectfully moves under Washington Superior Court Rule 24(a) and (b) ("CR 24") to intervene as a defendant in this action so that it can defend the validity of I-638.

FAU is a 501(c)(3) organization with members directly affected by the Initiative, including high-school runners who have competed against—and lost to—males[1] in the past and will inevitably again unless the Initiative takes effect on schedule. They therefore have a direct interest in defending the Initiative.

Their interest is well recognized. Courts have often faced cases about who can access girls' sports teams and private spaces. While differing on the merits, courts have agreed on one thing: those most affected should be allowed to intervene.

Indeed, courts have allowed transgender athletes to intervene to seek access to women's teams. *See, e.g.*, *Soule v. Conn. Ass'n of Schs., Inc.*, No. 3:20-cv-00201, 2021 WL 1617206, at *2 (D. Conn. Apr. 25, 2021). Similarly, courts have allowed biological girls to intervene to defend their right to access female-only spaces and sports. *See, e.g.*, *B.P.J. v. W. Va. State Bd. of Educ.*, No. 2:21-CV-00316, 2021 WL 5711547, at *2–3 (S.D. W. Va. Dec. 1, 2021); *Hecox v. Little*, 479 F. Supp. 3d 930 (D. Idaho 2020); *Tirrell v. Edelblut*, No. 24-cv-251-LM-TSM, 2025 WL 1939965, at *4 (D.N.H. July 15, 2025). For good reason—these intervenors are directly affected. Denying intervention to one of these groups could well undermine the other group's ability to intervene and defend their interests in similar cases.

[1] Because this case and Initiative 638 are about the biological differences between males and females, we use those terms in accordance with their biological meaning.

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This case is no different. FAU's members are the very people I-638 was designed to protect: biological girls competing in girls' sports. They competed against and lost to males before—and suffered abuse for speaking up. Other girls forced to compete against male athletes have been injured. Without I-638, that will happen again. So FAU seeks to intervene to ensure that the Initiative, which appears to have passed by a resounding 13-point margin, takes effect.

FAU satisfies the criteria for intervention as of right under CR 24(a) and for permissive intervention under CR 24(b)(2) for four reasons.

First, this case is still in its infancy, and no party will be prejudiced. The case and the intervention motion were filed just this week.

Second, FAU has a clear interest in protecting its members from the challengers' attempt to subvert the voters' will. FAU has Washington members who want to compete on a safe and level playing field and who cannot do so if they are forced to compete against males. That includes members who have already been forced to compete against male athletes who identify as female.

Third, if the challengers get their requested relief, officials cannot enforce the Initiative, allowing unfair competition against FAU's members.

Fourth, no other party adequately represents FAU's interests. Adequacy is not a demanding standard, and the State does not share FAU's particular interest in protecting female athletes—the interest I-638 was passed to protect. Also, FAU will defend I-638 with arguments and evidence the State cannot or will not offer, including federal defenses and its members' own experience competing against males. In fact, Washington has already opposed these arguments elsewhere.

Whether under CR 24(a) or (b)(2), intervention should be granted, and this Court should not proceed without hearing from the female athletes whom the Initiative protects. They face real-world harms. And they deserve to be heard here no less than the challengers.

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STATEMENT OF FACTS

FAU defends women's sports. Brown Decl. ¶3. It works to ensure that women and girls get to compete on a safe and level playing field. *Id.* And it seeks to uphold their privacy rights in locker rooms and private spaces because those rights are essential to participating in athletics. *Id.* Its members include current female athletes. *Id.* ¶5. FAU has litigated to protect its members' athletic opportunities before, including as an intervenor-defendant defending New Hampshire's law protecting girls' sports. *Id.* ¶¶33–35.

Many of FAU's athletes compete on girls' teams at public schools receiving federal funding, including in Washington. Brown Decl. ¶¶36–38; Garrett Decl. ¶¶2–3; Bierer Decl. ¶¶2–4, 9; Retzlaff Decl. ¶2; Wilson Decl. ¶¶2–4, 8–9. And some of those athletes have had to compete against male athletes who identify as female. Brown Decl. ¶30; Garrett Decl. ¶¶17–24; Hoefer Decl. ¶¶11–14; Wilson Decl. ¶¶16–20; Retzlaff Decl. ¶¶8, 16.

This fall, FAU's Washington cross-country members experienced firsthand what's at stake. A male who identifies as female at Camas High School began the 2026 season on the boys' team and placed 76th in a boys' junior varsity race.[2] By mid-September, this athlete was racing as a girl, and within weeks the athlete won a girls' varsity race.[3] Several FAU Washington members raced, or refused to race, against this runner. Garrett Decl. ¶¶10, 17, 21, 24; Bierer Decl. ¶¶14–16, 22–25;

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[2] Sarah Mizes-Tan, *Protest in Southwest Washington Against Trans Runner on Girls Cross-Country Team Goes Viral*, OPB (Oct. 19, 2026, 6:41 PM), https://www.opb.org/article/2026/10/19/camas-washington-transgender-high-school-sports/; Alejandro Avila, *Parents Speak Out on The Ingraham Angle After Girls Forfeit Race over Biological Male Runner*, OutKick (Oct. 14, 2026, 10:48 PM), https://www.foxnews.com/outkick-sports/parents-speak-out-ingraham-angle-girls-forfeit-race-biological-male-runner.

[3] Jackson Thompson, *Washington Girls Walk Off Cross Country Meet in Protest of Male Athlete, Parents Reveal How It Came to This*, Fox News (Oct. 14, 2026, 6:33 AM), https://www.foxnews.com/outkick-sports/washington-girls-walk-off-cross-country-meet-protest-male-athlete-parents-reveal-how-it-came-to-this.

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Retzlaff Decl. ¶¶8, 14, 16; Wilson Decl. ¶20.

Skyview High junior and team captain Charlie Garrett and her teammate lined up against that athlete on September 15, then stepped off the course in protest. Garrett Decl. ¶10; Retzlaff Decl. ¶8. The athlete ran 22:18—a time that would have placed 60th of 96 in the boys' race that day but placed seventh among the girls. Garrett Decl. ¶12.

Battle Ground's Elise Bierer refused to race the same athlete at districts, giving up her chance at regionals. Bierer Decl. ¶¶22–26, 30–32.

Charlie then raced the athlete—and lost—three more times. At districts, the athlete passed Charlie in the final 600 meters to take second; Charlie finished third, and the fourth-place girl was left off the podium. Garrett Decl. ¶¶17, 20. At regionals, the athlete edged Charlie by one second for seventh, taking a podium spot from a girl. *Id.* ¶¶21–22. The athlete's participation kept the 50th-place girl out of the state meet. *Id.* ¶23. And at state, the athlete sprinted past about 30 girls, including Charlie, in the final 800 meters. *Id.* ¶24.

Eastmont junior Ahnaleigh Wilson raced the same athlete at the state final. The athlete finished ahead of Ahnaleigh, who was running on a bone stress injury, bumping her down in the results. Wilson Decl. ¶21. It was not the first time Ahnaleigh raced a male who identified as female. In eighth grade, she led a 1600-meter race until one such athlete passed her in the last 200 meters and took first, leaving her second on the podium. *Id.* ¶¶16–17. And at a 2024 invitational, another such athlete placed fourth, bumping Ahnaleigh from sixth to seventh. *Id.* ¶20.

Former Prosser High track athlete Soleil Hoefer's team also competed against and lost to a male athlete who identified as female in the girls' state 4 x 400 meters: the athlete's team placed second and bumped Soleil's team down a spot, and the athlete won the individual girls' 400 final. Hoefer Decl. ¶¶9–13.

As the public considered a new measure to correct these Title IX violations

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and restore Title IX's promise, the media widely reported these events. Garrett Decl. ¶25; Bierer Decl. ¶36; Hoefer Decl. ¶22 & n.1; Wilson Decl. ¶33 & n.3; Retzlaff Decl. ¶12.

Other female athletes have been injured as a result of competing against males. Here in Washington, wrestler Kallie Keeler suffered a sexual assault when she was unknowingly pitted against a male opponent. Verified Compl., *K.M.K., ex rel. Brown v. Wash. Interscholastic Athletic Ass'n*, No. 3:26-cv-5616 (W.D. Wash. June 9, 2026), ECF No. 1. Payton McNabb, then a 17 year-old high-school volleyball player in North Carolina, suffered a traumatic brain injury when a male opponent spiked the ball into her head.[4] Likewise, a high-school coach in Guam reported that a transgender athlete injured three of his female players during a girls rugby match in 2022.[5] These kinds of injuries are par for the course when males play women's sports.

On November 3, 2026, Washington voters approved I-638 by an apparent 13-point margin. Hoefer Decl. ¶21. The Initiative takes effect December 3, 2026. I-638 protects FAU's members both on their own school teams and when they compete against other schools' teams. Brown Decl. ¶¶50–51. It also protects their privacy, because male athletes will not be on girls' teams in locker rooms and on overnight travel. Brown Decl. ¶52; Garrett Decl. ¶9; Retzlaff Decl. ¶23.

The challengers nevertheless demand that this Court nullify the Initiative that over 1.5 million Washington voters approved to keep girls' sports fair and safe. Brown Decl. ¶46. They ask for novel constitutional and statutory interpretations to

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[4] Andrea Mew, *Kill Shot: How Payton McNabb Turned Tragedy into Triumph*, Independent Women's Forum (last accessed Nov. 13, 2026), https://www.iwfeatures.com/profile/payton-mcnabb/.

[5] Luke Gentile, *Transgender rugby player slams female athletes, coach says three injured*, Wash. Examiner (Apr. 14, 2022), https://www.washingtonexaminer.com/news/1065633/watch-transgender-rugby-player-slams-female-athletes-coach-says-three-injured.

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override the will of the voters. And they ignore federal law that already protects female athletes and places Washington's prior practice on the wrong side of Title IX and the United States Constitution. They are wrong on all fronts. *See* Exhibit A ("FAU proposed answer").

FAU's members know what sports are like without the protections that I-638 reinforces—girls lose opportunities and achievements, their safety is jeopardized, and their privacy is violated. They advocated and voted for I-638. Hoefer Decl. ¶21; Garrett Decl. ¶¶14, 25–26; Bierer Decl. ¶36; Wilson Decl. ¶36; Retzlaff Decl. ¶¶25–27. They are the ones who train before sunrise, work for a spot on the podium, and become sidelined in their own sport. They deserve to be heard in this case.

STATEMENT OF ISSUES

1. Whether FAU has a right to intervene under Civil Rule 24(a) to defend I-638 and protect its Washington members.
2. Whether the Court should permit FAU to intervene under Civil Rule 24(b) because FAU shares a common claim or defense with the main action.

EVIDENCE RELIED UPON

FAU relies on Plaintiffs' Complaint; the Declarations of Kristi Burton Brown, Charlie Garrett, Sierra Retzlaff, Elise Bierer, Ahnaleigh Wilson, and Soleil Hoefer; and FAU's Proposed Answer.

ARGUMENT

The people made their voices heard. But as things stand, this case will proceed without the voices of the girls who have been forced to compete against males. They deserve to be heard in a case challenging a voter initiative designed to protect them. The Court should thus allow FAU to intervene.

I. FAU is entitled to intervene as of right.

Courts "liberally construe [the] rules in favor of intervention." *Olver v. Fowler*, 161 Wn.2d 655, 664 (2007) (allowing intervention after final judgment).

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Under CR 24(a), FAU is entitled to intervention of right if (1) the motion is timely, (2) FAU has an interest in the subject of the action, (3) the case's disposition will impair or impede FAU's ability to protect its interest, and (4) FAU's interest is not adequately represented by the existing parties. *Loveless v. Yantis*, 82 Wn.2d 754, 758 (1973). Because CR 24 mirrors the federal intervention rule, Washington courts often "look to decisions and analysis of the federal rule for guidance." *Am. Disc. Corp. v. Saratoga W., Inc.*, 81 Wn.2d 34, 37 (1972). "When in doubt, intervention should be granted." *Id.* at 40.

FAU satisfies all four elements.

A. FAU's motion is timely.

A "motion to intervene is timely if it is filed before the commencement of the trial." *Columbia Gorge Audubon Soc'y v. Klickitat Cnty.*, 98 Wn. App. 618, 623 (1999). FAU moved four days after the challengers filed suit, before any ruling, and before I-638 takes effect. Because the motion is timely, the Court "need not consider prejudice or other negative effects of the delayed admission of additional parties." *Id.* at 628. Regardless, there is none: FAU will follow the existing schedule, and its proposed answer accompanies this motion.

B. FAU has protected interests in this action.

FAU has a concrete interest in stopping the challengers' attempt to remove the Initiative's safeguards for girls' sports. "Not much of a showing is required … to establish an interest." *Columbia Gorge*, 98 Wn. App. at 629 (citing *Am. Disc.*, 81 Wn.2d at 41). And "'in cases challenging … statutory schemes as unconstitutional or as improperly interpreted and applied, … the interests of those who are governed by those schemes are sufficient to support intervention.'" *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989) (quoting 7C Charles Alan Wright et al., Fed. Prac. & Proc. § 1908 (2nd ed. 1986)). Associations often intervene to represent members with rights at stake. *E.g.*, *Loveless*, 82 Wn.2d at 758–59; *Dioxin/Organochlorine*

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Ctr. v. Dep't of Ecology, 119 Wn.2d 761 (1992). And those who support ballot initiatives routinely intervene in cases challenging them. *See, e.g.*, *Garfield Cnty. Transp. Auth. v. State*, 196 Wn.2d 378, 385 (2020) (taxpayer group intervened on initiative reducing taxes).

FAU's Washington athlete members want to compete on a safe and level playing field, but they cannot do so if they are forced to compete against males. Already, many members have been forced to compete against males who identify as female in Washington. Garrett Decl. ¶¶17–24; Hoefer Decl. ¶¶11–14; Wilson Decl. ¶¶16–20.

The voters adopted the Initiative to protect these FAU members—and all female athletes. This fall, one FAU member lost a podium spot at districts, a medal at regionals, and multiple places at state to a male runner who identifies as female; and girls behind that FAU member lost a podium spot and a state berth. Garrett Decl. ¶¶17–24. Another gave up her varsity postseason rather than race the male athlete: "My stand for fairness cost me my chance at regionals—and my championship hopes." Bierer Decl. ¶30. A third, who raced that athlete at state on a bone stress injury, also lost to that athlete. Wilson Decl. ¶21.

Courts deciding similar intervention requests have recognized that female athletes like FAU's members are "the intended beneficiaries" of these laws. *Hecox v. Little*, 479 F. Supp. 3d at 957. And their interest is significant. There "is no question" that "redressing past discrimination against women in athletics and promoting equality of athletic opportunity between the sexes" is an "important" interest. *Clark ex rel. Clark v. Ariz. Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982); *see also Cohen v. Brown Univ.*, 991 F.2d 888, 897 (1st Cir. 1993) ("Equal opportunity to participate lies at the core of Title IX's purpose."). FAU's defenses are the "mirror image" of some of the claims the challengers assert. *See* Mot. to Intervene, *Soule v. Conn. Ass'n of Schs.*, No. 3:20-cv-00201-SVN (D. Conn. Feb. 21,

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2020), ECF No. 36, at 11 (citation modified). That gives them a clear interest in defending the law. *Id.*

Given this consensus, federal courts have unanimously granted intervention requests in situations like these. For example, in *Hecox v. Little*, when a male athlete who identified as female challenged a substantially similar sports-fairness law in Idaho, 479 F. Supp. 3d at 952, two female athletes moved to intervene to defend the law. And the court granted their motions both permissively and as of right due to their protectable interest in equal athletic opportunity. *Id.* at 952, 955, 958. In fact, to find otherwise would mean that no one—including the plaintiff—had a protectable interest. *Id.*

FAU has thus met the minimal requirement to show an interest at stake in this case. Regardless, even an "insufficient interest should not be used as a factor for denying intervention." *Columbia Gorge*, 98 Wn. App. at 629 (citation modified).

C. This action threatens to impair FAU's interests.

FAU members are "so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect [their] interest." CR 24(a). The rule does not require certainty. It is enough that the litigation "could result in decisions" that affect them. *Loveless*, 82 Wn.2d at 759.

FAU more than meets this standard: if the challengers get their requested relief, officials will be unable to enforce the Initiative, and many of FAU's female-athlete members could be forced either to compete in an unfair and unsafe playing field or to stop competing altogether. Either way, they lose.

The male athlete "will run on the Camas girls' team again," and FAU's members will again "rac[e] against this inherently faster male." Garrett Decl. ¶27. Another member will face the same male athlete "again at next year's state meet, because that athlete is in [her] grade," and he would again "bump [her] down in the rankings." Wilson Decl. ¶¶9, 12, 25–27. In addition, some members may leave their

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school teams if the Initiative is blocked. Garrett Decl. ¶28; Bierer Decl. ¶¶38–40; Retzlaff Decl. ¶22. As one put it, "even one male competing takes away a place, a medal, or an opportunity for a girl." Garrett Decl. ¶14.

And because this case challenges I-638 on its face, the relief the challengers seek would take the Initiative's protections from every FAU member at every school in the state. That makes this case a far cry from cases where relief is limited to a plaintiff or two whom intervenors would never compete against. Courts thus have had no trouble concluding as much. *E.g.*, *Hecox*, 479 F. Supp. 3d at 953.

D. The existing parties do not adequately represent FAU's interests.

FAU is not adequately represented by Defendant State of Washington. An "intervenor need make only a minimal showing that its interests may not be adequately represented." *Columbia Gorge*, 98 Wn. App. at 629 (citation modified). Unless the State will "*undoubtedly*" make all of FAU's arguments, intervention is appropriate. *Id.* at 630. Courts thus "often conclude[] that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *e.g.*, *CLEAN v. City of Spokane*, 133 Wn.2d 455, 474 (1997).

The State—which has broad interests that account for all Washington students, including the challengers—does not share FAU's focused interests in championing female athletes. And it is all but certain that the State will not make all FAU's arguments—particularly those based on federal law, because doing so would force the State to admit liability for its current practice. And it would contradict the State's recent argument to the U.S. Supreme Court that existing practice *does not* violate Title IX. Opp'n to Mot. for Inj. Pending Appeal at 16–31, *K.M.K. ex rel. Brown v. Wash. Interscholastic Activities Ass'n*, No. 26A458 (U.S. Oct. 13, 2026). So only FAU can effectively make the federal-law arguments.

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The Washington Supreme Court has "repeatedly concluded that the state's general duty to protect the public's interest does not sufficiently protect the narrower interests of private groups." *Pub. Util. Dist. No. 1 of Okanogan Cnty. v. State*, 182 Wn.2d 519, 532 (2015). That is because the State necessarily represents the "broader interest in protecting all of its residents" rather than FAU's "limited" interests in protecting its members. *Id.* (citing *CLEAN*, 133 Wn.2d at 474). And it's particularly true where the proposed intervenor has "a more sharply focused and sometimes antagonistic viewpoint" to that of the government—applicable here given FAU's position that Washington's current practice violates federal law. *Loveless*, 82 Wn.2d at 759.

In addition, FAU will defend I-638 with arguments and evidence the State will not and cannot offer, including federal defenses and its members' testimonies about competing against males. *Columbia Gorge*, 98 Wn. App. at 629–30. FAU's members can tell the Court firsthand what happens when males compete in girls' events—places lost, podiums missed, and state berths taken. Garrett Decl. ¶¶17–24; Wilson Decl. ¶¶16–20.

While the State may defend its law as a permissible policy choice, FAU will argue not only that the Initiative is valid but that the U.S. Constitution, Title IX, and Title IX's regulations *require* Washington to have female-only sports teams, as do pre-existing state laws. *See* FAU Proposed Answer; *see also Soule v. Conn. Ass'n of Schs.*, 755 F. Supp. 3d 172 (D. Conn. 2024) (holding plausible Title IX violation under similar policy). With female-athlete members, FAU can undoubtedly assert these federal provisions in defense of the Initiative. In considering the Initiative's lawfulness, it is imperative that those issues are before the Court.

Plus, FAU's members have accused the State itself of violating Title IX by allowing males in girls' sports, including in complaints against the Superintendent of Public Instruction, his office, and the Governor. Hoefer Decl. ¶17; Wilson Decl.

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¶30; Bierer Decl. ¶33. It is hard to imagine the State adopting FAU's arguments since that would effectively admit liability for prior violations and the State has long defended its current practice as consistent with federal law. Amici Br. of States of Wash. et al. in Support of Appellees at 15, *Female Athletes United v. Ellison*, No. 25-2899 (8th Cir. Dec. 23, 2025). So even "assum[ing] that the Attorney General will perform his duties exceptionally well," FAU will almost certainly "have a valid complaint about his performance." *Fritz v. Gorton*, 8 Wn. App. 658, 662 (1973).

FAU's "intervention [is] vital to the defense of the law at issue." *Miracle v. Hobbs*, 333 F.R.D. 151, 155 (D. Ariz. 2019) (citing *Horne v. Flores*, 557 U.S. 433, 433 (2009)). FAU should thus be granted intervention as of right.

II. FAU should be granted permissive intervention.

In addition, the Court should permit FAU to intervene under CR 24(b)(2). Washington courts readily approve permissive intervention by associations whose members have a stake in the outcome. *See, e.g.*, *Paxton v. City of Bellingham*, 129 Wn. App. 439, 448 (2005). FAU members' rights to fair and safe competition are at issue, and they deserve to be heard.

Permissive intervention is appropriate for FAU because a "claim or defense and the main action have a question of law or fact in common," and because intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties." CR 24(b)(2). An applicant need not assert any independent claim beyond that commonality. *Pub. Util. Dist. No. 1*, 182 Wn.2d at 531–32. For the reasons in Part I, FAU's defenses share common questions with the main action, its motion is timely, and it brings a perspective the State does not.

In short, this Court should allow permissive intervention because female athletes who have lost to male athletes deserve to be heard. This case could affect their ability to compete on a safe and level playing field and to access women's-only locker rooms, restrooms, and private spaces. FAU members are the ones who will

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feel the real-world harm if the Initiative is invalidated.

That's why time and again courts have allowed both female athletes and male athletes who identify as female, or organizations representing them, to intervene in cases like this. *See B.P.J.*, 2021 WL 5711547, at *3 (allowing female athlete to intervene); Order, *Soule v. Conn. Ass'n of Schs., Inc.*, No. 3:20-cv-00201, 2021 WL 1617206 (D. Conn. Apr. 25, 2021), ECF No. 93 (allowing male athletes who identify as female to intervene). In these cases, the athletes directly affected by the laws deserved to be fully heard in the challenges to them.

The Court should do the same here. Otherwise, the voices of female athletes who have competed against males will be shut out even though they are directly affected. That would unfairly silence them here. And it would set an example for future cases, which could be used to exclude athletes on either side of these issues. That's good for no one. FAU's members deserve to be heard.

CONCLUSION

The Court should grant this motion. A proposed order and FAU's proposed answer accompany this motion.[6]

[6] Due to the immediacy of the challengers' request for relief, it is presumed that this motion is opposed.

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I certify that this brief contains 4,086 words, in compliance with the Local Civil Rules. Respectfully submitted this 13th day of November, 2026.

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**Motion for Admission Pro Hac Vice Forthcoming*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

WASHINGTON EDUCATION ASSOCIATION, et al., *Plaintiffs*, vs. STATE OF WASHINGTON, *Defendant*, and FEMALE ATHLETES UNITED, *Proposed Intervenor-Defendant*.	CASE NO. 26-2-36880-5 SEA PROPOSED INTERVENOR-DEFENDANT FEMALE ATHLETES UNITED'S PROPOSED ANSWER TO PLAINTIFFS' COMPLAINT

Proposed Intervenor-Defendant Female Athletes United ("FAU"), on behalf of its members, answers Plaintiffs' Complaint as follows. Each numbered paragraph of the Answer corresponds to the same numbered paragraph of the Complaint. "The Initiative" refers to Initiative Measure No. IL26-638. When FAU uses the word "girls," it refers to biological females.

GENERAL DENIAL

Except as expressly admitted or qualified, FAU denies each and every allegation, statement, or charge contained in the Complaint, and denies that Plaintiffs are entitled to any relief they request.

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I. INTRODUCTION

1.1 Paragraph 1.1 comprises argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph 1.1. Contrary to the paragraph's description, the Initiative overturns policies that discriminated against girls and forced them to compete in unfair and unsafe environments. Far from violating any applicable legal requirements, the Initiative is necessary to correct an ongoing violation of Title IX of the Education Amendments of 1972 and to ensure that school sports would be free of unlawful sex discrimination. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.2 Paragraph 1.2 comprises argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph 1.2. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.3 Paragraph 1.3 comprises argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph 1.3. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.4 Paragraph 1.4 is a legal conclusion to which no response is required. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.5 Paragraph 1.5 comprises argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph 1.5. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.6 Paragraph 1.6 comprises argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph

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1.6. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.7 Paragraph 1.7 comprises argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph 1.7. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.8 Paragraph 1.8 comprises argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph 1.8. To the extent any further response is necessary, the remainder of the paragraph is denied.

1.9 FAU conditionally admits only that if election results are certified in favor of the Initiative in accordance with law, it will take effect on December 3, 2026. The remainder of Paragraph 1.9 contains argument and legal conclusions to which no response is required. FAU denies the descriptive characterizations in Paragraph 1.9. To the extent any further response is necessary, the remainder of the paragraph is denied.

II. PARTIES

A. PLAINTIFFS

2.1 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 2.1. FAU denies that the Initiative would cause injury or harm to any student or parent. To the extent any further response is necessary, the remainder of the paragraph is denied.

2.2 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 2.2. FAU denies that The Initiative would cause injury or harm to any student or parent. To the extent any further response is necessary, the remainder of the paragraph is denied.

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2.3 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 2.3. FAU denies that the Initiative would cause injury or harm to any student or parent. To the extent any further response is necessary, the remainder of the paragraph is denied.

2.4 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 2.4. FAU denies that the Initiative would cause injury or harm to any student or parent. To the extent any further response is necessary, the remainder of the paragraph is denied.

2.5 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 2.5. FAU denies that the Initiative would cause injury or harm to any student or parent. To the extent any further response is necessary, the remainder of the paragraph is denied.

2.6 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 2.6. FAU denies the descriptive characterizations contained in Paragraph 2.6. To the extent any further response is necessary, the remainder of Paragraph 2.6 is denied.

2.7 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 2.7. FAU denies the descriptive characterizations contained in Paragraph 2.7. Paragraph 2.7 also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, the remainder of the paragraph is denied.

B. DEFENDANT

2.8 FAU admits that the Complaint names the State of Washington as defendant.

III. JURISDICTION AND VENUE

3.1 Paragraph 3.1 states a legal conclusion to which no response is required.

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3.2 Paragraph 3.2 states legal conclusions to which no response is required. FAU denies that Plaintiffs are entitled to a declaratory judgment or injunction.

3.3 FAU admits only that Plaintiffs have alleged residence in King County, but FAU lacks information sufficient to admit or deny that allegation and thus cannot evaluate the propriety of venue in this Court and therefore denies the same.

IV. STANDING

4.1 The allegations in Paragraph 4.1 are legal conclusions to which no response is required. To the extent any further response is necessary, the remainder of the paragraph is denied.

4.2 The first sentence of Paragraph 4.2 is a legal conclusion to which no response is required. FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 4.2. The document attached as Exhibit A speaks for itself and requires no response. To the extent any further response is necessary, the remainder of the paragraph is denied.

4.3 FAU denies that the Initiative would cause the injury alleged. Paragraph 4.3 also contains legal conclusions and argument to which no response is required. To the extent any further response is necessary, the remainder of the paragraph is denied.

4.4 FAU denies that the Initiative would cause the injuries alleged. Paragraph 4.4 also contains legal conclusions and argument to which no response is required. FAU lacks sufficient information to either admit or deny the descriptions of the organizational plaintiffs in Paragraph 4.4. To the extent any further response is necessary, the remainder of the paragraph is denied.

4.5 FAU admits only that the Initiative is of substantial public importance. A ruling for Plaintiffs on any claim would subvert the will of the people

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of Washington and harm the State's students, especially girls who stand to benefit from the restoration of equal athletic opportunity and biology-based distinctions between girls' and boys' sports. It would also deepen the State's ongoing violation of Title IX and the Equal Protection Clause. To the extent any further response is necessary, the remainder of the paragraph is denied.

V. FACTS

5.1 FAU admits only that the quoted statement is an incomplete excerpt from WIAA's webpage. FAU lacks sufficient information to either admit or deny the other allegations in Paragraph 5.1. To the extent any further response is necessary, the remainder of the paragraph is denied.

5.2 FAU denies that existing policies and practice—which permit some males to participate on "girls" teams under gender-identity-participation policies (like WIAA's)—account for student safety, are lawful, or are structured to allow student athletes to compete against students at a similar competitive level. Males have inherent athletic advantages that result in lack of fair competition and put female athletes at greater risk of injury. FAU denies the Complaint's suggestion that biological males participating in girls' sports has not compromised safety or fairness. To the extent any further response is necessary, the remainder of the paragraph is denied.

5.3 FAU admits that participation in school sports is beneficial for students. FAU denies any suggestion that the Initiative, which ensures access to school sports for all students based on biology, would bar athletic participation or deny those benefits for any student. Any student, regardless of gender identity as described by Plaintiffs (in footnote 1 of the Complaint), can participate in school sports based on the student's biological sex. To the extent any further response is necessary, the remainder of the paragraph is denied.

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5.4 FAU admits only that athletic participation promotes physical health and provides opportunities for exercise and, for some sports, being outdoors. To the extent the allegations describe or characterize the cited scientific article, FAU denies these descriptive characterizations; the document speaks for itself. FAU denies any allegations in Paragraph 5.4 that are inconsistent with, mischaracterize, or take out of context the complete text of the article and further denies any remaining allegations in Paragraph 5.4.

5.5 Paragraph 5.5 consists of descriptive characterization and argument about several cited scientific studies and articles. Because each is a written document that speaks for itself, no further response is required. FAU denies any allegation that is inconsistent with, mischaracterizes, or takes out of context the complete text of the cited study or article and further denies any remaining allegations in Paragraph 5.5.

5.6 Paragraph 5.6 consists of descriptive characterization and argument about cited scientific studies and articles. Because each of the cited studies is a written document that speaks for itself, no further response is required. FAU denies any allegation that is inconsistent with, mischaracterizes, or takes out of context the complete text of the cited study and further denies any remaining allegations of Paragraph 5.6.

5.7 Paragraph 5.7 contains descriptive characterization not requiring a response. FAU admits that student athletes can experience the joy of mastering a new skill, celebrate the success of their peers, and form lifelong relationships with other children who share the same athletic interests. FAU denies the Complaint's suggestion that the Initiative interferes with those results; rather, gender-identity-based policies deprive girls of such benefits by depriving them of fair competition and increasing the risk to their health. To the extent any further response is required, the remaining allegations of Paragraph 5.7 are denied.

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5.8 Paragraph 5.8 contains descriptive characterization not requiring a response. FAU admits that many parents attend school events, show support for and encourage their child, or watch their child grow and develop in the context of school sports. FAU lacks sufficient information to either admit or deny that school sports are the "primary" means of doing these things. FAU denies the Complaint's suggestion that the Initiative interferes with such attendance, support, encouragement, or observation. Rather, gender-identity-based policies like WIAA's have deprived girls and their families—including FAU's members—of these benefits by subjecting them to unfair competition and increased risk of injury. To the extent any further response is required, the remaining allegations of Paragraph 5.8 are denied.

5.9 Paragraph 5.9 describes several cited scientific studies and articles. FAU denies Plaintiffs' descriptive characterization of those studies. Because each of the cited studies is a written document that speaks for itself, no further response is required. FAU denies any allegation that is inconsistent with, mischaracterizes, or takes out of context the complete text of the cited study and further denies any remaining allegations of Paragraph 5.9.

5.10 Paragraph 5.10 contains legal conclusions and argument to which no response is required. It also describes several cited scientific studies and articles. FAU denies Plaintiffs' descriptive characterization of those studies. Because each of the cited studies is a written document that speaks for itself, no further response is required. FAU denies any allegation that is inconsistent with, mischaracterizes, or takes out of context the complete text of the cited study and further denies any remaining allegations of Paragraph 5.10.

5.11 FAU denies the descriptive characterization of the Washington Code contained in the first sentence of Paragraph 5.11. The cited provisions speak for themselves. The documents cited in footnote 17 also speak for themselves. FAU

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denies that opportunities are equally available to boys and girls under existing, sex-discriminatory policies (including WIAA's) or that such policies are lawful. FAU admits that many teams are nominally designated for "girls" or "boys" but denies that gender-identity-based participation policies provide equal opportunity or result in separate teams for each sex. FAU denies any remaining allegations of Paragraph 5.11.

5.12 FAU admits as to the text of RCW 28A.600.200. That provision speaks for itself. Paragraph 5.12 also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.13 FAU admits that the quoted language appears on WIAA's cited website. The website speaks for itself; no further response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.14 FAU denies the descriptive characterizations in Paragraph 5.14. FAU admits only as to the factual description of WIAA policy in the final sentence of Paragraph 5.14. Paragraph 5.14 also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.15 FAU denies that WIAA convened a "broad stakeholder group" when adopting its gender-identity participation policy. WIAA's Executive Board adopted the first gender-identity participation policy unilaterally, and then amended it at the request of extreme, activist groups without input from girls and their families, intentionally elevating the interests of males over those of women and girls who would suffer the known and inevitable fairness and safety consequences. FAU admits that the resulting policy has been amended over the years, but denies that it has met the needs of children in Washington. FAU admits that the Washington Office of Superintendent of Public Instruction (OSPI) and the Washington State

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PTA issued statements as cited in footnotes 19 and 20, but denies the Complaint's descriptive characterization of those statements and the arguments and legal conclusions contained therein. Paragraph 5.15 also contains legal conclusions and argument to which no response is required. To the extent any further response is necessary, the remainder of the paragraph is denied.

5.16 FAU admits that this paragraph accurately quotes a portion of the current WIAA Handbook. FAU denies the suggestion that section 18.16.0 is the only policy relevant to gender-identity-based participation in school sports or to adjudicating Plaintiffs' claims.

5.17 As to the first sentence of Paragraph 5.17, FAU admits only that the WIAA Representative Assembly took an "advisory vote" on proposed amendments to WIAA's existing gender-identity policy, Handbook 18.16.0. As to the second sentence of Paragraph 5.17, FAU admits that the Attorney General's Office announced it had reviewed the proposed amendments and concluded they would violate state law, but denies the accuracy of the conclusions reached by the Attorney General's Office. The Initiative does not conflict with other Washington laws.

5.18 FAU denies the descriptive characterizations contained in Paragraph 5.18, but admits that the Initiative changes preexisting state policy. FAU denies that these changes would lead to confusion. To the extent any further response is necessary, the remainder of the paragraph is denied.

5.19 FAU admits only that Section 2 of the Initiative changes state policy; the details of the changes are on the face of the Initiative and speak for themselves. Any remaining allegations of Paragraph 5.19 are denied.

5.20 FAU admits only that Paragraph 5.20 contains incomplete quotations from parts of the Initiative, the full text of which speaks for itself. Any remaining allegations in Paragraph 5.20 are denied.

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5.21 FAU admits only that WIAA publishes a model form, the terms of which speak for themselves, and which school districts are not required to use. As to the implication that no school district verifies biological sex in connection with medical clearance for athletics, FAU denies. Any remaining allegations of Paragraph 5.21 are denied.

5.22 FAU admits only that the pictured form is available on the Seattle Public Schools' website. FAU lacks sufficient information to either admit or deny the exclusive use of this form for all students in all Seattle Public Schools.

5.23 Admit.

5.24 FAU admits only the factual allegations in the first sentence of Paragraph 5.24. FAU denies the remainder of the allegations in Paragraph 5.24. Both Seattle Public Schools' form and WIAA's model form require the physician to certify having performed a physical evaluation and exam, and to retain records of the findings. A physician could not, consistent with best practices and clinical standards, certify a student's athletic eligibility without knowing and accounting for the student's sex.

5.25 FAU lacks sufficient information to either admit or deny the factual allegations in the first seven sentences of Paragraph 5.25. FAU denies the descriptive characterizations contained in the final four sentences of Paragraph 5.25, which also contain legal conclusions and arguments to which no response is required. As recognized in Section 1 of the Initiative, the existing physical examination process for school sports will satisfy the law's verification requirements; FAU denies that the Initiative requires "onerous" or "more burdensome" evaluations.

5.26 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 5.26. Paragraph 5.26 also contains legal conclusions and argument to which no response is required. FAU denies that a clinician conducting

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routine well-child visits or athletic physicals would be unable to provide the verification required by the Initiative. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.27 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 5.27. FAU denies the relevance or completeness of the figures cited in this paragraph. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.28 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 5.28. Paragraph 5.28 also contains legal conclusions and argument to which no response is required. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.29 FAU denies the descriptive characterizations contained in Paragraph 5.29. Paragraph 5.29 also contains legal conclusions and argument to which no response is required. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.30 FAU lacks sufficient information to either admit or deny the factual allegations in Paragraph 5.30. Paragraph 5.30 also contains legal conclusions and argument to which no response is required. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.31 FAU denies the descriptive characterizations in Paragraph 5.31. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.32 FAU denies the descriptive characterizations in Paragraph 5.32. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

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5.33 FAU denies the descriptive characterizations in Paragraph 5.33. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.34 FAU denies the descriptive characterizations in Paragraph 5.34. Paragraph 5.34 also contains legal conclusions and argument to which no response is required. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.35 FAU denies the descriptive characterizations found in Paragraph 5.35. Paragraph 5.35 also contains legal conclusions and argument to which no response is required. FAU denies that the Initiative increases the risk of abuse. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.36 FAU denies the descriptive characterizations found in Paragraph 5.36. The Initiative does not impair or infringe student-athletes' privacy interests. Paragraph 5.36 also contains legal conclusions and argument to which no response is required. To the extent any further response is necessary, the remaining allegations in this paragraph are denied.

5.37 Paragraph 5.37 contains legal conclusions and argument to which no response is required. FAU denies the descriptive characterizations in Paragraph 5.37. The statutory provisions referenced in Paragraph 5.37 speak for themselves. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.38 FAU denies the descriptive characterization in Paragraph 5.38. Paragraph 5.38 also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

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5.39 FAU denies the descriptive characterization in Paragraph 5.39. Paragraph 5.39 also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.40 Paragraph 5.40 consists of legal conclusions and argument to which no response is required. Most school districts have delegated authority over interscholastic athletics to WIAA. WIAA says it will adopt a policy that can be applied uniformly by all its member schools. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.41 FAU admits the statement in the second sentence of Paragraph 5.41. FAU lacks sufficient information to either admit or deny the other factual claims and predictions in this paragraph. FAU denies the descriptive characterizations contained here. Paragraph 5.41 also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.42 FAU denies that the Initiative places a cognizable burden on Washington families. This paragraph also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

5.43 FAU denies that implementing the Initiative will cause confusion or that its terms are unclear. This paragraph also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

VI. FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT

A. WASHINGTON STATE CONSTITUTION ARTICLE I, SECTION 7

6.1 Answering Paragraph 6.1, FAU repeats and re-alleges its prior responses, and to the extent an answer is required, denies the allegations.

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6.2 No response is required, as the Washington Constitution is a document that speaks for itself.

6.3 Paragraph 6.3 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

6.4 FAU denies the descriptive characterization in Paragraph 6.4. The Initiative's text speaks for itself. The paragraph also contains argument and legal conclusions requiring no response. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

6.5 Paragraph 6.5 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

B. WASHINGTON STATE CONSTITUTION EQUAL RIGHTS AMENDMENT, ARTICLE XXXI

6.6 Answering Paragraph 6.6, FAU repeats and re-alleges its prior responses, and to the extent an answer is required, denies the allegations.

6.7 No response is required, as the Washington Constitution is a document that speaks for itself.

6.8 Paragraph 6.8 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

C. VIOLATION OF WASHINGTON STATE CONSTITUTION RIGHT TO EDUCATION, ARTICLE IX, SECTION 1

6.9 Answering Paragraph 6.9, FAU repeats and re-alleges its prior responses, and to the extent an answer is required, denies the allegations.

6.10 As to the first sentence of Paragraph 6.10, no response is required, as the Washington Constitution is a document that speaks for itself. The second

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sentence of Paragraph 6.10 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

D. WASHINGTON STATE CONSTITUTION ARTICLE II, SECTION 37

6.11 Answering Paragraph 6.11, FAU repeats and re-alleges its prior responses, and to the extent an answer is required, denies the allegations.

6.12 No response is required, as the Washington Constitution is a document that speaks for itself.

6.13 Paragraph 6.13 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

6.14 FAU denies that the Initiative amends without setting forth any Washington statute within the meaning of article II, section 37. The Initiative complies with article II, section 37. FAU denies the descriptive characterizations of the Washington Law Against Discrimination, Equal Educational Opportunity Law, RCW 28A.640.010, and the Parental Rights statute, which speak for themselves. Contrary to the Complaint's characterization, the Initiative is consistent with, and does not amend, these statutes or other controlling laws. Paragraph 6.14 also contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

6.15 FAU denies that voters were unaware of any impact the Initiative may have on existing state law. Voters were perfectly aware that the Initiative would require replacing existing gender-identity-based participation policies with a sex-based participation system that abides by governing law such as Title IX. Paragraph 6.15 also contains argument and legal conclusions to which no response

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is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

6.16 Paragraph 6.16 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

E. DECLARATORY JUDGMENT

6.17 Paragraph 6.17 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

6.18 Paragraph 6.18 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

VII. SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF

7.1 Answering Paragraph 7.1, FAU repeats and re-alleges its prior responses, and to the extent an answer is required, denies the allegations.

7.2 Paragraph 7.2 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

7.3 Paragraph 7.3 contains argument and legal conclusions to which no response is required. To the extent any further response is necessary, FAU denies the allegations in this paragraph.

VIII. PLAINTIFFS' PRAYER FOR RELIEF

FAU denies that Plaintiffs are entitled to any of the relief requested in the Complaint's Prayer for Relief, including Paragraphs A through E thereof.

AFFIRMATIVE DEFENSES

FAU's affirmative defenses to the Complaint are set forth below. By setting forth the following defenses, FAU does not assume a burden of proof on the matters

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at issue other than those on which it has the burden of proof as a matter of law.

1. Plaintiffs' claims are not ripe. The Initiative has not been certified, and even assuming it is certified, the injuries Plaintiffs allege are speculative and depend on the future decisions of third parties not before the Court.

2. Plaintiffs lack standing.

3. Plaintiffs lack a private right of action concerning the provisions of the Washington Constitution under which they purport to sue.

4. Plaintiffs' declaratory judgment act claims lack justiciability as required by the Uniform Declaratory Judgment Act.

5. The Complaint fails, in whole or in part, to state a claim on which relief can be granted.

6. Plaintiffs' proposed relief would violate the Washington Constitution and statutes, including WLAD.

7. Plaintiffs' proposed relief would violate Title IX, 42 U.S.C. § 1681 et seq., and its implementing regulations, which apply here because Washington, its agencies, and its school districts accept federal funding.

8. Plaintiffs' proposed relief would violate the Equal Protection Clause of the Constitution of the United States. U.S. Const. amend. XIV, § 1.

9. Failing to implement the Initiative would subvert the will of the voters and violate the guarantee of a republican form of government. U.S. Const. art. IV, § 4.

10. Plaintiffs' proposed relief would subvert the will of the people and thus violate the Due Process Clause of the Constitution of the United States. U.S. Const. amend. XIV, § 1.

11. The Initiative's provisions and subsections are severable one from another.

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12. Without admitting any facts pled by Plaintiffs, any loss, injury, or damages alleged in the Complaint would be directly and proximately caused or exacerbated by Plaintiffs' own conduct and failure to take actions to mitigate such losses, injuries, or damages.

13. The equities do not favor Plaintiffs' proposed relief. Even assuming Plaintiffs' claims could succeed (which is denied), the equitable remedy consistent with the will of the people would be to extend the Initiative's requirements to all school sports teams, not to eliminate them for girls' teams.

PRAYER FOR RELIEF

WHEREFORE, FAU respectfully asks the Court to:

A. Dismiss the Complaint with prejudice and without leave to amend;

B. Deny all relief that Plaintiffs request;

C. Grant FAU its costs and reasonable attorney fees; and

D. Grant such other and further relief as is just and proper.

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DATED this 13th day of November, 2026.

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**Motion for Admission Pro Hac Vice Forthcoming*