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7 **UNITED STATES DISTRICT COURT**  
 8 **FOR THE DISTRICT OF ARIZONA**  
 9 **TUCSON DIVISION**

10 Jane Doe, by her next friends and parents  
 Helen Doe and James Doe; and Megan Roe,  
 by her next friends and parents, Kate Roe and  
 11 Robert Roe,

Case No. \_\_\_\_\_

**COMPLAINT**

12 Plaintiffs,

13 v.

14 Thomas C. Horne, in his official capacity as  
 State Superintendent of Public Instruction;  
 15 Laura Toenjes, in her official capacity as  
 Superintendent of the Kyrene School District  
 16 Kyrene School District; The Gregory School;  
 and Arizona Interscholastic Association, Inc.,

17 Defendants.

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**INTRODUCTION**

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2           1.       Generations of children across America have enjoyed playing sports with  
3 their friends and classmates. They have benefited physically, mentally, socially, and  
4 developmentally from doing so. For many children, playing sports is an important part of  
5 their school experience.

6           2.       Plaintiffs want nothing more than an equal opportunity to enjoy that same  
7 experience: to try out for and participate on the girls’ volleyball, soccer, basketball, and  
8 cross-country teams at their schools. Arizona law, however, denies Plaintiffs that  
9 opportunity because Plaintiffs are transgender girls. Ariz. Rev. Stat. § 15-120.02 (the  
10 “Ban”). Plaintiffs bring this suit to challenge the application of the Ban to them because it  
11 violates the U.S. Constitution and federal law.

12           3.       The Ban’s exclusion of Plaintiffs from participating in school sports  
13 because they are transgender denies them equal treatment under the law, excludes them  
14 from a critical school activity, causes them to experience shame and stigma, denies them  
15 well-known physical and mental health benefits that arise from playing school sports, and  
16 directly contributes to negative physical and emotional health consequences.

17           4.       The Ban, as applied to Plaintiffs, violates the Equal Protection Clause  
18 because it impermissibly discriminates based on Plaintiffs’ transgender status and on  
19 account of their sex because being transgender is a sex-based trait. Accordingly, Arizona  
20 may apply the Ban to Plaintiffs only if it has an “exceedingly persuasive justification” for  
21 doing so, *U.S. v. Virginia*, 518 U.S. 515, 533 (1996), which here is absent. In fact, the  
22 Ban’s impermissible discrimination cannot survive any level of scrutiny.



1 information and belief, Defendant Horne is a grant recipient of federal funds because he  
2 has administrative control over the Arizona Department of Education. He is sued in his  
3 official capacity only.

4 10. Defendant Laura Toenjes is the Superintendent of Kyrene School District.  
5 Defendant Toenjes executes her official duties in Maricopa County and is responsible for  
6 the administration and oversight of the Kyrene School District. She is sued in her official  
7 capacity only.

8 11. Defendant Kyrene School District is a public school district serving parts of  
9 Maricopa County. Kyrene School District oversees the Kyrene Aprende Middle School.  
10 Upon information and belief, it receives federal financial assistance.

11 12. Defendant The Gregory School is a private middle and high school located  
12 in Tucson. Upon information and belief, it receives federal financial assistance.

13 13. Defendant Arizona Interscholastic Association, Inc. (“AIA”) is a  
14 membership organization of public and private high schools that regulates and oversees  
15 interscholastic athletic competition in the State of Arizona. The Kyrene School District  
16 and The Gregory School’s athletic teams participate in competitions regulated by the AIA  
17 and comply with the AIA’s guidelines and policies. The AIA is subject to Title IX  
18 because it indirectly receives federal funding from its member schools. *See* 34 C.F.R.  
19 § 106.2(i). It is also a government actor subject to the Fourteenth Amendment. *Clark v.*  
20 *Arizona Interscholastic Ass’n*, 695 F.2d 1126, 1128 (9th Cir. 1982).



1 participation of transgender students in intramural sports, and the AIA set rules for  
2 transgender students' participation in interscholastic sports.

3 20. In October 2014, the AIA Executive Board approved for the first time a  
4 transgender student's request to compete on a sports team consistent with that student's  
5 gender identity.<sup>2</sup> Subsequently, the AIA considered requests for transgender students to  
6 play on the teams consistent with their gender identity on a case-by-case basis.<sup>3</sup>

7 21. By December 2018, the AIA in conjunction with its Sports Medicine  
8 Advisory Committee formalized and revised its policy to permit transgender students to  
9 play on teams consistent with their gender identity so long as the student's parent or  
10 guardian made the request to the school administrator or athletic director and explained  
11 when their child realized they were transgender.<sup>4</sup>

12 22. This policy's goal was to ensure that transgender students felt supported  
13 and did not need to provide intrusive medical documentation.<sup>5</sup> At that time, the AIA had

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15 <sup>2</sup> Robert Obert, *AIA Approves First Transgender Athlete to Play a Sport*, AZ Central  
16 Sports (Oct. 22, 2014), [https://www.azcentral.com/story/sports/high-  
school/2014/10/22/aia-approves-first-transgender-athlete-play-sport/17718485/](https://www.azcentral.com/story/sports/high-school/2014/10/22/aia-approves-first-transgender-athlete-play-sport/17718485/).

17 <sup>3</sup> Erin Buzuvis, *"As Who They Really Are": Expanding Opportunities for Transgender  
18 Athletes to Participate in Youth and Scholastic Sports*, 34 L. & Ineq. 341, 346–47  
(2016).

19 <sup>4</sup> *Minutes: Executive Board Meeting*, Arizona Interscholastic Association (Dec. 10,  
20 2018), [https://aiaonline.org/files/16539/executive-board-meeting-minutes-december-  
10-2018.pdf](https://aiaonline.org/files/16539/executive-board-meeting-minutes-december-10-2018.pdf); Arizona Interscholastic Association, *AIA Policies and Procedures*, Art.  
41 (2022-2023), <https://aiaonline.org/files/16362/article-41-sports-medicine.pdf>.

21 <sup>5</sup> *AIA alters language of transgender policy for Arizona student-athletes*, ABC 15  
22 (Dec. 17, 2018), [https://www.abc15.com/sports/aia-alters-language-of-transgender-  
policy-for-arizona-student-athletes](https://www.abc15.com/sports/aia-alters-language-of-transgender-policy-for-arizona-student-athletes).

1 received only two or three requests by transgender students to play on teams consistent  
2 with their gender identity and had approved all of them.

3 23. Arizona’s schools and teams were thus including the small number of  
4 transgender students who sought to be treated in accordance with their gender identity,  
5 and no problems or complaints regarding their participation in school sports arose.

6 24. Despite the AIA’s successful policies, the Arizona Legislature passed the  
7 Ban at issue in this case on March 24, 2022.

8 25. The Ban requires each interscholastic or intramural athletic team or sport  
9 that is sponsored by a public school or a private school whose students or teams compete  
10 against a public school to be designated as a boys’, a girls’, or coed team based on the  
11 students’ “biological sex.” Ariz. Rev. Stat. § 15-120.02(A). The Ban prohibits athletic  
12 teams or sports designated for females, women, or girls to be open to members of the  
13 “male sex.” *Id.* § 15-120.02(B).

14 26. The Ban does not define the terms “biological sex,” “male sex,” or “sex”  
15 generally. The Legislative findings, however, suggest “sex” as being determined at  
16 “[fertilization] and revealed at birth or, increasingly, *in utero.*” S.B. 1165, 55th Leg., 2d  
17 Reg. Sess. (Ariz. 2022), § 2.

18 27. The law also forbids an interscholastic association—such as the AIA—  
19 from permitting transgender girls to play on girls’ teams in interscholastic competitions.  
20 Ariz. Rev. Stat. § 15-120.02(A), (D).

21 28. In addition to regulating schools and interscholastic associations directly,  
22 the law creates a private cause of action for any student to sue a school or athletic  
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1 association that permits transgender girls to play on girls' teams if that student believes  
2 that they have "suffer[ed] any direct or indirect harm" from a violation of the law. *Id.* §  
3 15-120.02(E), (G).

## 4 **II. Transgender People and Sports**

5 29. "Gender identity" is the medical term for a person's internal, innate, deeply  
6 held sense of their own gender. Everyone has a gender identity. There is a medical  
7 consensus that a person's gender identity is not subject to voluntary change and has a  
8 significant biological foundation.

9 30. From a medical perspective, a person's sex encompasses several different  
10 biological attributes, including sex chromosomes, certain genes, gonads, the body's  
11 production of and response to sex hormones, internal and external genitalia, secondary  
12 sex characteristics, and gender identity. Those attributes are not always aligned in typical  
13 ways.

14 31. When a child is born, a health care provider designates the child's sex to be  
15 marked on the child's birth certificate based on the child's observable anatomy. In the  
16 vast majority of cases, that initial designation turns out to be consistent with the  
17 individual's gender identity. For a transgender person, however, that initial designation  
18 turns out to be inaccurate because it does not reflect the person's gender identity.

19 32. Gender dysphoria, which results from physical impairments, is the distress  
20 caused by incongruence between a person's gender identity and their designated sex at  
21 birth. If untreated, gender dysphoria may cause anxiety, depression, eating disorders,  
22 substance abuse, self-harm, and suicide. Gender dysphoria is a diagnosable and treatable



1 condition recognized by the American Psychiatric Association<sup>6</sup> and is articulated in the  
2 Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-V”).<sup>7</sup>

3 33. Under the medical standards of care for the treatment of gender dysphoria  
4 in adolescents, the only safe and effective treatment for gender dysphoria is to permit  
5 transgender adolescents to live consistent with their gender identity in all aspects of their  
6 lives. In addition, when a child begins puberty, doctors may prescribe puberty blocking  
7 medication and, for older adolescents, hormone therapy. Forcing a transgender girl to be  
8 treated as male contradicts the medical standards of care and can result in serious  
9 negative health consequences, including, for example, severe anxiety, depression,  
10 substance abuse, self-harm, and suicidality.

11 34. There is a scientific consensus that the biological driver of average group  
12 differences between girls and boys with respect to athletic performance is differences in  
13 their respective levels of testosterone, which begin to diverge significantly only after the  
14 onset of puberty.

15 35. Transgender girls who receive puberty-blocking medication do not go  
16 through male puberty. As a result, they do not experience the physiological changes  
17 caused by the increased production of testosterone associated with male puberty. If those  
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19 <sup>6</sup> *What is Gender Dysphoria?*, American Psychiatric Association,  
20 <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> (last visited Apr. 12, 2023).

21 <sup>7</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental*  
22 *Disorders, Fifth Edition, Text Revision (DSM-5-TR)* (2022).

1 girls subsequently receive hormone therapy, their bodies develop the skeletal structure,  
2 fat distribution, and muscle and breast development typical of other girls.

3 36. Transgender girls who receive puberty-blocking medication and those who  
4 receive hormone therapy typically have testosterone levels in the same range as other  
5 girls and significantly lower than boys who have begun pubertal development.

6 37. For transgender youth, research has shown that being accepted and  
7 supported as who they are is enormously beneficial to their health and well-being.  
8 Conversely, being denied recognition and support can cause significant harm, exacerbate  
9 gender dysphoria, and expose them to the risk of discrimination and harassment.

### 10 **III. The Benefits of School Sports**

11 38. For children and young adults, school-sponsored sports offer benefits they  
12 will experience throughout life and often have a positive developmental impact that is  
13 second only to family support. For example, students who participate in high school  
14 sports are more likely to finish college and more likely to be actively engaged in planning  
15 for their future. Participation in sports has a documented positive effect on academic  
16 achievement, with student athletes generally experiencing better academic achievement  
17 than students who are not athletes.

18 39. Sports provide an opportunity to gain confidence, to build social  
19 connections, and to develop important social, emotional, and coping skills. Participation  
20 in sports provides students the opportunity to make friends and become part of a  
21 supportive community of teammates and peers. It also reduces the effects of factors, such  
22 as stressful life events, that lead to an increased likelihood of experiencing anxiety,  
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1 depression, poor academic performance, dropping out of school, and engaging in risky  
2 behaviors. Learning how to manage stressful events at a young age provides benefits to  
3 student athletes throughout their lives, even after the competitions have ended. In  
4 contrast, when young people are excluded from participating in youth sports, or do not  
5 feel accepted or respected, they do not have the opportunity to experience these benefits.  
6 In addition, when youth are excluded from an equal opportunity to participate because  
7 they are transgender, the negative impact on their emotional and social development is  
8 severe; in addition to losing the benefits that participation in sports provides, they  
9 internalize the shame and stigma of being officially excluded for a personal characteristic  
10 (being transgender) over which they have no control and that already subjects them to  
11 prejudice and social stigma.

12 40. Participation in sports also allows students to build teamwork and discipline  
13 skills. Students learn the importance of working as part of a group to achieve a common  
14 goal and the necessity of each individual member's role in bringing about success.  
15 Students also experience the success and personal fulfillment achieved from discipline,  
16 hard work, and perseverance through countless hours of practice and competition.

17 41. Through sports, students develop social skills and emotional maturity that  
18 allow them to create and sustain lifelong friendships. Sportspersons spend considerable  
19 time with their teammates, often experiencing high-pressure situations together that lead  
20 to deeper and more meaningful social bonds and friendships. These sports experiences in  
21 turn result in reduced anxiety and higher self-esteem. These benefits positively affect  
22 students throughout their entire lives.



1 Jane has not experienced any of the physiological changes, including muscle  
2 development, that increased testosterone levels would cause in a pubescent boy.

3 47. Jane has played soccer on girls' club and recreational sports teams for  
4 nearly five years. She enjoys playing soccer and making new friends through it. The  
5 friendships she has made through soccer are real and meaningful, and Jane has shared  
6 with her soccer teammates that she is a transgender girl. Jane's teammates and coaches  
7 have been highly supportive of her identity.

8 48. For Jane's family, playing sports is also an important value.

9 49. Jane intends to try out for the girls' soccer team at Kyrene Aprende Middle  
10 School—which has separate teams for boys and girls—in the winter 2023-2024 athletic  
11 season.

12 50. Jane also intends to try out for the girls' cross-country team in the summer  
13 2023 season, which starts in mid-July 2023, and the girls' basketball team in the spring  
14 2024 season at Kyrene Aprende Middle School. Like soccer, basketball has separate  
15 teams for boys and girls. While cross-country practices co-educationally, boys and girls  
16 compete separately.

17 51. Jane's health and well-being depend on being able to follow her medically-  
18 prescribed treatment, including living as a girl in all aspects of her life.

19 52. Playing on boys' teams or not being able to compete with other girls is not  
20 an option for Jane. It would be painful and humiliating for Jane to be forced to play on  
21 boys' teams. It would also contradict her medical treatment for her gender dysphoria.

1           53. The Ban thus denies Jane the opportunity to participate in school sports at  
2 all and the numerous social, educational, and physical and emotional health benefits that  
3 school sports provide.

4           54. But for the Ban, the Kyrene School District would permit Jane to play on  
5 girls' sports teams. In fact, the members of the Kyrene School District's Governing  
6 Board have denounced the Ban.<sup>8</sup>

7           55. If the Ban is not enjoined as to Jane, it will cause Jane to suffer irreparable  
8 emotional, psychological, and developmental harm that will irreparably and negatively  
9 affect her educational and social experience.

10           **B. Megan Roe**

11           56. Plaintiff Megan Roe is a 15-year-old transgender girl who attends The  
12 Gregory School.

13           57. Megan has identified as a girl since she was very young. She was diagnosed  
14 with gender dysphoria when she was 10 years old.

15           58. Before starting at The Gregory School, Megan's parents informed  
16 administrators and teachers at the school that Megan is a transgender girl.

17           59. As part of her medically-prescribed treatment for gender dysphoria, Megan  
18 has been receiving puberty-blocking medication since she was 11 years old, after clinical  
19 documentation of the initial signs of puberty. This medication has prevented her from

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20 <sup>8</sup> Paul Maryniak, *Kyrene Board Rips Transgender, Other State Laws*, Ahwatukee  
21 Foothills News (Sept. 21, 2022, last updated Oct. 25, 2022),  
22 [https://www.ahwatukee.com/news/article\\_50d6aaa4-3907-11ed-baa2-5b5183664658.html](https://www.ahwatukee.com/news/article_50d6aaa4-3907-11ed-baa2-5b5183664658.html).

1 undergoing male puberty. Megan then started to receive hormone therapy when she was  
2 12 years old. As a result, she has not experienced the physiological changes, including  
3 muscle development, that increased testosterone levels would cause in a pubescent boy.  
4 Instead, the hormones she has received have caused her to develop many of the  
5 physiological changes associated with puberty in females.

6 60. Megan's health and well-being depend on being able to follow her  
7 medically-prescribed treatment, including living as a girl in all aspects of her life.

8 61. Megan started to play volleyball a couple of years ago and has found it fun  
9 and enjoyable. Before volleyball, Megan enjoyed other sports, including swimming and  
10 dance. Megan's schoolfriends are on the girls' volleyball team. Megan's teammates,  
11 coaches, and The Gregory School have been highly supportive of her transgender identity  
12 and would welcome her participation on the girls' volleyball team.

13 62. At The Gregory School, volleyball is one of the most important sports in  
14 the school's social fabric. The matches are an important social occasion, which are well-  
15 attended by the school community.

16 63. The Gregory School has separate volleyball teams for boys and girls.  
17 Megan intends to try out for the girls' volleyball team at The Gregory School this fall.

18 64. The Gregory School participates in the AIA and complies with its rules so  
19 that students can play in interscholastic competitions.<sup>9</sup> But for the Ban, The Gregory  
20 School would permit Megan to play on the girls' volleyball team.

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22 <sup>9</sup> *The Gregory School Athletics Program*, The Gregory School,  
<https://www.gregoryschool.org/athletics> (last visited Apr. 13, 2023).







1           75. Title IX provides that “[n]o person in the United States shall, on the basis  
2 of sex, be excluded from participation in, be denied the benefits of, or be subjected to  
3 discrimination under any education program or activity receiving Federal financial  
4 assistance.” 20 U.S.C. § 1681(a).

5           76. Plaintiffs bring this Count against all Defendants.

6           77. Under Title IX, discrimination “on the basis of sex” encompasses  
7 discrimination against individuals because they are transgender. *See Doe v. Snyder*, 28  
8 F.4th 103, 114 (9th Cir. 2022) (holding that discrimination against transgender  
9 individuals violates Title IX).

10           78. Title IX forbids sex discrimination in athletic programs. The implementing  
11 regulations for Title IX permit sports teams to be separated by sex but do not mandate  
12 such separation.

13           79. Neither Title IX, its regulations, nor its guidance purport to define “sex” as  
14 something that is determined at fertilization and revealed at birth or in utero.

15           80. By barring Plaintiffs from playing on girls’ sports teams because they are  
16 transgender, Defendants exclude them from, deny them the benefits of, and subject them  
17 to discrimination in educational programs and activities “on the basis of sex,” in violation  
18 of their rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et*  
19 *seq.*

**COUNT III**

Discrimination On Basis of Disability  
Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*  
Section 504 of the Rehabilitation Act, 29 U.S.C. § 794  
(Against All Defendants)

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4 81. Plaintiffs incorporate all preceding paragraphs of the Complaint as though  
5 fully set forth herein.

6 82. The ADA provides that “no qualified individual with a disability shall, by  
7 reason of such disability, be excluded from participation in or be denied the benefits of  
8 the services, programs, or activities of a public entity, or be subjected to discrimination  
9 by any such entity.” 42 U.S.C. § 12132. Section 504 of the Rehabilitation Act extends  
10 that protection to “any program or activity receiving Federal financial assistance.” 29  
11 U.S.C. § 794(a).

12 83. Plaintiffs bring this Count against all Defendants.

13 84. Plaintiffs have a disability within the meaning and scope of 42 U.S.C.  
14 § 12102 based on their gender dysphoria, which results from physical impairments.  
15 42 U.S.C. § 12102(1); 29 U.S.C. § 705(9). Defendants are therefore required to afford  
16 Plaintiffs the protections of the ADA and Section 504 of the Rehabilitation Act.

17 85. By depriving Plaintiffs of the opportunity to try out for and compete on  
18 girls’ sports teams, denying Plaintiffs meaningful access to sports programs and  
19 activities, and subjecting Plaintiffs to discrimination, all because of Plaintiffs’ gender  
20 dysphoria, Defendants violate Plaintiffs’ rights under the ADA and Section 504 of the  
21 Rehabilitation Act. Playing on boys’ sports teams is not an available option for Plaintiffs  
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1 because it would exacerbate Plaintiffs' disabilities, be detrimental to their health, and  
2 contradict their prescribed medical treatment.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs respectfully request that this Court enter orders and  
5 judgment:

6 A. Declaring that the enforcement by Defendants of Ariz. Rev. Stat. § 15-  
7 120.02 violates Plaintiffs' rights under the Equal Protection Clause of the Fourteenth  
8 Amendment to the United States Constitution, Title IX, 20 U.S.C. § 1681 *et seq.*, the  
9 Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and Section 504 of the  
10 Rehabilitation Act, 29 U.S.C. § 794, *et seq.*

11 B. Preliminarily and permanently enjoining enforcement or any threat of  
12 enforcement of Ariz. Rev. Stat. § 15-120.02 by Defendants and their employees, agents,  
13 appointees, or successors as to Plaintiffs, and requiring Defendants and their employees,  
14 agents, appointees, or successors to permit Plaintiffs to try out for and play on the school  
15 sports' teams consistent with their gender identity;

16 C. Waiving the requirement for the posting of a bond as security for entry of  
17 preliminary injunctive relief;

18 D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees  
19 pursuant to 42 U.S.C. § 1988 and other applicable laws; and

20 E. Granting such other and further relief as the Court deems just and proper.  
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Respectfully submitted this 17th day of April, 2023.

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*\*Pro hac vice application forthcoming*