HON. MAUREEN McKEE, DEPT. 5
HEARING DATE: DECEMBER 3, 2026
TIME: 9:00 A.M.

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

J. DOE A, in their individual capacity, and on behalf of their minor child; JANE DOE B and JANE DOE C, in their individual capacities and on behalf of their minor child; JANE DOE D, in their individual capacity and on behalf of their minor child; JANE DOE E and JOHN DOE F, in their individual capacities and on behalf of their minor child; JOHN DOE G, in their individual capacity and on behalf of their minor child; TRANSFAMILIES, a nonprofit organization; and WASHINGTON EDUCATION ASSOCIATION, a nonprofit organization,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

No. 26-2-37399-0 SEA

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

CONTACT INFORMATION FOR INDIVIDUAL PLAINTIFFS' COUNSEL FOUND WITHIN SIGNATURE BLOCKS

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I. INTRODUCTION

Washington has a long tradition of treating all its citizens equally and without discrimination, including on the basis of sex and gender identity. These commitments are enshrined in the Washington Constitution and in the State's civil rights and education laws. Initiative Measure No. IL26-638 ("Initiative") makes two unprecedented changes to school athletics in Washington that violate multiple provisions of the Washington Constitution and conflict with existing statutory protections against discrimination. The Initiative requires every girl seeking to participate in girls' athletics to undergo an intrusive and medically unnecessary sex "verification," and it categorically prohibits transgender girls from participating on girls' teams.

Under the Initiative, for students to participate in girls' sports, a health care provider must verify each girl's "biological sex" based on only three criteria: "reproductive anatomy," "genetic makeup," or "normal endogenously produced testosterone levels." Initiative § 3(2). Boys face no comparable requirement. By imposing this intrusive, sex-based condition on girls alone, the Initiative violates Washington's Equal Rights Amendment ("ERA") and article I, section 7 of the Washington Constitution, which protects against unwarranted privacy intrusions. The Initiative also violates article II, section 37 of the Washington Constitution by changing the operation of many existing statutory protections against discrimination without setting forth the affected statutory provisions in full.

Because the Initiative takes effect December 3, 2026, in the middle of the school year, it will cause immediate and irreparable harm. Neither the intrusion into students' privacy nor the loss of athletic opportunities can be undone by a later judgment. Plaintiffs therefore ask the Court to preliminarily enjoin the Initiative's implementation and enforcement and maintain the status quo.

II. FACTS

A. Washington Has Long Guaranteed School Athletics to All Students, Including Transgender Students.

Most of Washington's school athletic opportunities are separated by sex and, continuously since 2007, Washington Interscholastic Activities Association ("WIAA") policy has permitted

participation in sex-separated programs consistent with a student's gender identity. Declaration of Julia Marks ("Marks Decl.") Exhibit ("Ex.") B, at 4.[1] Currently, to be eligible for school sports, a student must have on file with the school a medical eligibility form completed by a health care provider who has conducted the student's sports physical. *Id.* Ex. A, at 33. Sports physicals are valid for 24 months. *Id.* at 34. The WIAA supplies a model form, but school districts may use their own form. *See id.* at 33. Neither the current WIAA form nor the American Academy of Pediatrics model form asks for information about sex assigned at birth. Marks Decl. Exs. C, D; Declaration of Dr. Trace J. Julsen ("Julsen Decl.") ¶ 13. To prevent sports physicals from becoming a barrier to sports participation, some districts hold large events in public places like gymnasiums, often with limited or no privacy, where volunteer medical providers conduct sports physicals, typically focusing on cardiovascular and musculoskeletal health, vital signs, and a brief medical history. Declaration of Dr. Eloi Hoopman ("Hoopman Decl.") ¶¶ 5, 8, 10; Julsen Decl. ¶¶ 10–11, 15–16, 19; Declaration of Cassie Sauer ("Sauer Decl.") ¶ 6.

B. The Initiative Upends Washington Sports Eligibility for Girls.

In November 2026, after nearly two decades of maintaining sex-separated sports teams without requiring sex verification, Washington voters passed the Initiative, which newly imposes a medically unnecessary sex testing regime on girls alone and excludes transgender girls from girls' teams. *See* Marks Decl. Ex. F, at 2; Declaration of Andrea Klein ("Klein Decl.") ¶ 5. The Initiative upends Washington's current landscape by requiring girls to undergo a "medical evaluation of their sex." Attorney General of Washington, *Ballot Title and Explanatory Statement for Initiative IL26-638*, at 2 (July 14, 2026) ("Explanatory Statement"), *available at* https://tinyurl.com/fyaspzru. The nature of that medical evaluation, however, is unclear. Julsen

[1] In Washington, each school district's board of directors controls interschool athletics and may delegate that authority to WIAA. RCW 28A.600.200. WIAA is a nonprofit organization authorized to serve as a rule-making body for interschool athletics. Marks Decl. ¶ 2.

Decl. ¶ 22. Regardless of how it is interpreted, the Initiative will require new examinations of girls. *Id.* Girls across the state will face a new kind of uncertainty—they cannot predict how their provider will interpret the law and therefore will not be able to predict the scope of intrusion to expect during an exam. *Id*. ¶ 38. Providers are likewise confused and concerned. *Id.* ¶¶ 22, 33, 40. For example:

- **Testosterone testing**. The Initiative authorizes health care providers to verify "biological sex" using "normal endogenously produced testosterone levels." Initiative § 3(2). However, a blood test that measures circulating testosterone does not, by itself, establish whether the circulating testosterone has been altered by medication. Julsen Decl. ¶ 33. Further, what is normal and endogenous for a specific person can only be determined by a specialist, like an endocrinologist, if at all. *Id.* ¶ 34. These determinations are not within the scope of an ordinary sports physical. *Id.* ¶¶ 17, 21; Hoopman Decl. ¶ 9. Finally, any blood test is costly and time-consuming—and tests contemplated by the Initiative would likely not be covered by insurance. Marks Decl. Ex. E, at 2.
- **Genetic testing**. A provider testing "genetic makeup" would likely order a karyotype, which reveals a person's chromosomes. Julsen Decl. ¶ 28. These tests are typically ordered by specialists who are trained to explain the results to children and their families. *Id.* ¶ 30. Genetic testing is complicated and personal as it reveals a significant amount of information. *Id.* Chromosomes do not always align with a person's other sex characteristics; a girl with an intersex trait, for example, may have chromosomes that differ from those typically associated with girls. *Id.* Like a testosterone test, this test would typically require a blood draw and a lab test, at significant cost, and with a delay before results. *Id.* ¶¶ 29, 31–32. Doctors do not order this type of genetic testing absent specific medical bases for doing so. *Id.* ¶ 36.
- **Reproductive anatomy.** Verification through "reproductive anatomy" authorizes

medical providers to examine a girl's external and internal genitalia through potentially harmful and unnecessary pelvic examinations. *Id.* ¶¶ 23–24; *see* Marks Decl. Ex. E, at 2. Genital or pelvic examinations are not part of a sports physical and are not medically necessary to determine whether a girl can safely play. Julsen Decl. ¶¶ 14, 17, 24, 42. The prospect of an unnecessary genital exam will make many girls uncomfortable. *Id.* ¶¶ 40–41; Klein Decl. ¶ 14. The burden will fall on medical providers to explain the requirements of the new law. Julsen Decl. ¶ 40; Sauer Decl. ¶ 6. As a result, many providers may simply refuse to perform this part of a physical. *See* Julsen Decl. ¶¶ 42–43; Hoopman Decl. ¶ 11. According to the American Academy of Pediatrics, it is best practice to offer children a chaperone for these kinds of sensitive examinations. Julsen Decl. ¶ 25. Many providers of sports physicals do not have access to a chaperone**;** for those that do, this will add time and expense. *Id.* ¶¶ 25–26; Hoopman Decl. ¶ 9; Sauer Decl. ¶ 6.

"Verifying" "biological sex" using "only" the methods identified in the Initiative significantly exceeds the capacity of providers who perform ordinary sports physicals. Julsen Decl. ¶¶ 26, 32, 35; Hoopman Decl. ¶¶ 8–11; Marks Decl. Ex. E. As a result, many providers are expected to stop performing sports physicals, making it harder for girls to play sports. Julsen Decl. ¶ 43; Sauer Decl. ¶ 6; Hoopman Decl. ¶ 11. Many girls will likely drop out of sports rather than face the uncertain and intrusive new process. Julsen Decl. ¶ 41; Klein Decl. ¶ 14; Marks Decl. Ex. E, at 2. The Washington State Hospital Association ("WSHA") notes that many medical facilities do not have the staff and capacity to perform the medical sex verification required under the Initiative. Sauer Decl. ¶¶ 5–6.

Finally, section 3 requires school boards and nonprofit entities like WIAA to "prohibit biologically male students" from competing in girls' sports. Initiative § 3(1). The Initiative does not define what constitutes a "biologically male student." *See id.*

C. Plaintiffs and Their Members Will Be Directly Harmed.

The Initiative takes effect on December 3, 2026, thirty days after the November 3 general

election. *See* Wash. Const. art. II, § 1(d). The Initiative is already causing confusion around the state. School districts and other entities have expressed concern about how they will implement the Initiative's requirements while continuing to comply with existing antidiscrimination laws and their own policies. *See, e.g.*, Marks Decl. Ex. E, at 2–3.

J. Doe A is the parent of a 17-year-old transgender girl, Doe Child A, who is in 12th grade at a Seattle public high school and has participated on girls' sports teams for years. Declaration of J. Doe A ("Doe A Decl.") ¶¶ 4–5. Under the Initiative, Doe Child A will be barred from girls' teams. *Id*. ¶ 5. Doe A fears their daughter will be outed as transgender to people who do not know her status if the Initiative goes into effect. *Id*. ¶¶ 17–18.

Jane Doe B and Jane Doe C are the parents of an 11-year-old transgender girl, Doe Child BC, who is in 6th grade at a Seattle public school. Declaration of Jane Doe B ("Doe B Decl.") ¶ 4. Doe Child BC is registered for a girls' sports team at her middle school. *Id*. ¶ 5. Under the Initiative, she will be barred from girls' teams. *Id*. Doe B and Doe C believe the Initiative, if it goes into effect, will embolden discrimination against their daughter beyond sports. *Id*. ¶ 14.

Jane Doe D is the parent of a 15-year-old cisgender girl, Doe Child D, who is in 10th grade and plays on a girls' team at her Seattle public high school. Declaration of Jane Doe D ("Doe D Decl.") ¶ 4. Sports are a key part of Doe Child D's identity and have taught her grit, confidence, and teamwork. *Id*. ¶ 7. Doe Child D will be subject to the verification requirement, which Jane Doe D objects to as burdensome and invasive. *Id*. ¶¶ 5, 15.

Jane Doe E and John Doe F are the parents of two cisgender daughters, ages 15 and 17, who play girls' sports at a Seattle public high school. Declaration of Jane Doe E ("Doe E Decl.") ¶¶ 3–4. Sports are central to both girls' lives and have helped them build friendships and confidence. *Id*. ¶¶ 9–11. Doe E objects to the verification requirement, which her daughters will be subject to, as burdensome and invasive. *Id*. ¶¶ 5, 17.

John Doe G is the parent of a 15-year-old cisgender girl, Doe Child G, who is in 9th grade and plays on a girls' team at her Seattle public high school. Declaration of John Doe G ("Doe G Decl.") ¶ 3. Doe Child G has played her sport since kindergarten. *Id*. ¶ 5. Sports are a key part of

her identity and are a source of friendship, community, and purpose. *Id*. ¶¶ 4, 8. Doe Child G will be subject to the verification requirement, which Doe G objects to as burdensome and invasive. *Id*. ¶¶ 4, 12.

TransFamilies is a nonprofit founded in Washington State that has supported transgender children and their families since 2012. Declaration of Aidan Key ("Key Decl.") ¶ 3. It has approximately 2,000 member families nationwide, including about 900 in Washington. *Id*. ¶¶ 3–4. Some members have children who play on girls' teams in Washington. *Id*. ¶ 6.

The Washington Education Association ("WEA") is a nonprofit organization representing more than 80,000 public school educators and education support professionals. Declaration of Janie White ("White Decl.") ¶ 3. WEA members who serve as coaches, athletic directors, school nurses, counselors, and teachers will be directly affected by the Initiative. *Id.* ¶¶ 3, 5; Klein Decl. ¶¶ 6, 12. They will be responsible for explaining its new requirements, responding to questions from students and families, and navigating conflicts between the Initiative and existing nondiscrimination requirements. White Decl. ¶ 5; Klein Decl. ¶¶ 6, 12.

III. STATEMENT OF ISSUES

1. Washington's ERA prohibits denying or abridging equality of rights on account of sex. The Initiative requires every girl seeking to participate in school athletics to obtain medical verification of her "biological sex." Boys face no comparable requirement. Does the Initiative violate the ERA by imposing this verification requirement on only girls?

2. Article I, section 7 protects against government intrusion into private affairs without authority of law. The Initiative requires every girl seeking to participate in school athletics to obtain medical verification of intimate information about her body and authorizes invasive genital examinations, genetic testing, and hormone testing. This requirement applies without any individualized reason to question eligibility. Does the Initiative violate article I, section 7?

3. Article II, section 37 ensures transparency in legislation by requiring that any initiative that renders a straightforward interpretation of existing statutes erroneous must set forth its effects on those statutes. The WLAD, Equal Educational Opportunity Laws, and Parental Rights

statute prohibit discrimination based on sex, sexual orientation, and gender identity. The Initiative excludes transgender girls from girls' teams and imposes sex-verification requirements on only girls without setting forth the affected statutes. Does the Initiative violate article II, section 37?

IV. EVIDENCE RELIED UPON

Plaintiffs' Motion relies upon the supporting declarations of J. Doe A, Jane Doe B, Jane Doe D, Jane Doe E, John Doe G, Aidan Key, Andrea Klein, Janie White, Cassie Sauer, Dr. Eloi Hoopman, Dr. Trace J. Julsen, and Julia Marks, the exhibits to the declarations, and the pleadings, papers, and records on file in this matter.

V. ARGUMENT

Plaintiffs meet the requirements for preliminary relief and are entitled to an injunction to "preserve the status quo" until a hearing on the merits. *Nw. Gas Ass'n v. Wash. Utils. & Transp. Comm'n*, 141 Wn. App. 98, 115–16 (2007). Plaintiffs have clear legal rights that are at risk of "immediate invasion," which will cause them "actual and substantial injury." *Rabon v. City of Seattle*, 135 Wn.2d 278, 284 (1998). The Court weighs these criteria against competing equities, including by "balancing . . . the relative interests of the parties and the interests of the public," which here decisively weigh in favor of Plaintiffs. *Id.* This standard applies in cases challenging voter-passed initiatives. *See City of Burien v. Kiga*, 144 Wn.2d 819, 823–24 (2001).

A. Plaintiffs Are Likely to Prevail on Their ERA Claim.

The Initiative violates the ERA, which guarantees that "[e]quality of rights and responsibility under the law shall not be denied or abridged on account of sex." Wash. Const. art. XXXI, § 1. Unlike the Equal Protection Clause of the federal Constitution, the ERA imposes a "single criterion," asking: "Is the classification by sex discriminatory?" *Marchioro v. Chaney*, 90 Wn.2d 298, 305 (1978). "[U]nder our ERA discrimination on account of sex is forbidden." *Darrin v. Gould*, 85 Wn.2d 859, 877 (1975) (holding that the blanket exclusion of girls from a high school football team violated the ERA). When a law imposes requirements on one sex but not the other, it denies "equality of rights and responsibility under the law" and is prohibited even if the government offers a justification for the differential treatment. *See Guard v. Jackson*, 132 Wn.2d

660, 666–67 (1997).

The Initiative does exactly what the ERA forbids: it discriminates against girls by subjecting girls, but not boys, to a sex-verification requirement as a condition of participating in school athletics. Initiative § 3(2). The Initiative's express language recognizes that it will require sex discrimination. *See* Initiative § 4(1)(c) (creating an exception to a statutory provision that seeks to "eliminate sex discrimination"). The Initiative abridges girls' rights to participate in school sports by imposing a requirement that is placed only on girls, in violation of the ERA. *Guard*, 132 Wn.2d at 666 (holding that a wrongful death statute requiring fathers, but not mothers, to have regularly contributed to a child's support in order to sue violated the ERA).

The burden imposed on girls by the Initiative—mandatory sex verification—is significant. Despite the Initiative's "find[ings]," Initiative § 1, sex verification is not part of any existing required sports physical. Julsen Decl. ¶¶ 17, 21; Marks Decl. Ex. A, at 33. Instead, the verification requirement imposes a new set of obligations on girls that may subject them to increased risk of sexual abuse by providers, unnecessary examinations that may cause trauma, and additional cost. Julsen Decl. ¶¶ 24, 27, 31, 34. Imposing a burdensome verification requirement solely on the basis of sex violates the ERA's clear mandate to "end . . . discrimination against either sex." *Marchioro*, 90 Wn.2d at 305. While the Washington Supreme Court has recognized a "few," "narrow" exceptions "to the ERA's prohibition against sex-based classifications," the Initiative plainly does not fall within those limited—and rarely invoked—carve-outs. *Guard*, 132 Wn.2d at 664, 666.

B. Plaintiffs Are Likely to Prevail on Their Article I, Section 7 Claim.

Article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Wash. Const. art. I, § 7. The Washington Supreme Court applies a two-step test under that provision: first, whether the state action constitutes a disturbance of private affairs; second, if it does, whether the intrusion is justified by "authority of law." *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 306 (2008). "Authority of law" generally means a valid warrant, subject only to a "few jealously guarded exceptions." *Id.* at 306–07; *State v. Hendrickson*, 129 Wn.2d 61, 70 (1996) (quoting

State v. Houser, 95 Wn.2d 143, 149 (1980)). The Initiative's compulsory medical verification requirement fails both steps.

1. The Initiative Disturbs Private Affairs Because It Compels Medical Verification of Intimate Biological Characteristics.

Compelled medical testing of student athletes is a significant intrusion on privacy. "When inquiring about private affairs, we look to 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.' This is an objective analysis." *York*, 163 Wn.2d at 307 (citation modified) (quoting *State v. Young,* 123 Wn.2d 173, 181 (1994)). In *York*, the Court held that even a "relatively unobtrusive" urinalysis, in an enclosed stall, constitutes a "significant intrusion" because it requires a student to provide bodily fluids. *Id.* at 308.

Here, the demanded verification for girls is far more physically intrusive—authorizing genital or pelvic examinations and blood testing. *See* Julsen Decl. ¶¶ 23–24, 29, 33–34. The verification will also reveal personal information about a girl's life. *Id.* ¶¶ 24, 30. Washington courts have specifically recognized that "private affairs" include intimate or discrete details of a person's life. *Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss*, 194 Wn.2d 484, 506 n.10 (2019) (citing *State v. Jorden*, 160 Wn.2d 121, 126 (2007)). Information about a student's reproductive anatomy, genetic makeup, hormone levels, and medical characteristics that may reveal a student's transgender or intersex status falls squarely within that description.[2] *See Doe v. Dep't of Corr.*, No. 4:21-CV-5059, 2021 WL 2453099, at *7 (E.D. Wash. May 17, 2021) (noting that a person's transgender status might be a protected privacy interest). The verification requirement extracts this deeply private information without authority of law.

Further, collecting bodily samples that can reveal medical conditions or treatment intrudes on constitutionally protected private affairs. Beyond the taking of a sample, which itself constitutes

[2] In March 2025, the Washington Attorney General's Office ("AGO") reviewed proposed WIAA rules that would have required girls to verify their sex through an original birth certificate or a physician's affidavit. The AGO warned that such requirements "threaten[] to force them to reveal highly sensitive, personal health information that would alter many aspects of their lives." Marks Decl. Ex. G, at 4.

an intrusion, "the chemical analysis of its contents," which may disclose medical conditions or treatments, also infringes on an individual's privacy. *Robinson v. City of Seattle*, 102 Wn. App. 795, 822 n.105 (2000); *see also State v. Mecham*, 186 Wn.2d 128, 145 (2016) ("[T]he chemical analysis associated with these tests provide [sic] a wealth of private medical information that . . . infringes on the reasonable expectations of privacy."); *State v. Garcia-Salgado*, 170 Wn.2d 176, 184 (2010) ("[T]he swabbing of a person's cheek for the purposes of collecting DNA evidence is a[n] . . . intrusion into the body and constitutes a search . . . .").

The fact that school sports are voluntary does not justify the intrusion. *York* affirms that a student does not surrender their constitutional privacy rights by seeking to play on school-based sports teams. 163 Wn.2d at 308 ("A student athlete has a genuine and fundamental privacy interest in controlling his or her own bodily functions."); *see also Kuehn v. Renton Sch. Dist. No. 403*, 103 Wn.2d 594, 600 (1985) (holding unconstitutional a suspicionless search of students' luggage before a voluntary extracurricular trip because "neither the voluntary nature of the activity nor the preannouncement of the search . . . make the search constitutional").

2. **There Is No "Authority of Law" to Justify This Intrusion on Privacy.**

Because the Initiative disturbs constitutionally protected private affairs, the burden is on the State to establish "authority of law" for that intrusion. It cannot. Article I, section 7 generally requires a warrant unless the intrusion falls within one of the "jealously guarded exceptions" to the warrant requirement. *York*, 163 Wn.2d at 306–07, 310. Those exceptions include exigent circumstances, consent, searches incident to arrest, inventory searches, plain view, and *Terry* stops. *Id.* at 310; *see also id*. at 314 (declining to adopt "special needs exception" found in Fourth Amendment jurisprudence). None applies here. The Initiative requires no warrant, and none of these exceptions applies to the mandatory medical verification requirement. Likewise, decisions upholding bodily testing in other contexts do not apply. The Washington Supreme Court has expressly distinguished those decisions, which involved materially different circumstances, including criminal investigations, convicted offenders, or proceedings in which the subjects had received the benefit of full adversarial process. *York*, 163 Wn.2d at 315–16; *Blomstrom v. Tripp*,

189 Wn.2d 379, 407–10 (2017).

C. Plaintiffs Are Likely to Prevail on Their Article II, Section 37 Claim.

The Initiative is also unconstitutional because it amends existing statutes without setting forth the amendments in full, contravening article II, section 37, which requires that "[n]o act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." Wash. Const. art. II, § 37. The provision promotes transparency in legislation by ensuring "that legislators and voters are apprised of the impact that an amendatory law will have on existing law." *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 160 (2007). Article II, section 37 applies equally to initiatives. *Amalgamated Transit Union Local 587 v. State* ("*ATU*"), 142 Wn.2d 183, 247 (2000). The Initiative violates this requirement by imposing athletic eligibility rules that alter the operation of existing statutory protections against discrimination—including those in the WLAD (Chap. 49.60 RCW), the Equal Educational Opportunity Laws ("EEOL") (Chap. 28A.640 RCW; 28A.642 RCW), and Washington's Parental Rights statute (RCW 28A.605.005)—without setting forth the affected statutes.

Washington courts employ a two-pronged test to determine if a law violates article II, section 37. First, the court asks "whether the new enactment [is] such a complete act that the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment." *El Centro De La Raza v. State*, 192 Wn.2d 103, 129 (2018) (internal quotations omitted). Second, the court addresses whether "a straightforward determination of the scope of rights or duties under the existing statutes [would] be rendered erroneous by the new enactment." *Id.* (internal quotations omitted); *ATU*, 142 Wn.2d at 246.

1. The Initiative Is Not a Complete Act.

The purpose of the complete act test is "to make sure the effect of new legislation is clear and to avoid confusion, ambiguity, and uncertainty in the statutory law through the existence of separate and disconnected legislative provisions, original and amendatory, scattered through different volumes or different portions of the same volume." *Black v. Cent. Puget Sound Reg'l Transit Auth.*, 195 Wn.2d 198, 206 (2020) (citation modified). A "complete" act must "stand alone

as the law on the particular subject of which it treats." *State ex rel. Living Servs., Inc. v. Thompson*, 95 Wn.2d 753, 756 (1981). If it is not a complete act, then it must set forth all amended provisions. *ATU*, 142 Wn.2d at 246 (quoting *Thompson*, 95 Wn.2d at 756).

The Initiative does not stand alone. Although section 3 establishes new athletic eligibility requirements, the Initiative does not disclose how those requirements alter the existing rights of students and parents or the corresponding duties of school districts or the WIAA under WLAD, EEOL, and Washington's Parental Rights statute. The Initiative alters the rights and duties established by these statutes as applied to student athletics. For example, by failing to amend any portion of Chap. 28A.642 RCW, the Initiative leaves in place protections for transgender students, including RCW 28A.642.080. A student protected by those anti-discrimination provisions cannot determine how their rights are affected by reading the Initiative in isolation.

2. **The Initiative Renders Erroneous a Straightforward Determination of Rights Under Existing Law.**

Even if the Initiative were a complete act (it is not), it independently violates article II, section 37 because it "render[s] erroneous" "a straightforward determination of the scope of rights and duties under . . . existing statutes," specifically, the WLAD, the EEOL, and Washington's Parental Rights statute. *See El Centro*, 192 Wn.2d at 129–32; *Black*, 195 Wn.2d at 210.

a. The Initiative Silently Amends the Washington Law Against Discrimination.

The WLAD prohibits discrimination in public accommodations, including schools, based on "sex" and "sexual orientation." RCW 49.60.030; *see also W.H. v. Olympia Sch. Dist.*, 195 Wn.2d 779, 789 (2020) (holding that WLAD applies to school districts). "Sexual orientation" is defined to include, inter alia, "gender expression or identity." RCW 49.60.040(29). Collectively, under WLAD, girls may compete in activities without being treated worse than boys and transgender people may compete in athletics without being excluded because their gender identity differs from their sex assigned at birth.

The Initiative renders this clear meaning of the WLAD erroneous. A straightforward

reading of the WLAD today tells a transgender girl that a public school may not deny her full enjoyment of its programs, including athletics, because she is transgender. RCW 49.60.030(1)(b), .040(2), (29). Yet section 3 of the Initiative requires every school district and the WIAA to exclude her from girls' teams. Initiative § 3(1). The WLAD also tells every girl in Washington that she may not be subjected to discriminatory conditions of access because of her sex. The Initiative instead tells students seeking to play girls' sports to submit to unnecessary medical verification of their "reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels." *Id.* § 3(2).

Neither change is disclosed in the Initiative's text. So, the Initiative "produces the exact harm article II, section 37 attempts to avoid: it requires a thorough search of existing laws in order to understand the [Initiative's] effect on other provisions of [the] RCW." *El Centro*, 192 Wn.2d at 131–32.

b. The Initiative Silently Amends the Equal Educational Opportunity Laws.

The Initiative likewise renders erroneous the EEOL, Washington's anti-discrimination laws specific to public schools. Chapter 28A.642 prohibits public schools from discriminating based on "sexual orientation," and "gender identity," RCW 28A.642.010, and expressly reaches school sports, RCW 28A.642.020(1). The statute directs OSPI to develop rules and guidelines to eliminate discrimination in public schools, including in recreational and athletic activities. The Initiative never mentions Chapter 28A.642, though it renders the chapter erroneous by requiring medical verification of girls' biological sex and excluding transgender girls from girls' athletic teams.

c. The Initiative Silently Amends Washington's Parental Rights Statute.

The Initiative also renders erroneous Washington's Parental Rights statute. That statute guarantees parents and legal guardians of public school children the right "[t]o have their child receive a public education in a setting in which discrimination on the basis of sex, . . . sexual orientation, gender expression, [or] gender identity, . . . is prohibited under chapters 28A.640 and

28A.642 RCW." RCW 28A.605.005(2)(g). A straightforward reading of Washington's Parental Rights statute thus tells the parent of a transgender girl that her child is entitled to a public education—including the school's athletic programs—free from discrimination based on gender identity and tells the parent of every girl that her daughter will not face discrimination on the basis of sex. The Initiative renders both readings erroneous. Section 3 requires schools to exclude transgender girls from girls' teams and subjects only girls to medical verification of their sex. Initiative § 3(1)–(2). Yet the Initiative never mentions the Parental Rights statute, and nothing in that statute discloses that the rights it promises parents no longer extend to girls' athletics.

d. The Initiative's Selective Amendments Confirm Its Undisclosed Effects.

The amendments the Initiative does make confirm the constitutional defect. Section 4 expressly amends RCW 28A.640.020(1)(c), which requires that athletic activities "be offered to all students without regard to sex," by inserting the words "except as provided in section 3 of this act." Initiative § 4. Section 2 likewise amends RCW 28A.600.200 to require that all athletic policies "conform with section 3 of this act." *Id.* § 2(6). Yet the Initiative makes no corresponding exception to the WLAD, the EEOL, or the Parental Rights statute. That selective disclosure did more than leave voters uninformed; it affirmatively suggested that RCW 28A.600.200 and RCW 28A.640.020 were the *only* existing laws affected. A voter reviewing the measure could reasonably conclude that Washington's anti-discrimination protections for transgender students remained intact. They do not.

D. The Initiative Should Be Struck Down in Its Entirety.

The constitutional violations demonstrated above render all substantive provisions of the Initiative unconstitutional. Furthermore, because the Initiative lacks meaning and effect without section 3, that section is inseverable. *See Davis v. Cox*, 183 Wn.2d 269, 295 (2015) (concluding that a law's unconstitutional subsection was inseverable where all other provisions had "meaning and effect only in connection with" that subsection), *abrogated on other grounds by Maytown Sand & Gravel, LLC v. Thurston Cnty.*, 191 Wn.2d 392 (2018). The remaining provisions do not contain any independent substantive requirements. *See* Initiative §§ 2, 4 (amending existing laws);

id. § 1 (findings); *id.* § 6 (severability). Because section 3 is the only substantive provision, the entire measure must be invalidated.

Even if the Court were to conclude that only one portion of section 3 is unconstitutional, the entire Initiative should still be invalidated because the provisions are inseverable. An invalid provision is not severable when it is "so connected to the remaining provisions that it cannot be reasonably believed that the legislative body would have passed the remainder of the act's provisions without the invalid portions." *League of Women Voters of Wash. v. State*, 184 Wn.2d 393, 411 (2015). For an initiative, the question is whether the voters would have approved the remainder. *ATU*, 142 Wn.2d at 227–28. While a severability clause "may provide the assurance" that the legislation would have been enacted without the invalid provisions, such clauses are "not necessarily dispositive on the question." *Id.* at 228.

Sections 3(1) and 3(2) establish a single, integrated biological-sex eligibility framework. Section 3(1) establishes the biological-sex classification governing participation in girls' athletics; section 3(2) establishes the purported biological criteria—reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels—by which that classification is implemented. Neither provision can be separated from the other without fundamentally changing the framework voters approved.

Thus, if the Court were to invalidate the sex-verification requirement in section 3(2), the "biological sex" separation in section 3(1) could not be preserved without fundamentally altering the Initiative. Without section 3(2), the Initiative would leave a central aspect of its new eligibility framework undefined—requiring schools to devise their own standards for determining "biological sex" and leading to an alternative enforcement regime that voters did not approve and that runs its own significant risk of being unequal, arbitrary, and intrusive.

Two features of the Initiative demonstrate why the verification requirement cannot be severed from the categorical exclusion.

First, the Initiative itself makes clear that the sex-verification regime is integral to the "biological sex" separation. The Initiative's findings state that "[l]everaging the existing physical

examination process to verify biological sex" is the means of achieving the Initiative's objectives. Initiative § 1(4). Thus, verification is not an ancillary requirement that can be removed while leaving the categorical exclusion intact; it is a central component of the biological-sex framework the voters approved.

Second, the verification provision supplies the operative criteria for determining a student's "biological sex." Section 3(1), by contrast, does not independently establish criteria or a process for determining which students are "biologically male" and therefore excluded. *See id.* § 3(1)–(2). Without section 3(2), schools would be left to imagine their own definitions and processes for determining "biological sex." Doing so would require supplying a substantive standard that the voters did not enact. The categorical exclusion therefore depends on the verification provision for its operative meaning, making the verification subsection inseverable.

Unlike the peripheral provision severed in *El Centro*, 192 Wn.2d at 133, the verification requirement is integral to the Initiative's design and operation. Although the Initiative contains a severability clause, Initiative § 6, its findings, eligibility criteria, and prescribed verification process demonstrate that the two provisions are integral parts of the same scheme.

Ultimately, neither substantive provision is severable from the other, and the entire Initiative must be invalidated.

E. Plaintiffs Will Suffer Immediate and Irreparable Harm if the Initiative Is Allowed to Take Effect as Scheduled.

The Initiative is scheduled to take effect on December 3. Wash. Const. art. II, § 1(d); *see supra* Part II.C. On that date, the Initiative will require every school district and the WIAA to insist on the newly conceived medical verification of sex from every student seeking to participate in girls' sports. Initiative § 3(1)–(2). The resulting harm will be substantial, immediate, and statewide, warranting emergency relief. *See Rabon*, 135 Wn.2d at 284.

First, every girl in Washington who plays school sports will be subject to the Initiative's verification regime. Girls who play a spring sport and do not yet have a sports physical verifying their sex by the terms the Initiative dictates will need to meet the new requirements. *See* Klein

Decl. ¶ 9. This means that on December 3, existing sports physicals will not satisfy section 3's new verification requirement, even if they remain valid under current WIAA rules. Julsen Decl. ¶¶ 13, 21. Every girl's eligibility will be upended. Initiative § 3(2). To keep playing, girls' families may be forced to pay extra fees and subject their daughters to invasive hormone and chromosome tests or genital inspections or pelvic examinations with little time to find safe providers. Julsen Decl. ¶¶ 23–24, 29, 31, 34. And because the Initiative leaves "health examination" and "personal health care provider" undefined, students who rely on school-based health services or community clinics may face additional barriers to participation. *See id.* ¶¶ 22, 26, 37; Sauer Decl. ¶¶ 5–6. Further, schools and communities may not be able to marshal sufficient medical resources to provide all of the new sports physicals needed, which would leave many students without access to an affordable option to comply with the Initiative, resulting in their exclusion from school sports. Julsen Decl. ¶ 36–37; Klein Decl. ¶¶ 5, 9–11, 14; *see also* Sauer Decl. ¶¶ 5–6; Hoopman Decl. ¶¶ 5, 7–9, 11; Marks Decl. Ex. E, at 1–2.

Once a child has been subjected to an intrusive examination or test, no later judgment can undo that intrusion into her private affairs or undo the harm caused by being excluded from sports due to inability to obtain a new sports physical that complies with the Initiative. Nor can a later judgment undo a compelled medical verification that has already occurred.

Second, the compelled medical exams may reveal private information about a student's intersex or transgender status, or many other private medical facts, that may not be known to others or even to the family in the case of some conditions. Julsen Decl. ¶¶ 24, 30. And once revealed, that disclosure cannot be undone. Plaintiff J. Doe A's 17-year-old daughter attends a Seattle public school; she will be barred from the girls' teams on which she has played or intends to play. Doe A Decl. ¶¶ 4–5. TransFamilies members likewise have children who play sports in Washington public schools and who will be excluded. Key Decl. ¶¶ 7–9. Many transgender students have lived consistent with their gender identity for years, and no one at their school may know they are transgender. Removal from a team may involuntarily disclose their transgender status to classmates, coaches, and others at school. *See, e.g.,* Doe A Decl. ¶¶ 5, 17–18; Doe B Decl. ¶ 13;

Key Decl. ¶¶ 7–9. Children with intersex traits may learn of those traits for the first time through a test they did not need. Julsen Decl. ¶ 30; Klein Decl. ¶ 14. And because transgender youth already face substantially higher risks of depression, suicidal ideation, and suicide attempts, losing school athletics—an integral part of the education the State provides—threatens serious harm to their well-being. Washington State Psychological Association, *Statement on Passed Initiative 638*, Nov. 13, 2026, https://wspapsych.org/statement-on-passed-initiative-638. A lost season cannot be replayed. Nor can private medical and gender information, once disclosed, be made private again.

Third, the Initiative will sow confusion in the administration of school athletics statewide. WEA represents over 80,000 public school educators and education support professionals. White Decl. ¶ 3. They include the coaches, athletic directors, school nurses, counselors, and teachers who will have to administer and explain the Initiative's exclusion and verification requirements. Klein Decl. ¶ 6. Implementing the Initiative will also require school districts to devote staff time and public resources to revising eligibility procedures mid-school year and enforcing requirements whose constitutionality is in serious question. *Id.* ¶¶ 5–10, 12–13, 17.

Fourth, the Initiative will harm the medical community. The Washington State Hospital Association, an association with membership of all 114 hospitals in Washington, explains that Washington's "health care system simply cannot manage the capacity impacts of the Initiative" and, due to the "complexities of administering [the Initiative's] requirements and associated risks, a number of hospitals and health systems are considering no longer providing sports physicals." Sauer Decl. ¶ 6. The Washington State Medical Association ("WSMA"), along with other major Washington State medical associations, asserts that "[r]equiring physicians to verify 'biological sex' for sports participation represents a significant departure from accepted medical practice and raises serious ethical and privacy concerns." Marks Decl. Ex. E, at 2. "Physicians have a professional and ethical responsibility to recommend and perform examinations and tests based on medical necessity. Conducting procedures that are not medically indicated can undermine the physician-patient relationship and compromise patient trust." *Id*. at 3.

The record shows that Plaintiffs, as well as others impacted by the Initiative, have a well-

grounded fear of immediate, substantial, and irreparable injury.

F. The Balance of Equities Weighs Heavily in Favor of Injunctive Relief.

The balance of equities—including the public's interest—favors an injunction. *See Rabon*, 135 Wn.2d at 284. As shown above and in Plaintiffs' declarations, without a preliminary injunction, girls across the state will be subjected to mandatory medical sex verification, transgender girls will be removed from their teams mid-year, and schools will have to overhaul their athletic eligibility processes overnight. None of those harms can be undone if the Initiative is later held unconstitutional.

By contrast, if the Court grants a preliminary injunction and the Initiative is ultimately upheld, the State will be no worse off than if no injunction had been entered. The injunction would simply preserve the status quo that has governed Washington school athletics since 2007. *See Nw. Gas Ass'n*, 141 Wn. App. at 115–16. Moreover, if the Initiative is subsequently invalidated, an injunction will spare the State, every school district, and the WIAA the considerable burden and expense of implementing—and then unwinding—new eligibility rules, verification forms, and enforcement procedures. *See, e.g.*, Sauer Decl. ¶ 6; Klein Decl. ¶¶ 10, 11, 17.

The public interest likewise favors an injunction. The public has a strong interest in ensuring that no initiative takes effect in violation of the Washington Constitution. It also has an interest in avoiding the confusion that would follow if schools had to implement, mid-year, a regime that may later be struck down. The relative interests of the parties and the public thus weigh heavily in favor of a preliminary injunction.

VI. TIMING OF RELIEF

The Initiative's December 3 effective date left Plaintiffs very little time to seek a preliminary injunction. Plaintiffs have therefore requested and reserved hearing time for this Motion on the Initiative's effective date. If the Court requires additional time to decide the motion, Plaintiffs respectfully request interim relief preserving the status quo: an order temporarily enjoining implementation and enforcement of the Initiative pending the Court's ruling on this Motion.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs are entitled to a preliminary injunction to maintain the status quo.

We certify that this motion contains 6,931 words, consistent with the Parties' contemporaneously filed Stipulated Motion for Overlength Briefs.

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