

STATE OF TENNESSEE

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June 2, 2023

Deborah S. Hunt, Clerk  
United States Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202-3988

**Re: *State of Tennessee, et al. v. Department of Education, et al.*, No. 22-5807**

Dear Ms. Hunt:

Plaintiffs-Appellees, other than Arizona, respectfully submit this Rule 28(j) letter concerning rulemaking and legislative developments after argument.

*First*, the Department of Education announced in a blog post last Friday that it now anticipates issuing final rules in **October 2023** for the two proposed regulations that prompted this Court's request for supplemental briefing. U.S. Dep't of Educ., *A Timing Update on Title IX Rulemaking*, HomeRoom: The Official Blog of the U.S. Dep't of Educ. (May 26, 2023), <https://blog.ed.gov/2023/05/a-timing-update-on-title-ix-rulemaking/>. The supplemental briefing regarding those proposed rules is available at Doc. 81, Appellees' Supplemental Letter Brief, and at Doc. 82, Appellants' Supplemental Letter Brief.

*Second*, the States wanted to update the Court regarding the status of three pieces of legislation previously identified as arguably conflicting with the challenged documents. Doc. 84-1, Plaintiffs-Appellees' April 21, 2023 Letter.

In Tennessee, Governor Lee signed into law the legislation protecting schoolteachers from being “[r]equired to use a student’s preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student’s biological sex.” 2023 Tenn. Pub. Acts, ch. 448 (S.B. 466). The legislature had attempted to pass such a bill before the preliminary injunction. That bill failed in the Senate Finance Committee after the General Assembly’s Fiscal Review Committee and the ACLU of Tennessee both asserted conflict with the challenged documents. States’ Br. at 20.

In Missouri, both houses of the legislature have now passed Senate Bill 39. That bill, if signed by Governor Parson, will prohibit schools from “allow[ing] any student to compete in an athletics competition that is designated for the biological sex opposite to the student’s biological sex” with an exception for females “if no corresponding athletics competition designated for female students is offered or available.”

In Ohio, the House Higher Education Committee favorably reported the “Save Women’s Sports Act,” 2023 Ohio H.B. 6. The Committee considered the bill in five committee hearings before favorably reporting it in May. *See* Ohio Legislature, 135th Gen. Assem., House Bill 6, <https://legislature.ohio.gov/legislation/135/hb6>.

Appellants’ earlier response opposing consideration of this legislation is available at Doc. 85, Appellants’ April 24, 2023 Letter.

Respectfully submitted,

/s/ Clark Lassiter Hildabrand

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### **CERTIFICATE OF SERVICE**

I, Clark Hildabrand, counsel for Plaintiffs-Appellees other than the State of Arizona and a member of the Bar of this Court, certify that, on June 2, 2023, a copy of the foregoing Rule 28(j) letter was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

*/s/ Clark Lassiter Hildabrand*

Clark Lassiter Hildabrand

Senior Counsel