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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION  
15

16 BOARD OF TRUSTEES OF THE  
17 CALIFORNIA STATE UNIVERSITY,

18 Plaintiff,

19 vs.

20 UNITED STATES DEPARTMENT OF  
EDUCATION; LINDA McMAHON, in her  
21 official capacity,

22 Defendants.  
23  
24  
25  
26  
27  
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Case No.

**COMPLAINT**

**ADMINISTRATIVE PROCEDURE ACT  
CASE**

**INTRODUCTION**

1  
2 1. This lawsuit challenges lawless overreach by the U.S. Department of Education  
3 (the “Department”). The Department is attempting to punish San José State University (“SJSU”)  
4 for supposedly violating Title IX from 2022 to 2024, but there is no question that SJSU’s conduct  
5 was *required* by Ninth Circuit law and the federal government’s own guidance at the time.

6 2. SJSU is one of the most effective engines of economic mobility in the United  
7 States. Nearly half of its students are the first in their family to go to college. Thirty-five percent  
8 qualify for federal grants reserved for only those students with exceptional economic need. For  
9 less than half the cost of an elite private institution, students graduate ready to join Silicon  
10 Valley’s competitive and highly paid workforce. SJSU graduates not only go on to cutting-edge  
11 jobs at the world’s most innovative companies, they also become teachers, nurses, and  
12 occupational therapists, and join any number of other essential fields facing shortages of qualified  
13 workers.

14 3. To provide these opportunities to its students, SJSU relies on federal research  
15 funding and federal financial aid. More than half of SJSU students receive federal financial aid.  
16 For SJSU’s lowest-income students, federal aid often covers the entire cost of attendance—putting  
17 a high-quality degree financially within reach. Thousands of SJSU students learn valuable skills  
18 assisting with cutting-edge research financed by the federal government—research that, in turn,  
19 provides benefits to the public.

20 4. The federal government is now threatening to upend SJSU’s ability to deliver on its  
21 promise to students and fulfill its public mission by revoking SJSU’s federal funding. It threatens  
22 to do so not because SJSU violated the law. But because SJSU followed the law.

23 5. In late January 2026, the Department’s Office for Civil Rights (“OCR”) issued a  
24 Letter of Findings (or “the Letter,” attached as Exhibit A). The Letter purports to find that SJSU  
25 previously violated Title IX by allowing a transgender woman to compete on its women’s  
26 volleyball team from 2022 to 2024. And the Letter threatens that, unless SJSU agrees to a  
27 sweeping set of proposed terms—requiring both policy changes and statements on highly  
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1 politicized issues that defy the law—the federal government will pursue revoking SJSU’s federal  
2 funding.

3           6.       These findings and threats are lawless. Whether and under what conditions  
4 transgender women should be allowed to compete in women’s athletics has been hotly contested.  
5 But this case is not about that issue. It is about the Department’s attempt to punish SJSU, even  
6 though the law in the Ninth Circuit has been and is clear. Under Ninth Circuit law, Title IX and  
7 the Equal Protection Clause protect transgender students from discrimination. *See Grabowski v.*  
8 *Ariz. Bd. of Regents*, 69 F.4th 1110, 1113–14 (9th Cir. 2023); *Hecox v. Little*, 104 F.4th 1061,  
9 1068 (9th Cir. 2024). Transgender student-athletes who are qualified and eligible to play may not  
10 be excluded from the bathrooms and sports teams that are consistent with their gender identity  
11 simply because they are transgender. *See Hecox*, 104 F.4th at 1068.

12           7.       That, however, is precisely what the Department says that SJSU should have done.  
13 There is no dispute that the player the Department is focused on was qualified to play and eligible  
14 to play under the rules of the National Collegiate Athletic Association (“NCAA”), Mountain West  
15 Conference (“MWC”), and USA Volleyball. The Department believes SJSU should have  
16 excluded her anyway—simply because she was transgender. Ninth Circuit precedent  
17 unmistakably told SJSU that it could not do that. On the contrary, excluding the player from the  
18 team or facilities would have been unlawful discrimination under Title IX and the Equal  
19 Protection Clause.

20           8.       The Department’s recent Letter did not even mention these Ninth Circuit cases that  
21 bound SJSU at the time of the athlete’s participation—and still do today. The Department’s  
22 lawlessness goes further. The Letter also neglects to mention that, during the relevant time period  
23 of 2022 to 2024, the Department itself took the position that Title IX prohibited discrimination  
24 against and harassment of transgender people—as did a Department of Justice directive issued to  
25 SJSU specifically in 2022. The Department itself entered into multiple resolution agreements with  
26 schools and universities across the country requiring students to have access to bathrooms and  
27 other facilities consistent with their gender identity. That is consistent with Supreme Court  
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1 precedent interpreting Title VII. And it is consistent with the approach taken by the Ninth Circuit  
2 that SJSU relied on and followed from 2022 to 2024.

3 9. Nor did the Department’s Letter mention that a federal district court had already  
4 heard a challenge to SJSU’s conduct at issue here and held that the plaintiffs were unlikely to  
5 succeed on their Title IX claim. *See Slusser v. Mountain W. Conf.*, No. 1:24-cv-03155-SKC-  
6 MDB, 2024 WL 4876221, at \*9–11 (D. Colo. Nov. 25, 2024), *emergency injunction denied sub*  
7 *nom.*, *Van Kirk v. Mountain W. Conf.*, No. 24-1461 (10th Cir. Nov. 26, 2024).

8 10. Ninth Circuit law has not changed. The federal administration has, but it cannot  
9 rewrite the past. Pursuant to executive orders signed in the first days of the new administration,  
10 the federal government now takes the position that Title IX bars transgender women from  
11 competing in women’s sports under all circumstances and that Title IX offers no protection to  
12 transgender people at all. The lawfulness of these orders remains unsettled, but that is irrelevant  
13 here. These January and February 2025 orders do not and cannot change what SJSU was  
14 obligated to do from 2022 to 2024. The President does not have the authority to override judicial  
15 decisions interpreting the Constitution or federal statutes—much less to go back in time and  
16 change the rules that applied before he took office.

17 11. Black-letter law supports that commonsense conclusion. Title IX is Spending  
18 Clause legislation, and Title IX funding recipients must be given “clear notice” of any legal  
19 obligations they are expected to comply with in order to receive funds. *Pennhurst State Sch. &*  
20 *Hosp. v. Halderman*, 451 U.S. 1, 17, 25 (1981). The government may not impose “post  
21 acceptance or ‘retroactive’ conditions.” *City of Los Angeles v. Barr*, 929 F.3d 1163, 1175 (9th  
22 Cir. 2019) (citation omitted).

23 12. To be sure, the Supreme Court is currently weighing whether bans prohibiting  
24 transgender women from participating in women’s sports are unconstitutional. It is not clear what  
25 the Court will decide in that case. What is clear is that a ruling in the future cannot change the  
26 Ninth Circuit law that SJSU was obligated to follow and that SJSU did in fact follow from 2022 to  
27 2024. There is no serious argument that a future ruling somehow means that SJSU had “clear  
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1 notice” of that ruling in 2024 or that it should lose its federal funding for following the law that  
2 applied at the time. Yet that is the Department’s position—and it is just wrong.

3 13. The federal government purports to put SJSU to a choice. SJSU can agree to a  
4 sweeping set of terms, including making mandatory, highly politicized statements about sex and  
5 gender that would be contrary to Ninth Circuit law and issuing a series of apology letters and  
6 statements to any athletes who played for or against SJSU. *See* Proposed Resolution Agreement  
7 (attached as Exhibit B). Or, if SJSU does not agree to all those extortionate terms, it will lose  
8 federal funding that is essential to SJSU’s ability to operate.

9 14. That is no choice at all. SJSU has complied with the law and will continue to  
10 comply with the law. If the Supreme Court or the Ninth Circuit changes the law and imposes new  
11 or different requirements, then SJSU will comply going forward. But SJSU does not have the  
12 option to disregard what Ninth Circuit law is now. Nor may the Department condition the  
13 acceptance of federal funds on SJSU’s unwillingness to make highly politicized public  
14 statements—especially ones based on the false premise that SJSU violated the law between 2022  
15 and 2024. The Letter and findings must be set aside. They are contrary to law, they are arbitrary  
16 and capricious, they impose unconstitutional conditions, they attempt to compel speech in  
17 violation of the First Amendment, and they impermissibly attempt to impose new obligations  
18 retroactively. SJSU has filed this action to defend the rule of law and protect itself and its  
19 community against such lawless acts by the federal government.

20 **PARTIES**

21 15. Plaintiff the Board of Trustees of the California State University (“CSU”)  
22 administers the country’s largest four-year public university system, with 22 universities within  
23 the system. All are based in California. SJSU is one of the universities within the CSU system  
24 and is located in San Jose, California in the County of Santa Clara.

25 16. The Department is a federal executive agency tasked with establishing policy for  
26 education, administering education-related programs, and coordinating most federal assistance for  
27 education. The Department is headquartered in Washington, D.C. It contains an Office for Civil  
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1 Rights (again, referred to here as “OCR”). In the area of education, OCR has exercised primary  
2 enforcement authority for Title IX.

3 17. Defendant Linda McMahon is the U.S. Secretary of Education. She is being sued  
4 in her official capacity only. Secretary McMahon maintains an office at 400 Maryland Avenue  
5 SW, Washington, D.C., 20202.

### 6 JURISDICTION

7 18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because  
8 the action arises under the U.S. Constitution and federal statutes including the Administrative  
9 Procedure Act (“APA”), 5 USC 701-706. The APA waives sovereign immunity for actions  
10 seeking non-monetary relief against federal agencies and officials. This Court also has jurisdiction  
11 under 20 U.S.C. § 1683 and 28 U.S.C. § 1346(a)(2) because the defendants are United States  
12 officials.

13 19. The Court has authority to enter a declaratory judgment and to provide temporary,  
14 preliminary, and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of  
15 Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202; the All Writs Act, 28  
16 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. §§ 702, 703, and 706; 20 U.S.C.  
17 § 1683; and the Court’s inherent equitable powers.

18 20. CSU also has an independent right to non-statutory review of ultra vires executive  
19 action. *See, e.g., Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1327–28 (D.C. Cir. 1996).  
20 Among other powers, this Court has inherent equitable power to enjoin executive conduct that  
21 violates the Constitution. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477,  
22 491 n.2 (2010); *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992).

23 21. This Court also possesses the equitable power to enjoin “violations of federal law  
24 by federal officials.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326–27 (2015).  
25 The Supreme Court has repeatedly allowed equitable relief against federal officials who act  
26 “beyond th[e] limitations” imposed by federal statute. *Larson v. Domestic & Foreign Com. Corp.*,  
27 337 U.S. 682, 689 (1949).

28

1 **VENUE**

2 22. Venue lies in this District under 28 U.S.C. § 1391(e)(1) because at least one  
3 defendant is an agency of the United States or is an officer or employee of the United States or an  
4 agency thereof sued in his or her official capacity, and a substantial part of the events giving rise  
5 to the claim occurred in this District.

6 **DIVISIONAL ASSIGNMENT**

7 23. This action arises from events that took place, in substantial part, in Santa Clara  
8 County and, accordingly, assignment to the San Jose Division is appropriate under Civil Local  
9 Rule 3-2 and General Order 44.

10 **FACTS**

11 **A. CSU and SJSU’s Role as Engines of Economic Mobility**

12 24. Established in 1960, CSU offers its students a life-changing education at one of the  
13 most affordable tuition rates in the country.

14 25. CSU offers more than 4,000 degree programs, which are designed to meet the  
15 state’s workforce demands. In addition to its undergraduate offerings in areas like nursing,  
16 chemistry, art, and business, CSU offers independent doctorates in audiology, education, nursing  
17 practice, occupational therapy, physical therapy, and public health.

18 26. The CSU system is consistently recognized for providing opportunities for social  
19 mobility. For example, in 2024, all 22 of CSU’s campuses were ranked among the top 100 “Best  
20 Bang for the Buck” universities in the West.

21 27. CSU’s student body is drawn primarily from the top third of California’s high  
22 school graduates, regardless of their socioeconomic background. Yet CSU graduates routinely go  
23 on to high-paying and high-need jobs in California. Put simply, CSU transforms the lives of the  
24 students who enroll in and graduate from its programs.

25 28. SJSU exemplifies the transformative nature of a CSU education.

26 29. Nearly half of all undergraduate students at SJSU are first-generation college  
27 students. Many are from very low-income families. Nearly 35% of SJSU undergraduate students  
28

1 are Pell Grant recipients, which are available only to “undergraduate students who display  
2 exceptional financial need.”<sup>1</sup>

3 30. At SJSU, these students can pursue degrees in fields ranging from aviation to  
4 public health, business administration to social work, and chemistry to psychology.

5 31. SJSU’s programs prioritize career readiness. Students can enroll at SJSU and,  
6 within four years, graduate ready and certified to work as a teacher, a nurse, or a commercial pilot.

7 32. SJSU offers a wide array of STEM and other degree options that prepare students  
8 to go work for the world’s leading technology companies. For instance, students interested in  
9 engineering have their pick between aerospace, biomedical, chemical, civil, computer, electrical,  
10 industrial and systems, materials, mechanical, and software engineering degree programs.

11 33. SJSU offers its students these opportunities at a fraction of the typical higher-  
12 education sticker price. For the 2025–2026 academic year, full-time undergraduate tuition and  
13 campus fees is just \$8,846. Even in one of the most expensive zip codes in the United States—in  
14 the heart of Silicon Valley—tuition, on-campus room and board, books, transportation, and  
15 personal expenses totals just \$35,336 for California residents. That is less than half the price of  
16 many elite private institutions.

17 34. SJSU has remarkable success in securing its students high-quality employment  
18 after graduation. The average annual starting salary for SJSU graduates is over \$75,000. Many of  
19 its students earn far more, particularly those who go on to work for renowned global and Fortune  
20 500 companies, many which are located in Silicon Valley just up the road from campus.

21 35. Few institutions in the United States facilitate students from the lowest income  
22 brackets receiving high-quality, career-oriented education at the scale and effectiveness of SJSU.  
23 Students regularly enter in the bottom quintile of family incomes and leave in the top quintile of  
24 earners. This not only changes the student’s life, but changes the economic trajectory of their  
25 family and community.

26

27 <sup>1</sup> *Federal Pell Grants*, FED. STUDENT AID (last visited Mar. 6, 2026),  
28 <https://studentaid.gov/understand-aid/types/grants/pell>.

1           36. Federal financial aid is critically important to SJSU students. At least 66% of the  
2 students on campus receive some form of federal financial aid for a total of approximately \$130  
3 million annually. Without federal financial aid, many middle- and lower-income students would  
4 not be able to afford the cost of attending SJSU, even with assistance from SJSU institutional  
5 financial aid and State of California financial aid. These students would be forced to make the  
6 difficult decision of leaving SJSU or significantly reducing their courseloads to avoid paying the  
7 standard tuition rate. All of this would be devastating to campus life and would result in an  
8 immediate and dramatic contraction in tuition revenue that SJSU depends on to meet its financial  
9 obligations.

10           37. Unlawful revocation of SJSU's eligibility to receive federal funding would be  
11 devastating. If SJSU students were not eligible for financial aid, students who otherwise would  
12 have enrolled at SJSU would go to other schools where they could be eligible for federal financial  
13 aid. SJSU faces a competitive enrollment landscape, and it could not maintain anything close to  
14 the number—much less the high quality—of students it now enrolls if SJSU students could not  
15 apply for federal financial aid. This is an immediate problem. Prospective students for Fall 2026  
16 must decide by May 1, 2026 whether to accept offers of enrollment.

17           **B. SJSU's Emerging Leadership as a Research Institution**

18           38. SJSU is also home to a robust and growing research operation. Over the past seven  
19 years, SJSU has made unprecedented investments in its research program. Beginning in 2019,  
20 SJSU began offering its faculty additional paid time dedicated to research. More than half of  
21 SJSU's tenured and tenure-track faculty now participate in this program, which costs SJSU \$8  
22 million per year. SJSU also created the College of Graduate Studies, to further support its  
23 research operations, as well as its educational mission.

24           39. That investment has paid off. Last year, SJSU was listed for the first time as a  
25 "Research 2: High Spending and Doctorate Production" (known as "R2") institution in the  
26 Carnegie Classification of Institutions of Higher Education. SJSU now spends approximately \$90  
27 million a year on research expenditures and has a total research grant portfolio of \$275 million in  
28 committed grants. Of that funding, nearly 64% comes from the federal government.

1           40.     The single largest tranche of federal research funding—approximately \$90  
2 million—flows to SJSU through grants sponsored by NASA. SJSU is the agency’s primary  
3 partner in conducting human factors research at the NASA Ames Research Center in Mountain  
4 View, California. This research includes studying industrial design applications, autonomous  
5 driving, and how air and space travel affect humans, among other things.

6           41.     SJSU’s \$85 million in other federal funding covers a wide range of research grants  
7 from a wide range of agencies, including the National Science Foundation, the National Institutes  
8 of Health, the Department of Defense, and the Department of Energy.

9           42.     SJSU’s research capabilities are also essential to attracting talented students,  
10 recruiting the faculty to teach them, and giving students modern and cutting-edge educational  
11 opportunities.

12           43.     More than 700 students are employed in service of this research. Thousands more  
13 participate in research on a volunteer basis or via courses that have research work as part of their  
14 curricula.

15           44.     Unlawful termination of SJSU’s federal research grants, even temporarily, would  
16 have lasting negative impacts on SJSU’s research enterprise. Even temporary gaps in funding can  
17 end long-term studies that depend on continuous data collection. Disruptions in the data-  
18 collection process can negate years’ worth of work and reset the project to ground zero. Other  
19 types of research, like laboratory work, rely on actively maintaining specialized facilities,  
20 perishable samples, and sensitive equipment. Pauses in funding would lead to the irreversible loss  
21 of research that depends on continuity in managing these facilities, materials, and tools.

22           45.     Terminating SJSU’s federal research grants would also permanently and adversely  
23 impact its educational programs and faculty composition. SJSU hires around 50 new faculty  
24 members every academic year. Many of these hires are made in reliance upon continued federal  
25 funding. Faculty rely on federal research grants to fund their research and live in one of the most  
26 expensive areas in the country. Terminating federal research funding is therefore certain to trigger  
27 faculty attrition. In the process, SJSU will lose invaluable expertise in highly specialized fields  
28

1 like quantum technology, aerospace human factors, and wildfire mitigation. Rebuilding those  
2 programs would take years—if it happened at all.

3 46. Without federal research grants, SJSU could not recruit and retain the minimum  
4 number of research doctorates necessary to retain its R2 status, reversing its investments into its  
5 reputation as a nationally recognized research university. And SJSU lacks other funding sources  
6 that could cover the nearly \$175 million in lost federal research grants.

7 **C. Title IX-Related Funding Revocations and Title IX’s Clear Notice**  
8 **Requirement**

9 47. As a condition of receiving federal funding, universities like SJSU agree to the  
10 requirements of Title IX. The statute provides that “[n]o person in the United States shall, on the  
11 basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to  
12 discrimination under any education program or activity receiving Federal financial assistance.” 20  
13 U.S.C. § 1681(a).

14 48. Title IX is Spending Clause legislation, *Davis ex rel. LaShonda D. v. Monroe Cnty.*  
15 *Bd. of Educ.*, 526 U.S. 629, 640 (1999), which means that it imposes obligations on funding  
16 recipients as a condition of receiving those funds, *Pennhurst*, 451 U.S. at 17. Accordingly, Title  
17 IX funding recipients must be given “clear notice” of their legal obligations in order to be held  
18 liable for violating them. *Id.* at 25. The government may not impose “post acceptance or  
19 ‘retroactive’ conditions” on funding recipients. *City of Los Angeles*, 929 F.3d at 1175.

20 49. Title IX also requires government agencies to follow various statutory procedural  
21 requirements when enforcing Title IX. An agency may not suspend, terminate, or refuse to grant  
22 federal funds for failure to comply with Title IX unless “there has been an express finding on the  
23 record, after opportunity for hearing, of a failure to comply with such requirement.” 20 U.S.C.  
24 § 1682. Even then, the agency may not terminate or suspend aid “until the department or agency  
25 concerned has advised” the institution “of the failure to comply with the requirement and has  
26 determined that compliance cannot be secured by voluntary means.” *Id.*

27 50. If the agency determines that voluntary compliance “cannot be secured,” Title IX  
28 requires that it file a “full written report of the circumstances and the grounds for such action”

1 with specified congressional committees. *Id.* The termination or suspension of funds may not  
2 “become effective until thirty days have elapsed after the filing of such report.” *Id.*

3 51. Notwithstanding this requirement, the Department and other Executive Branch  
4 agencies have, over the past year, routinely and unlawfully terminated institutions’ federal funding  
5 without complying with this statutory requirement.

6 52. Title IX also limits the scope of funding terminations or suspensions. The statute  
7 states that any such action “shall be limited in its effect to the particular program, or part thereof,  
8 in which” a failure to comply with Title IX “has been so found.” *Id.*

9 53. OCR is also subject to regulations that establish additional procedural requirements  
10 for any termination or suspension of federal financial assistance. *E.g.*, 34 C.F.R. § 100.8.

11 **D. The Ninth Circuit Has Squarely Held that Title IX and the Equal Protection**  
12 **Clause Prohibit Discrimination Against Transgender People—and the**  
13 **Executive Branch Agreed from 2022 to 2024**

14 54. The Department’s Letter of Findings found SJSU violated Title IX by allowing a  
15 transgender woman to play on its women’s indoor volleyball team from 2022 to 2024 and its  
16 beach volleyball team during the 2023 season. That finding is not consistent with Ninth Circuit  
17 precedent that controlled during this period (and still does today). And in no way was SJSU on  
18 “clear notice” that preventing that student from playing was a condition of receiving Title IX  
19 funds.

20 55. The Ninth Circuit has held that Title IX’s prohibition on sex discrimination  
21 prohibits discrimination against transgender individuals. *Grabowski*, 69 F.4th at 1113–14.

22 56. In the Ninth Circuit, educational institutions cannot discriminate against individuals  
23 on the basis that they are transgender, and they must respond to student-on-student harassment  
24 based on transgender status. *See id.*

25 57. That conclusion flowed from and was based on the Supreme Court’s holding in  
26 2020 that Title VII’s prohibition on discrimination “because of . . . sex” prohibited discrimination  
27 against transgender individuals. *Bostock v. Clayton County*, 590 U.S. 644, 659–60 (2020).

28 Longstanding Ninth Circuit precedent establishes that Title VII and Title IX are to be construed in

1 parallel. *E.g., Emeldi v. Univ. of Or.*, 673 F.3d 1218, 1224 (9th Cir. 2012), *amended by* 698 F.3d  
2 715 (9th Cir. 2012).

3 58. Title IX further provides that “nothing” in Title IX “shall be construed to prohibit”  
4 funding recipients “from maintaining separate living facilities for the different sexes.” 20 U.S.C.  
5 § 1686. The Ninth Circuit has made clear that “just because Title IX authorizes sex-segregated  
6 facilities does not mean that they are required, let alone that they must be segregated based only on  
7 biological sex and cannot accommodate gender identity.” *Parents for Priv. v. Barr*, 949 F.3d  
8 1210, 1227 (9th Cir. 2020). Under this Ninth Circuit precedent, institutions are permitted to  
9 segregate intimate facilities like bathrooms and locker rooms on the basis of gender identity, rather  
10 than sex. *Id.*

11 59. In addition, the Ninth Circuit has held that the Equal Protection Clause of the U.S.  
12 Constitution prohibits public institutions—like SJSU—from excluding transgender women from  
13 women’s sports teams solely because they are transgender. *Hecox*, 104 F.4th at 1068.

14 60. The Courts, not the Executive Branch, are the last word on the meaning of Title IX  
15 and the Equal Protection Clause. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369 (2024)  
16 (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

17 61. What is more, from January 20, 2021 to January 20, 2025—which covers the entire  
18 period of SJSU’s relevant conduct—the Executive Branch interpreted Title IX’s protections to  
19 prohibit discrimination against transgender people, just like the Ninth Circuit does. A January 20,  
20 2021 Executive Order adopted that as the official position of the Executive Branch. *See* Exec.  
21 Order No. 13,988, 86 Fed. Reg. 7023 (Jan. 20, 2021). OCR then applied an interpretation of Title  
22 IX that treated its prohibitions on “sex” discrimination to include prohibitions on discrimination  
23 against transgender people. *See, e.g.*, U.S. Dep’t of Educ., Off. for C.R., Resolution Letter with  
24 Taft College (Oct. 19, 2023); *see also* Nondiscrimination on the Basis of Sex in Education  
25 Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390 (proposed  
26 July 12, 2022) (codified at 34 C.F.R. pt. 106).

27 62. Even before the 2021 Executive Order, the Department also applied that  
28 interpretation of Title IX to specifically require equal access to bathrooms and locker rooms

1 consistent with a student’s gender identity. *See, e.g.*, U.S. Dep’t of Educ., Off. for C.R.,  
2 Resolution Letter with Central Piedmont Community College (Aug. 14, 2015); U.S. Dep’t of  
3 Educ., Off. for C.R., Resolution Letter with Dorchester County School District Two (June 21,  
4 2016); U.S. Dep’t of Educ., Off. for C.R., Resolution Letter with Downey Unified School District  
5 (Oct. 14, 2014); U.S. Dep’t of Educ., Off. for C.R., Resolution Letter with Township High School  
6 District 211 (Dec. 2, 2015).

7 63. Indeed, on December 8, 2022, the Department of Justice’s Civil Rights Division  
8 informed SJSU directly that it expected SJSU to be “responsive to complaints of sex  
9 discrimination based on sexual orientation and gender identity.” Letter from M. Tucker et al.,  
10 Dep’t of Just., C.R. Div., to Leora Freedman, Assoc. V.C. & Deputy Gen. Couns., California State  
11 Univ. at 10 (Dec. 8, 2022).

12 **E. The Participation of a Transgender Player on the SJSU Women’s Volleyball**  
13 **Team**

14 64. The Department found that, from 2022 to 2024, a transgender player (referred to by  
15 the government and here as “Student 1”)<sup>2</sup> played on SJSU’s women’s volleyball teams.

16 65. Throughout that entire period, there is no dispute Student 1 was eligible to play  
17 volleyball and beach volleyball under NCAA rules and conference rules. SJSU ensured that each  
18 of the players on its volleyball and beach volleyball teams for each year was eligible to compete  
19 according to the NCAA rules, conference rules, and SJSU rules.

20 66. In January 2022, the NCAA updated its transgender participation policy to clarify  
21 that transgender women could compete on women’s teams. *See* 2022 NCAA Policy (attached as  
22 Exhibit C). The update aligned NCAA policy with the U.S. Olympic and Paralympic  
23 Committee’s policy in determining eligibility on a sport-by-sport basis, using each sport’s national  
24 governing body policy as a benchmark for NCAA eligibility. *See id.* So, for example, USA  
25 Volleyball provided the benchmark for the permissible standards—including blood levels of  
26 testosterone—for transgender women to compete in women’s volleyball. *Id.* SJSU was bound by

27 \_\_\_\_\_  
28 <sup>2</sup> SJSU is prohibited from disclosing the gender identity of any student under federal and state  
privacy laws, including the Family Educational Rights and Privacy Act.

1 this policy as an NCAA member. Further, under MWC policies, MWC member schools must  
2 comply with NCAA eligibility rules.

3 67. On February 6, 2025, the NCAA changed its transgender student-athlete  
4 participation policy to prohibit “competition by an individual assigned male at birth to compete on  
5 a women’s team.”<sup>3</sup>

6 68. There are more than 500,000 NCAA student athletes at any given time. There are  
7 no official numbers reporting the number of transgender women who competed in the NCAA  
8 pursuant to these policies. In 2024, NCAA President Charlie Baker testified to a U.S. Senate  
9 panel that he was aware of fewer than ten transgender athletes total competing in intercollegiate  
10 sports, without specifying how many were transgender women.<sup>4</sup>

11 69. Student 1 was qualified for her roster spot and played without incident on the SJSU  
12 women’s volleyball team during both the 2022 and 2023 seasons and on the beach volleyball team  
13 during the 2023 season.

14 70. In April 2024, an online article alleged that Student 1 was transgender, and other  
15 articles followed.

16 71. Throughout the Fall 2024 indoor volleyball season, multiple MWC conference  
17 opponents refused to play SJSU and received forfeits for doing so, as provided under MWC rules.

18 72. Throughout the Fall 2024 season, multiple current and former members of the  
19 women’s volleyball team—as well as the team’s Associate Head Coach—publicly spoke out  
20 against Student 1’s participation on the team.

21 73. SJSU continued to roster Student 1 because she was qualified to play and eligible  
22 under NCAA rules.

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25 <sup>3</sup> *Participation Policy for Transgender Student-Athletes*, NCAA (Feb. 6, 2025),  
<https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx>.

26 <sup>4</sup> Ralph D. Russo, *NCAA President Says Legal Clarity Needed on Transgender Athlete*  
27 *Participation*, N.Y. TIMES: THE ATHLETIC (Apr. 29, 2025),  
28 <https://www.nytimes.com/athletic/6062855/2025/01/14/ncaa-transgender-athlete-policy-charlie-baker>.

1 74. One student (referred to in the Letter and here as “Student 3”) was a vocal  
2 opponent of SJSU’s decision to roster Student 1. She spoke repeatedly with the national media to  
3 express her opposition, often outing her transgender teammate and referring to her as male or a  
4 man.

5 75. On September 24, 2024, Student 3 joined a lawsuit in the Northern District of  
6 Georgia challenging the NCAA’s transgender eligibility policies on the same day SJSU opened its  
7 MWC season.

8 76. Despite repeated efforts by SJSU’s Title IX office to contact Student 3 specifically  
9 to discuss her experience on the team, Student 3 never responded. Student 3 also repeatedly  
10 declined invitations to be interviewed by investigators investigating alleged Title IX violations  
11 related to the SJSU women’s volleyball team.

12 77. In response to the national attention and controversy surrounding the team, SJSU  
13 devoted substantial additional resources to the team over the course of the season.

14 78. Administrators and coaches met nearly every day in order to respond to  
15 developments during the season.

16 79. Administrators—from the Title IX office, the athletics department, and the  
17 communications staff—met with the team and the coaches to help them navigate the unusual and  
18 difficult situation. Players were told repeatedly that they were free to speak to the media about  
19 their experiences and that they could report Title IX matters to the Title IX office. They were also  
20 reminded that, consistent with the law, SJSU’s policies prohibited harassment on the basis of  
21 gender identity.

22 80. The media attention and national political environment resulted in Student 1  
23 receiving repeated hateful messages on social media, including from her own teammates.

24 81. Student 1 ultimately filed a Title IX complaint alleging that she was experiencing  
25 discrimination and harassment because of her transgender status related to her experiences on the  
26 volleyball team, including that one of her coaches refused to coach her because she was  
27 transgender.

28

1 82. That coach, Melissa Batie-Smoose, later confirmed to Fox News that “she ‘never  
2 talked to [Student 1]’” because “she preferred to focus on coaching and protecting the [cisgender]  
3 female athletes.”<sup>5</sup>

4 83. Batie-Smoose later filed her own Title IX complaint, which contained sensitive and  
5 legally protected student information, and in which she advocated for excluding Student 1 from  
6 the team solely because she was transgender—something the law prohibited SJSU from doing.  
7 Batie-Smoose shared that complaint with media outlets and spoke publicly about sensitive,  
8 legally-protected student information, despite being instructed by SJSU not to share that  
9 information.

10 84. On November 1, 2024, Batie-Smoose was placed on administrative leave.

11 85. On November 14, 2024, Student 3, Batie-Smoose, certain former SJSU volleyball  
12 players, and other then-current MWC players from other teams sued the MWC, CSU, and SJSU  
13 employees, including SJSU women’s volleyball Head Coach Todd Kress, in federal court in  
14 Denver. Among other claims, the lawsuit alleged that SJSU was violating Title IX and the Equal  
15 Protection Clause by rostering Student 1 and permitting her to use the women’s locker rooms and  
16 restrooms.

17 86. On November 16, 2024, Student 3, Batie-Smoose, and the other plaintiffs moved  
18 for a preliminary injunction in the Denver litigation seeking to bar Student 1 from playing in the  
19 upcoming MWC tournament.

20 87. On November 24, 2024, the court denied the motion for a preliminary injunction on  
21 the grounds that the plaintiffs were not likely to succeed on their claims that SJSU was violating  
22 Title IX or the Equal Protection Clause. Plaintiffs sought emergency relief from the Tenth Circuit,  
23 which the Tenth Circuit denied in short order.

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27 <sup>5</sup> Jackson Thompson, *Ex-SJSU Volleyball Coach Opens Up on Lawsuit After Losing Job amid*  
28 *Trans Athlete Scandal*, FOX NEWS (Oct. 1, 2025), <https://www.foxnews.com/sports/ex-sjsu-volleyball-coach-opens-up-lawsuit-against-school-after-losing-job-amid-trans-athlete-scandal>.

1 88. On November 25, 2024, the SJSU team traveled to Las Vegas for the MWC  
2 tournament. After advancing due to a forfeit, SJSU played Colorado State University in the  
3 conference championship game on November 30, 2024. SJSU lost, ending SJSU’s 2024 season.

4 89. Student 1 does not have any remaining NCAA eligibility to compete in women’s  
5 volleyball, has concluded her NCAA career, and has not participated on any University athletics  
6 team since November 30, 2024.

7 **F. The Department’s Investigation and Notice of Findings**

8 **1. President Trump Signs New Executive Orders**

9 90. On January 20, 2025, the same day President Trump was inaugurated, he signed an  
10 Executive Order adopting an interpretation of “sex” for purposes of Title IX that provides that:  
11 “‘Sex’ shall refer to an individual’s immutable biological classification as either male or female.  
12 ‘Sex’ is not a synonym for and does not include the concept of ‘gender identity.’” Exec. Order  
13 No. 14,168, 90 Fed. Reg. 8615, 8615–16 (Jan. 20, 2025).

14 91. The Executive Order also adopted definitions of certain other terms. Specifically,  
15 “‘Women’ or ‘woman’ and ‘girls’ or ‘girl’ shall mean adult and juvenile human females,  
16 respectively.” *Id.* “‘Female’ is defined to mean “a person belonging, at conception, to the sex that  
17 produces the large reproductive cell.” *Id.* By contrast, “‘Men’ or ‘man’ and ‘boys’ or ‘boy’ shall  
18 mean adult and juvenile human males, respectively,” where “Male” is defined to mean “a person  
19 belonging, at conception, to the sex that produces the small reproductive cell.” *Id.*

20 92. The following month, President Trump signed a second Executive Order, applying  
21 these definitions to the administration’s regulation of athletics under Title IX. Exec. Order No.  
22 14,201, 90 Fed. Reg. 9279 (Feb. 5, 2025) (incorporating Executive Order 14,168’s definitions).

23 93. As explained above, these orders marked a complete reversal from the prior  
24 administration’s policies and interpretations of Title IX.

25 **2. OCR’s Investigation of SJSU and SJSU’s Cooperation**

26 94. On February 6, 2025, the Department of Education’s Office for Civil Rights  
27 informed SJSU by letter that it was “initiating a directed investigation of” SJSU. *See* Notice of  
28 Investigation Letter (attached as Exhibit D). That letter explained that under President Trump’s

1 Executive Orders, “it is the policy of the United States to rescind all funds from educational  
2 programs that deprive women and girls of fair athletic opportunities,’ and to take ‘all appropriate  
3 action to affirmatively protect all-female athletic opportunities and all-female locker rooms and  
4 thereby provide the equal opportunity guaranteed by Title IX of the Education Amendments Act  
5 of 1972.’” *Id.*

6 95. The letter described the directed investigation as “examin[ing] whether the  
7 University denies equal athletic benefits and opportunities to female athletes through an athletic  
8 participation policy that permits biological males to participate in women’s intercollegiate  
9 athletics.” *Id.* OCR did not identify any other issues that it would be investigating.

10 96. Over the next nine months, SJSU fully cooperated with OCR’s investigation. SJSU  
11 provided over 20,000 pages of documents, a detailed narrative response to questions, and  
12 responses to follow-up questions by email. SJSU agreed to make witnesses available for  
13 interviews. SJSU even offered to provide an OCR attorney the opportunity to review hundreds of  
14 hours of recorded footage of the volleyball team’s practice sessions.

15 97. OCR declined the opportunity to review the video footage. OCR also declined the  
16 opportunity to interview any SJSU witnesses, despite SJSU making them available.

### 17 3. OCR’s Baseless and Legally Flawed Letter of Findings

18 98. On January 28, 2026, OCR issued a letter to SJSU informing SJSU that OCR had  
19 concluded SJSU was “in clear violation of Title IX.” Ex. A. The Letter informed SJSU that  
20 OCR’s directed investigation had reached that conclusion because SJSU “allows males to  
21 participate in women’s sports and to use women’s locker rooms and bathrooms.” *Id.*

22 99. OCR found that four aspects of SJSU’s conduct had violated Title IX. First, OCR  
23 found that SJSU violated Title IX by permitting Student 1 to play on its women’s volleyball team.  
24 Second, OCR found that SJSU violated Title IX by permitting Student 1 to use women’s locker  
25 rooms and bathrooms and to room with other women during team travel. Third, OCR found that  
26 SJSU failed to adequately respond to reports of discrimination and harassment related to Student  
27 1’s participation. Fourth, OCR found that SJSU violated Title IX by engaging in disparate  
28

1 treatment based on sex—specifically, that it treated Kress more favorably than Batie-Smoose, and  
2 Student 1 more favorably than others.

3 100. All of these findings are unfounded—and the second, third, and fourth were not  
4 even part of the directed investigation that OCR noticed and informed SJSU it would be  
5 conducting.

6 (a) *Student 1’s Participation in Women’s Sports*

7 101. OCR identified only one instance of a transgender woman who competed in  
8 intercollegiate athletics at SJSU—Student 1, who played for SJSU from 2022–2024. OCR did not  
9 identify any other transgender women that SJSU had rostered, was rostering, or planned to roster  
10 on its women’s teams. SJSU is not aware of any transgender women currently playing for any of  
11 its women’s teams. Nor is SJSU aware of any plans to recruit transgender women to play on those  
12 teams.

13 102. OCR explained that SJSU violated Title IX by permitting transgender women to  
14 play on women’s teams because “[w]hen a recipient of federal funding separates sports based on  
15 sex, the recipient is not ‘discriminat[ing]’ based on sex because the recipient is treating the sexes  
16 differently with a sufficient justification: the real biological differences between men and women.”  
17 Ex. A at 33–34. Permitting NCAA-eligible transgender women to participate, OCR explained,  
18 “separates sports based on sex and also allows males with a certain ‘gender identity’ to participate  
19 in women’s sports” in a way “that undermines the recipient’s justification for different treatment  
20 based on sex.” *Id.*

21 103. OCR’s analysis completely ignored the binding Ninth Circuit decisions in *Hecox*  
22 and *Grabowski* that are directly contrary to what OCR concluded. Nor did OCR acknowledge or  
23 discuss any of the circuit and district court decisions across the country that have interpreted Title  
24 IX and the Equal Protection Clause to preclude public institutions from taking the very steps that  
25 OCR now contends were necessary. *See B.P.J. ex rel. Jackson v. W. Va. State Bd. of Educ.*, 98  
26 F.4th 542, 561–63 (4th Cir. 2024) (athletics); *Tirrell v. Edelblut*, 748 F. Supp. 3d 19, 30–45  
27 (D.N.H. 2024) (athletics); *A.C. ex rel. M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769  
28 (7th Cir. 2023) (bathrooms); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 593–94 (4th Cir.

1 2020) (bathrooms). Instead, OCR focused only on those decisions that supported its view of Title  
2 IX—none of which are binding in California or the Ninth Circuit, which had squarely rejected the  
3 position OCR now takes.

4 104. OCR also did not address that, at the time of the relevant conduct, the position of  
5 the Executive Branch—including OCR itself—was that Title IX prevented discrimination against  
6 transgender people and that SJSU was required to protect transgender students from  
7 discrimination and harassment. The Letter did not address any of the guidance to that effect  
8 discussed above.

9 105. The Letter only implicitly acknowledged a change in the administration’s view of  
10 the law, by focusing on President Trump’s January and February 2025 Executive Orders. But  
11 those Orders cannot change the law that applies to SJSU or require SJSU to violate Ninth Circuit  
12 precedent. Nor may the orders be used to hold SJSU liable for conduct that entirely predated  
13 them.

14 106. Instead, OCR presupposed—based only on its own legal interpretation that  
15 conflicts with the Ninth Circuit’s—that sex assigned at birth was the only permissible basis on  
16 which to separate sexes under Title IX.

17 107. That reasoning is flawed and incomplete, even as a matter of biology. OCR never  
18 addressed, for example, how Title IX might apply to intersex students. Most individuals with XX  
19 chromosomes possess reproductive organs associated with the production of ova and female  
20 secondary sex characteristics, and most individuals with XY chromosomes possess reproductive  
21 organs associated with the production of sperm and male secondary sex characteristics. But not all  
22 do. For intersex individuals, these sex indicators may not be aligned.<sup>6</sup> For example, a person  
23 with ovotestes has both ovarian and testicular tissue. *Talbott v. United States*, 775 F. Supp. 3d  
24 283, 329 (D.D.C. 2025). Other conditions create discrepancies between external and internal sex  
25 markers, which as one court put it, “can produce XX males or XY females,” as well as “other  
26

27 \_\_\_\_\_  
28 <sup>6</sup> The Cleveland Clinic’s website addresses some of these presentations. *See Intersex*, CLEVELAND  
CLINIC (July 19, 2022), <https://my.clevelandclinic.org/health/articles/16324-intersex>.

1 chromosomal combinations such as XXY or XXX that affect overall sexual development.” *A.C.*  
2 *ex rel. M.C.*, 75 F.4th at 770. Intersex people are often assigned male or female at birth; some  
3 continue to identify that way in adulthood. Others may not. In all cases, “[p]eople with this  
4 genetic make-up are entitled to Title IX’s protections.” *Id.* Yet OCR did not consider that.

5 108. OCR’s analysis also ignores the Department’s own policy guidance instructing that  
6 such equal opportunity analyses are to be undertaken at a program level. OCR simply inferred  
7 that the participation of only one allegedly transgender woman on one team meant that “women in  
8 sex-segregated teams” at SJSU “are compelled to compete against” transgender women. Ex. A at  
9 36. OCR identified at most one instance of this happening—yet OCR described SJSU’s athletics  
10 program *as a whole* as violating Title IX.

11 109. OCR similarly ignored or adopted an interpretation of Title IX that conflicted with  
12 and departed from its own regulations and policy documents governing Title IX athletics  
13 compliance more generally. *See* 34 C.F.R. § 106.41(b) (contemplating non-sex-segregated teams);  
14 Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and  
15 Intercollegiate Athletics, 44 Fed. Reg. 71413, 71415–16 (Dec. 11, 1979); Off. for C.R., Dep’t of  
16 Educ., OCR-00016-B, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part  
17 Test (1996), <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html> (explaining that athletics  
18 programs comply with Title IX if they offer a number of roster spots to women that is  
19 substantially proportionate to their enrollment); 44 Fed. Reg. at 71415–16 (programs need not  
20 offer “identical” benefits to men and women’s teams).

21 110. OCR failed to consider other important information as well. For example, OCR  
22 based its conclusion that Student 1’s participation undermined safe and fair competition primarily  
23 on observations from Batie-Smoose and the fact that several other teams refused to play against  
24 SJSU.

25 111. But OCR never considered the fact that, at the time, USA Volleyball and the  
26 NCAA had each determined that players meeting their eligibility guidelines—as all players on  
27 SJSU’s team did—could compete without undermining safety or fairness. That included  
28 transgender players.

1 112. OCR also did not consider that top women’s volleyball programs intentionally  
2 practice against male practice players.

3 113. OCR did not purport to have reviewed any game footage or made any comparative  
4 analysis of Student 1’s height, strength, serve speed, or spike speed compared to other NCAA  
5 Division I women’s volleyball players.

6 114. OCR also did not consider that no SJSU athletics trainers or team physicians  
7 reported any significant injury due to Student 1’s play on the court, despite SJSU sharing that fact  
8 during the investigation.

9 115. OCR’s effective accommodations findings also suffer from significant problems.  
10 OCR found that SJSU was failing to “effectively accommodate the interests and abilities of  
11 members of both sexes” because “[a]t [SJSU], men get sex-segregated teams in which competitors  
12 compete only against other men; women in sex-segregated teams, however, are compelled to  
13 compete against [transgender women]. Men competing in men’s sports get fair and safe  
14 competition while women get unfair and unsafe competition, are subjected to increased risk of  
15 injury, [and] are displaced from podiums and other opportunities and recognition.” Ex. A at 36.  
16 This, in OCR’s view, “deprive[d] women of equal athletic opportunities in violation of Title IX.”  
17 *Id.*

18 116. OCR was simply wrong that as a matter of policy or eligibility “men . . . compete  
19 only against other [cisgender] men.” *Id.* at 36. Even today, NCAA rules permit transgender men  
20 to compete on men’s teams. And Title IX regulations specifically contemplate that women may  
21 sometimes be permitted to compete on men’s teams where no women’s team is offered in the  
22 same sports. 34 C.F.R. § 106.41(b). And OCR did not follow its own longstanding guidelines for  
23 assessing effective accommodation. *See* 44 Fed. Reg. at 71415–16; OCR-00016-B.

24 (b) *Student 1’s Use of Locker Rooms and Other Intimate Facilities*

25 117. OCR found that SJSU “purported to create sex-separate intimate facilities but it has  
26 abandoned the biological justification for sex separation in intimate facilities by allowing  
27 [transgender women] to use the women’s locker room, housing, or overnight stay arrangements.”  
28 Ex. A at 37. OCR described this “biological justification” as women’s “privacy interest in using

1 intimate facilities away from men, and in shielding their bodies from men while changing in the  
2 locker room, living in on-campus housing, and on overnight stays for school activities.” *Id.* And,  
3 in light of this, OCR held that SJSU violated Title IX by permitting Student 1 to use bathrooms,  
4 locker rooms, and other intimate facilities for women.

5 118. But the Ninth Circuit has *specifically rejected* OCR’s reasoning. *Parents for*  
6 *Privacy v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020), held that cisgender women do not have a  
7 right under Title IX or the Equal Protection Clause to bathrooms and other facilities that exclude  
8 transgender women. As the Ninth Circuit explained, “just because Title IX authorizes sex-  
9 segregated facilities does not mean that they are required, let alone that they must be segregated  
10 based only on biological sex and cannot accommodate gender identity.” *Id.* This was and is the  
11 law on the books that governs SJSU.

12 119. OCR never mentions *Parents for Privacy*, nor does it engage with its underlying  
13 reasoning. OCR cannot simply ignore binding, on-point precedent. Nor may it threaten SJSU’s  
14 federal funding for following the Ninth Circuit’s interpretation of Title IX.

15 120. OCR also never addresses that, during the relevant period of time, OCR itself took  
16 the position that funding recipients were required to permit transgender students to use bathrooms  
17 and intimate facilities consistent with their gender identity.

18 121. OCR’s finding was not procedurally proper either. OCR informed SJSU in its  
19 notice of directed investigation that it was investigating its athletics participation policies, not  
20 SJSU’s conduct regarding intimate facilities. *See* Ex. D. It never gave SJSU the opportunity to  
21 address that issue during the investigation. Consistent with OCR’s longstanding practice and  
22 basic notions of fairness, OCR’s own Case Processing Manual states that notices of investigation  
23 must provide the “allegations to be investigated.”<sup>7</sup> Here, OCR did not do so.

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26  
27 <sup>7</sup> U.S. Dep’t of Educ., Off. for C.R., Case Processing Manual § 111 (2025),  
28 <https://www.ed.gov/media/document/ocr-case-processing-manual-us-department-of-education-office-civil-rights-33891.pdf>.

1 (c) SJSU's Handling of Reports of Title IX Violations

2 122. OCR found that SJSU failed to adequately respond to the Title IX complaints it  
3 received regarding Student 1's participation. This, too, was not part of the notice of directed  
4 investigation. *See* Ex. D.

5 123. In the course of reaching this conclusion, OCR found that "the University has  
6 failed to provide sufficient information or approve requested interviews, for OCR to make  
7 additional conclusions regarding compliance." Ex. A at 38. But two sentences later, OCR  
8 acknowledges that SJSU told OCR that it was "working to make arrangements for interviews." *Id.*  
9 OCR's findings on this score concededly, and unnecessarily, rested on incomplete information.

10 124. OCR primarily faulted SJSU for not characterizing any of the reports it received as  
11 "Title IX complaints," with the exception of the formal complaint filed by Student 1 on her own  
12 behalf. *See id.* at 41. OCR then faulted the Title IX office for deciding not to investigate "most of  
13 the allegations" raised in the various reports that SJSU received. *Id.* OCR is wrong in both  
14 respects.

15 125. The Department's Title IX regulations require investigations only in response to  
16 formal complaints describing "conduct that reasonably may constitute sex discrimination under  
17 Title IX." 34 CFR § 106.44(f)(1).

18 126. OCR describes five reports of Title IX violations related to Student 1's  
19 participation on the women's volleyball team that, according to OCR, were "complaints" that  
20 SJSU did not adequately address.

21 127. In light of the Ninth Circuit precedent and Executive Branch guidance discussed  
22 above, SJSU's Title IX coordinator could not reasonably have concluded that allowing Student 1  
23 on the roster or permitting Student 1 to use women's bathrooms, locker rooms, or other intimate  
24 facilities violated Title IX. OCR never considered that fact.

25 128. OCR also never addressed or considered SJSU's obligations under Ninth Circuit  
26 precedent and Executive Branch guidance to address discrimination and harassment against  
27 transgender students. Yet OCR faulted SJSU for reminding players that while they were free to  
28 speak out about their "experiences without fearing retaliation," they were still "*subject to the*

1 *University’s policy against harassment.*” Ex. A at 42 (emphasis in original). But that is precisely  
2 what the law required of SJSU. All SJSU was asking of its athletes was not to discriminate or  
3 harass fellow students, even as they were free to oppose SJSU’s conduct. OCR never explained  
4 how else SJSU was supposed to handle this situation, given unambiguous precedent holding that  
5 Title IX obligated SJSU to respond to student-on-student harassment based on gender identity.

6 129. SJSU also appropriately responded to each and every report OCR identifies in the  
7 Letter as having been mishandled.

8 130. ***The September 23, 2024 Letter:*** On September 23, 2024, SJSU received a letter  
9 from Student 3’s lawyers informing SJSU that Student 3 “was joining a lawsuit against the  
10 NCAA” that asserted that Student 1’s participation on the volleyball team violated Title IX and  
11 “remind[ing] the University” not to retaliate against or permit retaliation against Student 3. *Id.* at  
12 20. The letter did not report that Student 3 had experienced any retaliation.

13 131. Once again, the Ninth Circuit had specifically prohibited public institutions like  
14 SJSU from excluding a transgender woman from its women’s team solely because she was  
15 transgender. Thus, the conduct complained of in the letter was not “conduct that reasonably may  
16 constitute sex discrimination under Title IX,” and did not require an “investigation” under the  
17 Department’s rules. 34 CFR § 106.44(f)(1).

18 132. ***The ICONS Letter:*** On September 24, 2024, SJSU received a letter from the  
19 Independent Council on Women’s Sports (ICONS) that OCR describes as “alleging the  
20 University’s policy and practice of allowing [transgender woman] to participate in the women’s  
21 volleyball program violated Title IX by denying women equal athletic opportunities and by  
22 allowing a [transgender woman] in women’s locker rooms.”

23 133. Just like the September 23 report, this letter did not describe “conduct that  
24 reasonably may constitute sex discrimination under Title IX,” 34 CFR § 106.44(f)(1), under Ninth  
25 Circuit precedent.

26 134. The letter also asserted, based on representations from Student 3, that Student 1’s  
27 participation posed a safety risk because she was hitting volleyballs at “80mph.”  
28

1 135. SJSU takes the safety of its students seriously. Thus, over the course of the season,  
2 SJSU's Title IX coordinator consulted with coaches and athletic training staff to assess practices  
3 for safety. They determined that Student 1's participation did not pose a safety risk.

4 136. These assessments were consistent with those of neutral third parties, including  
5 those of current and former players at top programs.

6 137. Any person familiar with college volleyball would understand the ICONS letter's  
7 assertion that Student 1 hit volleyballs at "80mph" to be a rhetorical statement, not a factual one.  
8 An 80-mile-per-hour serve would be among the fastest ever recorded in NCAA Division I men's  
9 volleyball, where an 84-mile-per-hour serve is the current record. An 80-mile-per-hour spike—  
10 i.e., a ball hit over the net mid-point—would be among the fastest ever in a men's Olympic  
11 competition.

12 138. ESPN independently analyzed Student 1's spikes across multiple games, including  
13 one shared on social media by Student 3. That analysis revealed Student 1's average spike speed  
14 to be 50.6 miles per hour, right in the middle of average spike speeds for NCAA Division I  
15 women's volleyball players.

16 139. ESPN also interviewed top NCAA women's volleyball players who reported that  
17 they "get [hit] in the face in practice every single day," that "[t]his is normal," and that at top-50  
18 programs, women's players play against male practice players (who do not undergo any  
19 testosterone suppression).<sup>8</sup> The use of male practice players by top programs confirms that there  
20 is nothing inherently unsafe about collegiate women's volleyball players practicing with someone  
21 assigned male at birth.

22 140. ***The October 5, 2024 Report:*** On October 5, 2024, Coach Kress emailed the Title  
23 IX coordinator sharing a "report from one of my student-athletes yesterday of some behavior  
24 initiated by [Student 1] that could be deemed as retaliation toward [Student 3]. This behavior  
25

26 \_\_\_\_\_  
27 <sup>8</sup> Katie Barnes, *Inside San Jose State's Polarizing Volleyball Season*, ESPN (Nov. 26, 2024, 7:00  
28 AM), [https://www.espn.com/college-sports/story/\\_/id/42549609/inside-san-jose-state-university-2024-volleyball-season-gender-fairness-safety](https://www.espn.com/college-sports/story/_/id/42549609/inside-san-jose-state-university-2024-volleyball-season-gender-fairness-safety).

1 occurred in Colorado on Wednesday, October 2, while we were there for our match vs Colorado  
2 State.”

3 141. OCR characterizes this report as one in which the Title IX office “decided not to  
4 investigate.” *Id.* at 41. But earlier in the Letter, OCR acknowledges that the MWC “found there  
5 was ‘insufficient evidence to corroborate the allegations of misconduct.’” Ex. A at 28. OCR does  
6 not explain why SJSU may not rely on the investigation conducted by the MWC.

7 142. OCR also entirely ignores SJSU’s active response when it learned of an alleged  
8 plan to target Student 3 during the Colorado State University game. On October 3, 2024, the  
9 University received a report about an Instagram message that had been sent to a teammate about  
10 that supposed plan. The same day, the SJSU Title IX office informed the Colorado State  
11 University Police Department, the Fort Collins Police Department, and the Colorado State  
12 University Title IX Office that additional security measures were needed for the team. SJSU’s  
13 Title IX Office also alerted the SJSU police officer who was traveling with the team of the  
14 message and potential safety threat. To ensure the team’s safety while at Colorado State, SJSU  
15 coordinated with agencies in Colorado to implement precautionary security measures, including  
16 deploying undercover and plainclothes officers at the match and providing 24/7 security for the  
17 team. Law enforcement also interviewed players and worked with university administrators to  
18 prepare a comprehensive safety plan for the match.

19 143. On the evening of October 3, 2024, SJSU received a report that Student 1 and two  
20 teammates had met with a player on the Colorado State team before the match to allegedly  
21 “conspire” to target Student 3. SJSU promptly contacted both Coach Kress and Colorado State’s  
22 head coach to determine if either had observed any misconduct. After reviewing the game  
23 footage, both coaches reported that they saw no abnormal play.

24 144. On October 7, 2024, the Title IX office again sent outreach to Student 3 offering  
25 supportive measures, the option to initiate the grievance procedure, and an offer to meet. Student 3  
26 did not respond to the outreach.

27 145. OCR also did not consider the fact that the underlying conduct—advocating for  
28 SJSU to exclude a transgender woman from its team in violation of binding Ninth Circuit

1 precedent—is not protected Title IX activity because it was not reasonable under the  
2 circumstances to believe that rostering a transgender player violated Title IX.

3           146. **Batie-Smoose’s Report:** On October 29, 2024, Batie-Smoose filed a Title IX  
4 “Complaint.” OCR describes this complaint as: “requesting ‘an immediate and comprehensive  
5 Title IX investigation’ alleging in part: (1) San José State University was engaged in illegal  
6 discrimination on the basis of subjective identity; (2) Student 2 was wrongfully refused a women’s  
7 volleyball scholarship while Student 1 was permitted to maintain a women’s volleyball  
8 scholarship; (3) the University’s Senior Associate Athletics Director for Student-Athlete Wellness  
9 and Leadership Development stated ‘anyone who disagrees with [Student 1] being on the  
10 women’s volleyball team needs to get therapy and needs to leave SJSU’; (4) Student 1’s physical  
11 abilities and strength placed women on the team and opponents’ teams at increased risk of injury;  
12 (5) Coach 2 was giving Student 1 preferential treatment over the women on the team; (6) Women  
13 in the San José State University women’s volleyball team were being denied opportunities and  
14 benefits on the basis of sex; (7) University officials took action to dissuade women on the team  
15 from filing a complaint or speaking out in opposition to Student 1 being able to participate on the  
16 women’s volleyball team; (8) Coach 2 retaliated against Student 3 after she joined a Title IX  
17 lawsuit challenging Student 1’s participation in the women’s volleyball program; and  
18 (9) University officials were not responding properly to student, parent, and Coach 3’s concerns  
19 regarding Student 1’s participation in the women’s volleyball program.” *Id.* at 40.

20           147. The majority of these assertions boil down to an objection to Student 1’s  
21 participation on the team, which is not “conduct that reasonably may constitute sex discrimination  
22 under Title IX,” 34 CFR § 106.44(f)(1), under Ninth Circuit precedent.

23           148. Batie-Smoose’s complaints about “dissuading women on the team from speaking  
24 out” refers to comments made at a single meeting after media reports regarding Student 1 at the  
25 beginning of the season. Within days after that meeting, other SJSU employees, including those  
26 in the Title IX office, met with the team to inform the players that they were free to speak out on  
27 these issues.

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1 149. In addition, the Title IX office repeatedly invited students to report concerns, as  
2 well as to participate in the investigations that were subsequently launched into both Batie-Smoose  
3 and Kress.

4 150. To the extent Batie-Smoose’s complaint referred to reminders of students’  
5 obligations not to harass their peers on the basis of gender identity, that is not “conduct that  
6 reasonably may constitute sex discrimination under Title IX,” 34 CFR § 106.44(f)(1), under Ninth  
7 Circuit precedent.

8 151. The same is true of mere favoritism. *E.g., Bradley v. Harcourt, Brace & Co.*, 104  
9 F.3d 267, 271 (9th Cir. 1996).

10 152. And SJSU *did* open an investigation into Kress’s alleged retaliation against  
11 Student 3 and found that there was insufficient evidence to substantiate the allegation.

12 153. ***November 3, 2024 Letter from Parents:*** On November 3, 2024, parents of another  
13 SJSU player sent a letter to SJSU asserting that Kress gave Student 1 preferential treatment and  
14 that players were discouraged from expressing opposition to Student 1 being on the roster.

15 154. The letter was forwarded to SJSU’s Title IX Coordinator, who then met with the  
16 parents who sent the letter. During the meeting, the parents told the Title IX coordinator that they  
17 felt misled because of how the 2024 season was unfolding and the continuing presence of a  
18 transgender player on the team.

19 155. The Title IX coordinator understood the parents’ grievance to concern Kress’s  
20 honesty during recruitment, which was not a Title IX matter. For that reason, as well as the fact  
21 that no complaint by any affected student had been filed, the Title IX office declined to open an  
22 investigation.

23 156. In sum, none of OCR’s findings regarding SJSU’s handling of reports of purported  
24 Title IX violations withstands scrutiny.

25 (d) *SJSU’s Alleged Disparate Treatment in Employment and*  
26 *Scholarships*

27 157. In yet another issue that it addressed without giving SJSU any notice, OCR  
28 concluded that in two instances SJSU had treated cisgender women worse than similarly situated

1 transgender women or cisgender men. First, it placed Batie-Smoose, but not Kress, on  
2 administrative leave, despite receiving Title IX complaints about both. Second, Kress allowed  
3 Student 1 to retain her scholarship in a year where she was injured, but did not permit a cisgender  
4 woman to do the same. These findings are procedurally improper and wholly unsupportable.

5 158. Batie-Smoose and Kress are not similarly situated. Among other differences,  
6 Batie-Smoose consistently and repeatedly advocated for SJSU to violate binding legal obligations  
7 imposed by the Ninth Circuit. Kress did not. Batie-Smoose intentionally shared sensitive and  
8 legally protected information about students both in interviews and by sharing her Title IX  
9 complaint with news outlets. Kress did not. After a thorough investigation, Batie-Smoose was  
10 found to have discriminated against Student 1 on the basis of sex and gender identity. Batie-  
11 Smoose later admitted to this in an interview with Fox News. After a thorough investigation,  
12 Kress was found *not* to have retaliated against Student 3.

13 159. In addition, SJSU had other bases for its suspension of Batie-Smoose, including  
14 unprofessional, on-duty conduct.

15 160. OCR’s findings with respect to disparate treatment by Kress of Student 1 and the  
16 other injured player fall apart for similar reasons. OCR also did not take into account whether  
17 Student 1 was a better player, the team’s positional needs, or any of the other considerations that  
18 are relevant to whether the two students were “similarly situated” for purposes of Title IX.  
19 Indeed, OCR did not even *meet* with Kress in the course of its investigation into SJSU.

20 161. Similarly, OCR found that Student 1 was not disciplined for violations of team  
21 rules, when other players were. But with respect to Student 1’s violation of team rules before the  
22 Colorado State game, she snuck out of the hotel with two other (cisgender) players who were also  
23 not punished. And the record provided to OCR revealed that Kress elected not to discipline  
24 Student 1 for leaving her hotel room because such conduct was not typically disciplined. OCR  
25 never considered this explanation for Kress’s disciplinary decisions.

26 162. OCR also did not address that SJSU’s inquiry into Kress—the person who was  
27 responsible for disciplining violations of team rules—found no credible evidence of retaliation  
28 towards even the most vocal student opposing Student 1’s participation on the team. Nor did it

1 address that mere favoritism is insufficient to violate Title IX. OCR also did not take into account  
2 whether any of the alleged disparate treatment of Student 1 with respect to discipline could be a  
3 supportive measure in response to her own complaints under Title IX.

4 163. OCR did not provide notice of this subject of its investigation in its notice of  
5 directed investigation.

6 **4. OCR'S Proposed Resolution Agreement**

7 164. Along with the Letter of Findings, OCR transmitted to SJSU a Proposed Resolution  
8 Agreement. *See* Ex. B. That agreement would require SJSU to:

- 9 A. Prohibit transgender women from competing in any women's athletic  
10 program, not limited to intercollegiate athletics.
- 11 B. Make a public statement adopting OCR's preferred definition of the words  
12 "Sex," "Female," "Male," "Woman," "Girl," "Man," and "Boy" for  
13 purposes of all SJSU policies, as well as agreeing to the "fact" that "there  
14 are only two sexes (female and male) because there are only two types of  
15 gametes (eggs) and sperm" and that sex is "unchangeable."
- 16 C. Award cisgender female athletes any individual awards they would have  
17 won absent participation by transgender women in all competitions.
- 18 D. Issue a personalized apology letter to every woman who played on a team  
19 with the allegedly transgender player or who forfeited a match against SJSU  
20 and make a public statement to anyone who played against SJSU during  
21 that time "expressing genuine regret and remorse" about the player's  
22 participation.

23 165. OCR described these and other components of the Proposed Resolution Agreement  
24 as "actions that will remedy current and past discrimination, and to prevent any similar instances  
25 where future violative conduct may recur." Ex. A at 45.

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1 166. According to OCR’s own Case Processing Manual, “[t]he provisions of the  
2 resolution agreement must be tied to the allegations and the evidence obtained during the  
3 investigation, and will be consistent with applicable regulations.”<sup>9</sup>

4 167. The Proposed Resolution Agreement would require SJSU to violate existing, on the  
5 books, Ninth Circuit controlling precedent.

6 168. In addition, the Proposed Resolution Agreement was contrary to the First  
7 Amendment because it would improperly compel speech by SJSU—and, as described above, the  
8 statements that OCR would compel are legally and factually wrong. OCR did not address how to  
9 reconcile the Proposed Resolution Agreement with section 109 of OCR’s Case Processing  
10 Manual, which states that “all actions taken by OCR must comport with First Amendment  
11 principles. OCR will not interpret any statute or regulation to impinge upon rights protected under  
12 the First Amendment or to require recipients to encroach upon the exercise of such rights.”<sup>10</sup>

13 169. OCR closed its letter by warning SJSU that if “OCR determines an agreement will  
14 not be reached, the Department may begin enforcement action including” by taking steps to  
15 initiate an “action to suspend, terminate, or refusal to grant or continue federal financial  
16 assistance.” Ex. A at 45.

17 **G. The Administration’s Pattern and Practice of Revoking Universities’ Funding**

18 170. Though both Title IX and its parallel statute covering race discrimination, Title VI,  
19 each require agencies to undertake multiple procedural steps prior to terminating federal funding,  
20 the current administration’s practice has been to ignore those requirements.

21 171. The government has terminated, frozen, or failed to pay billions of dollars in funds  
22 to dozens of universities across the country. And it has often done so based on assertions that  
23 those institutions have violated Title IX or Title VI, which prohibits discrimination on the basis of  
24 race, color, and national origin in programs and activities receiving federal financial assistance.

25 \_\_\_\_\_  
26 <sup>9</sup> U.S. Dep’t of Educ., Off. for C.R., Case Processing Manual § 302 (2025),  
27 <https://www.ed.gov/media/document/ocr-case-processing-manual-us-department-of-education-office-civil-rights-33891.pdf>.

28 <sup>10</sup> *Id.* § 109.

1 172. But this administration has *never*—not once—followed the statutory and regulatory  
2 procedural requirements of Title IX or Title VI when cutting off these funds.

3 173. The government began its funding-termination campaign in the spring of 2025.

4 174. In March and April of 2025, the government froze funding for Columbia, the  
5 University of Pennsylvania, Brown, Cornell, Northwestern, Harvard, and the State of Maine,  
6 asserting that those entities had violated Title IX or Title VI.

7 175. In two of those freezes, the government accused the targeted institution of Title IX  
8 violations.

9 176. In March 2025, the government froze \$175 million in federal contracts awarded to  
10 the University of Pennsylvania based on the participation of a transgender athlete on the women’s  
11 swimming team in 2022. The University had been notified that OCR initiated a directed  
12 investigation under Title IX into its athletics policies, but it learned about the suspension of its  
13 funding “through various news outlets” rather than the government itself.

14 177. In April 2025, the Department of Agriculture froze federal funding for the State of  
15 Maine based on the state’s alleged violation of Title IX by allowing transgender girls to participate  
16 in girls’ sports. OCR (along with the Office of Civil Rights for the Department of Health and  
17 Human Services) had informed the State of Maine in February and March that it was found in  
18 violation of Title IX. The State declined to execute the government’s proposed resolution  
19 agreement. Days after that refusal, without providing notice or following procedures required by  
20 statute, the Department of Agriculture froze its funding for the Maine Department of Education,  
21 threatening crucial programs that fight child hunger.

22 178. The government engaged in the same course of action against institutions that it  
23 accused of violating Title VI.

24 179. For example, on March 3, 2025, the government notified Columbia University that  
25 it would conduct a review of Columbia’s federal contracts and grants. Four days later, without  
26 providing Columbia notice, the government summarily announced “the immediate cancellation of  
27 approximately \$400 million in federal grants and contracts to Columbia University” and asserted  
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1 that those cancellations “represent[ed] the first round of action” and that “additional cancellations  
2 [were] expected to follow.”

3 180. On March 31, 2025, the government notified Harvard University that it would  
4 conduct a review of Harvard’s federal contracts and grants. On April 11, the government sent  
5 Harvard a proposed resolution, and Harvard declined to execute that resolution on April 14.  
6 Hours later, without providing any further notice or following any additional procedures, the  
7 government froze \$2.2 billion in grants and \$60 million in contracts to Harvard.

8 181. Many universities did not receive any form of notice from the government that they  
9 were being targeted or that their funding was at risk. It has been publicly reported, for example,  
10 that Brown University, Northwestern University, and Cornell University learned from press  
11 reports that funding was being terminated.

12 182. In none of these cases did the administration follow Title VI’s or Title IX’s  
13 procedural requirements.

14 183. It is against this backdrop that Defendants issued the Letter of Findings and  
15 Proposed Resolution Agreement that have put CSU in an immediate and concrete dilemma: either  
16 accept Defendants’ unlawful proposed Resolution Agreement or face termination or suspension of  
17 substantial federal funding. Defendants’ statements and actions have made clear that failure to  
18 execute the proposed Resolution Agreement may result in termination or suspension of funding.  
19 The credible threat of such enforcement establishes a present injury sufficient for Article III  
20 standing.

21 184. Defendants’ and other federal agencies’ repeated practice of refusing to follow  
22 Title VI’s and Title IX’s procedural requirements before terminating funding demonstrates a  
23 pattern of filing suit, revoking funding, and/or taking other punitive actions without following  
24 established procedures. SJSU has therefore come to this Court to assert its rights and protect itself  
25 and the community it is proud to serve.

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1 **CAUSES OF ACTION**

2 **COUNT ONE**

3 **U.S. Constitution - Spending Clause**  
4 **(Against All Defendants)**

5 185. The paragraphs above are incorporated and reasserted as if fully set forth herein.

6 186. Under the Spending Clause, the Executive Branch has no authority to impose  
7 conditions beyond those contained in Title IX. *City & County of San Francisco v. Trump*, 897  
8 F.3d 1225, 1232 (9th Cir. 2018). The Ninth Circuit’s interpretation of the Constitution and Title  
9 IX binds SJSU, and SJSU complied with that law. The Letter of Findings is therefore contrary to  
10 the U.S. Constitution because it reflects the imposition of unlawful funding conditions in that it  
11 necessarily imposes obligations on SJSU not found in Title IX.

12 187. In addition, Title IX is Spending Clause legislation. *Davis ex rel. LaShonda D. v.*  
13 *Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999). Thus, when “Congress decides to impose  
14 conditions on the allocation of funds to the states, it “must do so unambiguously . . . , enabl[ing]  
15 the States to exercise their choice knowingly, cognizant of the consequences of their  
16 participation.” *City of Los Angeles v. Barr*, 929 F.3d 1163, 1174 (9th Cir. 2019). “The legitimacy  
17 of Congress’[s] power to legislate under the spending power thus rests on whether the State  
18 voluntarily and knowingly accepts the terms . . . .” *Pennhurst State Sch. & Hosp. v. Halderman*,  
19 451 U.S. 1, 17 (1981). Accordingly, “Congress goes too far when it surprises states with “post  
20 acceptance or ‘retroactive’ conditions.”” *Barr*, 929 F.3d at 1174.

21 188. All of SJSU’s relevant conduct occurred between 2022 and 2024. SJSU’s conduct  
22 was lawful at the time, and remains lawful today. Even if the law—or the Executive Branch’s  
23 interpretation of it—has changed since 2024, that cannot impose retroactive legal obligations on  
24 SJSU under Title IX.

25 **COUNT TWO**

26 **Administrative Procedure Act, 5 U.S.C. § 706**  
27 **Contrary to Law - Spending Clause**  
28 **(Against All Defendants)**

189. The paragraphs above are incorporated and reasserted as if fully set forth herein.

1 190. Under the Administrative Procedure Act (“APA”), a court shall “hold unlawful and  
2 set aside agency action . . . found to be . . . contrary to constitutional right, power, privilege, or  
3 immunity.” 5 U.S.C. § 706(2)(B).

4 191. OCR’s Letter of Findings and Proposed Resolution Agreement constitute final  
5 agency action. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (actions that “mark the  
6 ‘consummation’ of the agenc[ies]’ decisionmaking process,” “determine[]” “rights [and]  
7 obligations,” and are backed by “legal consequences” constitute final agency action) (citations  
8 omitted).

9 192. As explained above, Defendants’ finding that SJSU violated Title IX is contrary to  
10 the Spending Clause because it reflects the imposition of unlawful, post-hoc funding conditions.  
11 It is therefore unlawful under the APA and must be set aside.

12 **COUNT THREE**

13 **Administrative Procedure Act, 5 U.S.C. § 706**  
14 **Contrary to Law – Title IX**  
**(Against All Defendants)**

15 193. The paragraphs above are incorporated and reasserted as if fully set forth herein.

16 194. Under the APA, a court shall “hold unlawful and set aside agency action . . . found  
17 to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5  
18 U.S.C. § 706(2)(C).

19 195. Defendants’ finding that SJSU violated Title IX is contrary to Title IX.

20 196. Defendants’ finding that SJSU violated Title IX is contrary to binding Ninth Circuit  
21 precedent, Title IX regulations, and OCR’s interpretation of Title IX in place at the time of SJSU’s  
22 conduct.

23 197. If the correct reading of Title IX changed after November 30, 2024, or does change  
24 in the future, that change in the law cannot be the basis for liability under Title IX for acts taken  
25 prior to that date. *City of Los Angeles*, 929 F.3d at 1175.

26 198. Defendants’ finding that SJSU violated Title IX is therefore contrary to law and  
27 must be declared unlawful and set aside under the APA.

28

1 **COUNT FOUR**

2 **Administrative Procedure Act, 5 U.S.C. § 706**  
3 **Contrary to Law – Equal Protection**  
4 **(Against All Defendants)**

5 199. The paragraphs above are incorporated and reasserted as if fully set forth herein.

6 200. Under the APA, a court shall “hold unlawful and set aside agency action . . . found  
7 to be . . . contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

8 201. Defendants’ finding that SJSU violated Title IX is contrary to the Equal Protection  
9 Clause. Under binding Ninth Circuit precedent, state actors like SJSU may not exclude qualified  
10 and eligible transgender women from women’s sports teams on the sole basis that they are  
11 transgender. *See Hecox v. Little*, 104 F.4th 1061, 1068 (9th Cir. 2024).

12 202. Defendants’ finding that Title IX required SJSU to exclude Student 1 from the  
13 women’s volleyball team or sex-segregated intimate facilities or to adopt blanket bans on the  
14 participation of transgender women on women’s sports teams would require violating the Equal  
15 Protection Clause of the U.S. Constitution. *Id.*

16 203. Defendants’ finding is therefore contrary to law and must be declared unlawful and  
17 set aside under the APA.

18 **COUNT FIVE**

19 **Administrative Procedure Act, 5 U.S.C. § 706**  
20 **Arbitrary & Capricious**  
21 **(Against All Defendants)**

22 204. The paragraphs above are incorporated and reasserted as if fully set forth herein.

23 205. The APA requires this Court to hold unlawful and set aside any final agency action  
24 that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5  
25 U.S.C. § 706(2)(A).

26 206. As explained above, OCR’s Letter of Findings and Proposed Resolution Agreement  
27 constitute final agency action.

28 207. Defendants’ actions are arbitrary and capricious because they are neither  
“reasonable [nor] reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (citation  
omitted). They are not the product of “reasoned decisionmaking,” *Motor Vehicle Mfrs. Ass’n of*

1 *U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983), including because  
2 Defendants’ actions “entirely fail[] to consider . . . important aspect[s] of the problem.” *Id.* at 43;  
3 *see also DHS v. Regents of the Univ. of Calif.*, 591 U.S. 1, 30 (2020). The Letter ignores SJSU’s  
4 legal obligations under binding circuit precedent, does not address the many steps SJSU took in  
5 response to reports of Title IX violations even when SJSU was not required to investigate, and  
6 departs from the agency’s own regulations and longstanding policy guidance interpreting Title IX.

7 208. Defendants’ actions were arbitrary and capricious because Defendants failed to  
8 “articulate a satisfactory explanation for [their] action[s]” and demonstrated no “rational  
9 connection between the facts found and the choice made.” *State Farm Mut. Auto. Ins. Co.*, 463  
10 U.S. at 43 (citation omitted). Defendants have not articulated *any* rationale for holding SJSU  
11 liable under Title IX for following the law that binds it. Nor have they articulated *any* rationale  
12 that justifies forcing SJSU to choose between adopting sweeping, forward-looking remedies and  
13 make highly politicized statements or losing substantial federal funding due to the inclusion of a  
14 single player who played her last game for SJSU more than a year ago.

15 209. Defendants’ actions were arbitrary and capricious because Defendants failed to  
16 consider reasonable, obvious alternatives to sweeping cuts to and limits on SJSU’s federal  
17 financial assistance, such as the more limited corrective actions that the government has  
18 historically employed to address Title IX violations. *See Yakima Valley Cablevision, Inc. v. FCC*,  
19 794 F.2d 737, 746 n.36 (D.C. Cir. 1986).

20 210. Defendants’ actions were arbitrary and capricious because Defendants neglected to  
21 “take[] into account” the “serious reliance interests” “engendered” by the government’ prior  
22 regulatory approach and current Supreme Court and Ninth Circuit precedent. *Regents of the Univ.*  
23 *of Calif.*, 591 U.S. at 30 (2020) (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222  
24 (2016)). SJSU had every reason to rely on the Ninth Circuit’s precedents here. In addition, in  
25 2022, OCR itself had told SJSU it needed to do more to protect transgender students from  
26 discrimination and harassment on its campus. And, during the 2024 volleyball season, SJSU  
27 prevailed in emergency litigation in which Student 3, Batie-Smoose, and others sought to exclude  
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1 Student 1 from the volleyball team. The Court rejected the plaintiffs’ Title IX and Equal  
2 Protection theories.

3 211. SJSU conformed its behavior to the law and the regulatory environment at the time;  
4 it should not be punished for conforming its conduct to those standards. In addition, for several  
5 decades, SJSU has relied on the well-established process for federal financial assistance in its  
6 budgeting and financial planning, including with respect to staffing, infrastructure, facility and  
7 equipment purchases, and long-term investment decisions. OCR never mentions the effect of  
8 funding terminations on SJSU, its faculty, students, or the broader San Jose area.

9 212. Defendants’ actions therefore must be set aside under the APA.

10 **COUNT SIX**

11 **Administrative Procedure Act, 5 U.S.C. § 706**  
12 **Failure to Follow Procedure Required by Law**  
**(Against All Defendants)**

13 213. The paragraphs above are incorporated and reasserted as if fully set forth herein.

14 214. The APA requires this Court to hold unlawful and set aside any final agency action  
15 that is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

16 215. OCR’s Letter of Findings and Proposed Resolution Agreement constitute final  
17 agency action.

18 216. Title IX provides that federal funding cannot be “suspend[ed], terminat[ed], or  
19 refus[ed]” without “an express finding on the record, after opportunity for a hearing, of a failure  
20 [by the applicant or recipient] to comply such requirement” of Title IX. 20 U.S.C. § 1682. The  
21 APA mandates formal adjudications whenever a statute or regulation requires a finding “on the  
22 record after opportunity for an agency hearing.” *Ass’n of Nat’l Advertisers, Inc. v. FTC*, 627 F.2d  
23 1151, 1160 (D.C. Cir. 1979) (quoting 5 U.S.C. § 554(a)). In such adjudications, parties have a  
24 right to trial-like procedures, such as “the right to present evidence and to conduct cross-  
25 examination.” *Id.* At a minimum, then, OCR cannot revoke SJSU’s Title IX funding without  
26 affording it an opportunity for a formal hearing and informing Congress of the basis of a  
27 revocation. OCR has not provided SJSU that opportunity.

28

COUNT SEVEN

**Administrative Procedure Act, 5 U.S.C. § 706  
Failure to Follow Procedure Required by Law  
(Against All Defendants)**

217. The paragraphs above are incorporated and reasserted as if fully set forth herein.

218. Under the APA, a court shall “hold unlawful and set aside agency action, findings, and conclusions found to be without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

219. When issuing legislative rules, federal agencies are required to follow the notice-and-comment process set forth in the APA. *E.g., Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 95–96 (2015) (explaining rulemaking requirements of 5 U.S.C. § 553(b)).

220. The agency must publish a “[g]eneral notice of proposed rule making” in the Federal Register. 5 U.S.C. § 553(b). That notice must describe “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” *Id.* § 553(b)(3). The agency must further provide “interested persons” an “opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.” *Id.* § 553(c).

221. The rule announced in the Letter that “Title IX’s bar on sex discrimination does not include discrimination on the basis of the subjective perception of one’s own ‘gender,’” Ex. A at 4, as a new basis for Title IX enforcement is a legislative rule, not an interpretive rule or a general statement of policy.<sup>11</sup> *See, e.g., N.H. Hosp. Ass’n v. Azar*, 887 F.3d 62, 70–74 (1st Cir. 2018) (“We have said that a legislative rule is one that ‘creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself.’”); *accord Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 251–52 (D.C. Cir. 2014) (characterizing legislative rules as those that “impose legally binding obligations or prohibitions on regulated parties); *Mendoza v.*

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<sup>11</sup> Because the Letter’s new rule is a legislative rule, it is necessarily reviewable as final agency action. *See Cal. Communities Against Toxics v. EPA*, 934 F.3d 627, 635 (D.C. Cir. 2019) (“[I]f a rule is legislative it has the force and effect of law, and a legislative rule is thus necessarily final.”).

1 *Perez*, 754 F.3d 1002, 1021 (D.C. Cir. 2014) (explaining that a legislative rule “supplements a  
2 statute, adopts a new position inconsistent with existing regulations, or otherwise effects a  
3 substantive change in existing law or policy”); *Syncor Int’l v. Shalala*, 127 F.3d 90, 94–95 (D.C.  
4 Cir. 1997) (noting that “a substantive rule *modifies* or *adds* to a legal norm”); *Am. Mining Cong. v.*  
5 *Mine Safety & Health Admin.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993) (explaining that a rule is  
6 legislative, inter alia, if there is no “adequate legislative basis for enforcement action” without the  
7 rule, or if the rule “effectively amends a prior legislative rule”); *see also Clarian Health W., LLC*  
8 *v. Hargan*, 878 F.3d 346, 357–58 (D.C. Cir. 2017) (treating legislative rules as binding upon the  
9 agency, whereas interpretive rules and policy statements leave the agency “free to exercise  
10 discretion”).

11 222. There are no circumstances that would create good cause for the Department to  
12 forgo notice and comment in issuing the Letter’s new rule. *See* 5 U.S.C. § 553(b)(B).

13 223. The Department does not invoke the good cause exception in the Letter by  
14 “incorporat[ing] the finding [of good cause] and a brief statement of reasons therefor” as required  
15 by § 553(b)(B).

16 224. In using the Letter to issue a legislative rule, Defendants have failed to follow the  
17 procedural requirements of the APA. The offending paragraph of the Letter, and the conclusions  
18 that flow from it, are therefore unlawful and must be set aside.

## 19 **COUNT EIGHT**

### 20 **U.S. Constitution – First Amendment** 21 **(Against All Defendants)**

22 225. The First Amendment provides that the federal government “shall make no  
23 law . . . abridging the freedom of speech.” U.S. Const. amend. I.

24 226. “[A]cademic freedom” is “a special concern of the First Amendment” and receives  
25 heightened protection. *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967).  
26 This freedom protects “not only students and teachers, but their host institutions as well.”  
27 *Asociacion de Educacion Privada de P.R., Inc. v. Garcia-Padilla*, 490 F.3d 1, 8 (1st Cir. 2007)  
28 (citation omitted). As the Supreme Court has recognized, “[a]cademic freedom thrives not only on

1 the independent and uninhibited exchange of ideas among teachers and students, but also . . . on  
2 autonomous decisionmaking by the academy itself.” *Regents of Univ. of Mich. v. Ewing*, 474 U.S.  
3 214, 226 n.12 (1985) (citations omitted). Colleges and universities have a constitutionally  
4 protected right to “manage an academic community and evaluate teaching and scholarship free  
5 from [governmental] interference.” *Blasdel v. Nw. Univ.*, 687 F.3d 813, 816 (7th Cir. 2012)  
6 (citation omitted). After all, “[i]f there is any fixed star in our constitutional constellation, it is that  
7 no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or  
8 other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va.*  
9 *State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

10 227. Funding conditions that curtail a university’s ability to govern itself or that demand  
11 it take institutional positions on contested topics can therefore “result in an unconstitutional  
12 burden on First Amendment rights.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*  
13 (“*AID*”), 570 U.S. 205, 214 (2013). The government cannot “deny a benefit to a person on a basis  
14 that infringes his constitutionally protected interests.” *Perry v. Sindermann*, 408 U.S. 593, 597  
15 (1972).

16 228. The terms of Defendants’ Proposed Resolution Agreement “compel” SJSU to  
17 speak the government’s “own preferred messages,” or else face the “sanction[.]” of the loss of  
18 federal funding. *303 Creative LLC v. Elenis*, 600 U.S. 570, 586, 588–89 (2023). Specifically, the  
19 Agreement would require SJSU to make a public statement adopting OCR’s preferred definitions  
20 of the words “Sex,” “Female,” “Male,” “Woman,” “Girl,” “Man,” and “Boy” for purposes of all  
21 SJSU policies; agreeing to the “fact[.]” that “there are only two sexes (female and male) because  
22 there are only two types of gametes (eggs and sperm)”; and declaring that sex is “unchangeable.”  
23 Ex. B at 2. The Agreement would also require SJSU to send letters to certain female athletes  
24 “expressing apology for allowing [their] educational experience and participation in athletics to be  
25 marred by sex discrimination” and “expressing genuine regret and remorse that [they] were placed  
26 in a position in which they had to compete against a male athlete in an athletic program designed  
27 for women.” *Id.* at 3. OCR has made clear that rejecting these terms will result in the termination  
28 of federal funding. *See id.*

1           229. The First Amendment forbids such compelled speech, except when it survives strict  
2 scrutiny. While the government is free to “define the limits of the government spending  
3 program,” it cannot impose “conditions that seek to leverage funding to regulate speech outside  
4 the contours of the program itself.” *AID*, 570 U.S. at 214–15. Conditioning funding upon SJSU’s  
5 agreement to “profess a specific belief” therefore impermissibly compels speech in violation of the  
6 First Amendment. *Id.* at 218.

7           230. The Letter and Proposed Resolution Agreement also trigger strict scrutiny because  
8 they are content- and viewpoint-based. They go far beyond requiring or securing SJSU’s  
9 compliance with the law and instead dictate that SJSU make public statements reflecting specific  
10 beliefs about sex and gender and express certain sentiments, like remorse, in public and private  
11 communications with particular individuals of the government’s choosing. And unless SJSU  
12 makes these specific statements, in the way the government wants, SJSU stands to lose critical  
13 government funding.

14           231. The government “bears the burden of proving the constitutionality of its actions.”  
15 *FEC v. Cruz*, 596 U.S. 289, 305 (2022) (citation omitted).

16           232. Defendants cannot reasonably argue that the conditions they seek to impose on  
17 SJSU are “the least restrictive means of achieving a compelling [governmental] interest.” *Ams. for*  
18 *Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (citation omitted).

19           233. The conditions are overbroad because the statements the government would require  
20 of SJSU do not further any government interest. The government’s reading of Title IX directly  
21 contravenes Ninth Circuit precedent. But even if it did not, SJSU can comply with the law  
22 without professing to certain beliefs about sex and gender or expressing remorse for complying  
23 with Ninth Circuit precedent.

24           234. The conditions are also overbroad because Defendants have ignored less restrictive  
25 alternatives. The government does not explain why an agreement in which SJSU agrees to follow  
26 the law would not be sufficient.

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1 235. SJSU’s fear that Defendants will terminate or freeze federal funding, as they have  
2 threatened to do, is reasonable in light of the government’s prior conduct with other institutions.  
3 *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 165–66 (2014).

4 236. Because Defendants’ actions in imposing viewpoint-based conditions on SJSU  
5 violate the First Amendment, those actions lack lawful authority. This Court should declare them  
6 unconstitutional and ultra vires.

7 237. Because Defendants’ actions are unconstitutional and ultra vires, this Court should  
8 enjoin Defendants in their official capacities from imposing the freeze.

9 238. If Defendants’ actions are not declared unlawful, set aside, and enjoined as  
10 unconstitutional and ultra vires, SJSU will suffer substantial injury, including irreparable injury.

11 **COUNT NINE**

12 **Administrative Procedure Act, 5 U.S.C. § 706**  
13 **Contrary to Law – First Amendment**  
14 **(Against All Defendants)**

14 239. The paragraphs above are incorporated and reasserted as if fully set forth herein.

15 240. Under the Administrative Procedure Act (“APA”), a court shall “hold unlawful and  
16 set aside agency action . . . found to be . . . contrary to constitutional right, power, privilege, or  
17 immunity.” 5 U.S.C. § 706(2)(B).

18 241. As alleged in Count 8, Defendants’ demand that SJSU adopt and profess certain  
19 highly politicized beliefs or else lose federal funding violates the First Amendment.

20 242. For that reason, the Court should declare Defendants’ actions unlawful and enjoin  
21 Defendants from engaging in future terminations, suspensions, or refusals to grant or to continue  
22 funding or work pursuant to the Letter of Findings or Proposed Resolution Agreement.

23 243. The Letter of Findings and Proposed Resolution Agreement must be vacated and  
24 “set aside” under 5 U.S.C. § 706(2)(B).

25 244. Without such an order, SJSU will suffer substantial injury, including irreparable  
26 injury.

27 **PRAYER FOR RELIEF**

28 245. For the foregoing reasons, Plaintiff respectfully requests an order:

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- A. Expediting the resolution of this action to prevent further harm to Plaintiff;
- B. Declaring that Defendants’ Letter of Findings and Proposed Resolution Agreement violate the Administrative Procedure Act;
- C. Declaring that Defendants’ Letter of Findings and Proposed Resolution Agreement violate the Spending Clause;
- D. Declaring that the Letter of Findings and Proposed Resolution Agreement violate the First Amendment;
- E. Vacating and setting aside the Letter of Findings and Proposed Resolution Agreement;
- F. Preliminarily and permanently enjoining Defendants, their agents, and all persons acting in concert or participating with Defendants from terminating, freezing, blocking, or refusing to grant SJSU’s funding in violation of the Spending Clause, Title IX, and the Administrative Procedure Act or otherwise giving effect to the Letter of Findings or Proposed Resolution Agreement in any way;
- G. Preliminarily and permanently enjoining Defendants, their agents, and all persons acting in concert or participating with Defendants from violating Plaintiff’s First Amendment rights;
- H. Entering judgment in favor of Plaintiff;
- I. Awarding Plaintiff its reasonable costs and attorneys’ fees in accordance with the law, including but not limited to amounts available pursuant to 42 U.S.C. § 1988; and
- J. Issuing any and all other relief as the Court deems appropriate.

1 DATED: March 6, 2026

MUNGER, TOLLES & OLSON LLP

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By:           /s/ Bryan H. Heckenlively            
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