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Via Email

Hon. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: *K.M.K. v. Washington Interscholastic Activities Association*, No. 26A458

Dear Mr. Harris:

I write on behalf of Respondent Washington Interscholastic Activities Association ("WIAA") in response to Applicant's letter dated November 3, 2026, which provides what Applicant characterizes as an update in support of K.M.K.'s pending application for an injunction pending appeal.

The WIAA respectfully stands ready to submit a substantive response to Applicant's November 3 letter should the Court or the Circuit Justice wish to receive one. However, the cross-country results described in Applicant's letter involve non-parties and a different sport, and are not part of the record below, so their relevance to these proceedings is questionable. More importantly, Applicant's emergency intervention is even less appropriate in light of yesterday's election.

On November 3, 2026, Washington voters considered Initiative Measure No. IL26-638, which concerns participation in athletics at K-12 schools. Among other things, the initiative provides that a school district board of directors or a voluntary nonprofit entity must prohibit biologically male students from competing with and against female students in athletic activities that have separate classifications for male and female students, where the activity is intended for female students only and is an individual or team competition activity. The initiative would also require verification of a student's sex by the student's health care provider. According to election-night returns reported by the Secretary of State's office, approximately 57% of voters had approved the measure. Results remain unofficial until certified; counties are expected to certify by November 24, and the Secretary of State by December 3, 2026, but most news outlets are reporting the passage of the initiative as likely.

As Applicant's own letter acknowledges, if the initiative is approved it would take effect 30 days after the election. Wash. Const. art. II, § 1(d). The Office of Financial Management's fiscal impact statement likewise identifies December 3, 2026 as the effective date.

WIAA is a voluntary nonprofit entity that governs interscholastic athletics in Washington, and it has committed to follow Washington state law. Accordingly, if Initiative 638 is certified as approved and absent any Court orders prohibiting its enactment into law, the WIAA will amend its rules governing participation in girls' athletic competitions to comply with the initiative upon its effective date. That change would apply just as the upcoming wrestling season in which K.M.K. seeks to compete begins.

In light of these circumstances, WIAA respectfully submits that the more appropriate course is to allow the state-law process to run its course. The certification and implementation of Initiative 638 is likely to alter, and may resolve, the policy that is the subject of the application, and could materially affect whether any interim relief is needed, as well as the scope of any live controversy. Emergency resolution of the Title IX question presented on an application for an injunction pending appeal would be premature while the governing state law is poised to change within weeks.

Respectfully submitted,

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MB:kp

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