

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI *ex rel.*
CATHERINE L. HANAWAY,
ATTORNEY GENERAL OF MISSOURI,

&

MERLYN JOHNSON,
Plaintiffs,

v.

MISSOURI STATE HIGH SCHOOL
ACTIVITIES ASSOCIATION,

Defendant.

Case No. 4:26-cv-00171-SRC

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO INTERVENE**

I. INTRODUCTION

The United States respectfully moves, pursuant to Federal Rule of Civil Procedure 24 and 42 U.S.C. § 2000h-2, for leave to intervene in this action to remedy significant violations of the U.S. Constitution arising from the Defendant Missouri State High School Activities Association’s (“MSHSAA”) adoption and implementation of its Board of Directors eligibility rules—rules whereby candidates for certain Board seats are categorized by race and sex, and then either granted or denied an opportunity to stand for election to those Board seats based on the category in which the candidates fall.

As shown below, the United States should be granted intervention as of right on two grounds. First, the United States has an unconditional statutory right to intervene. *See* Fed. R. Civ. P. 24(a)(1); 42 U.S.C. § 2000h-2. Second, the United States may intervene as of right because it has significant interests that may, as a practical matter, be impeded by disposition of this case

and cannot be adequately represented by the other parties. *See* Fed. R. Civ. P. 24(a)(2). Furthermore, given that this action was filed only recently, the United States’ motion is timely. *Id.* In the alternative, the United States satisfies the requirements of Fed. R. Civ. P. 24(b) for permissive intervention and respectfully moves for an order granting its request under that provision. The Proposed Complaint in Intervention (“Complaint”) is attached hereto as Exhibit 1.

II. BACKGROUND

MSHSAA is “a voluntary, nonprofit, educational association of secondary schools established for the purpose of working collaboratively to develop and adopt standards of supervision and administration to regulate the diverse interscholastic activities and contests which are delegated by the member schools to the jurisdiction of the Association.” MSHSAA Const. art. II, § 2. *See* ECF 1, Ex. A at 20, PageID #45. MSHSAA’s members are Missouri’s public and private schools. MSHSAA’s membership numbers in the hundreds of schools.¹ Member schools must renew their membership each year and pay an annual fee. MSHSAA employs more than fifteen people and these employees are eligible to participate in Missouri’s state-retirement system on the same terms as other public employees in the state.

MSHSAA is governed by a ten-member Board of Directors. MSHSAA Const. art. IV, §§ 2, 6. *See* ECF 1, Ex. A at 24 and 26, PageID #49 and #51. Board members are elected by MSHSAA’s member schools, which are represented by their principals and superintendents. *Id.* art. IV, § 3.a; art. VI, § 2. Eight of the directors (each of whom must be a superintendent, a

¹ Some schools are registered as “affiliate schools” which limits their ability to participate in certain interscholastic competitions. *See* MSHSAA Const. art. III, § 6. *See* ECF 1, Ex. A at 23, PageID #48. Many of these affiliate members are also public schools. Additionally, affiliate membership is open to homeschooling associations. *See* Member School Listing, MSHSAA, <https://tinyurl.com/58524c3a> (last visited Feb 13, 2026).

principal, or an activities director of a member school) are elected on the basis of geography—one from each membership district. *Id.* art. IV, § 2.b. Two additional directors are elected on an at-large basis. *Id.* art. IV, §2.b.2. At-large members must meet the same qualification as district-based members, except that each of the at-large seats is reserved for “a candidate representing the under-represented gender of the current Board, or an under-represented ethnicity.”² It is unclear whether Board members receive any compensation for their service on the Board.

Dr. Merlyn Johnson— the Superintendent of Cassville R-IV School District—was nominated for one of MSHSAA’s Board of Directors at-large seats. He satisfied all of the criteria for election to the Board, but his candidacy was rejected on the basis that he was a Caucasian, non-Hispanic male. State of Missouri, acting through its Attorney General, and Dr. Johnson brought suit against MSHSAA alleging racial and sex discrimination in violation of 42 U.S.C. § 1983 (Count 1); the Fourteenth Amendment (Count 2); 42 U.S.C. §2000e-5(f) (Count 3); and 42 U.S.C. § 1981 (Count 4).

The United States Attorney General has reviewed this action and determined it is a case of general public importance. This case will provide relief to the Plaintiff but will also relieve other potential candidates for the MSHSAA Board from the “injury,” of “being forced to compete in a race-based system that may prejudice the[m].” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007).

² MSHSAA’s constitution does not define “ethnicity,” but based on the correspondence from the Board (discussed below) it appears to include only the “Hispanic”/“non-Hispanic” distinction.

III. ARGUMENT

A. *The United States Has an Unconditional Statutory Right to Intervene*

The United States' Motion to Intervene should be granted under Fed. R. Civ. P. 24(a)(1) because Section 902 of the 1964 Civil Rights Act, codified at 42 U.S.C. § 2000h-2, confers on the United States an unconditional right to intervene in this action. Section 902 provides:

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

42 U.S.C. § 2000h-2. This action claims that the MSHSAA's policies with regard to eligibility for the Board's at-large seats violate equal protection based on race, color, national origin, and/or sex. ECF 1 ¶¶ 126-134. Furthermore, the United States Attorney General has certified that this case is of "general public importance." *See* Certificate of the Attorney General, attached as Exhibit 2. Once these statutory prerequisites are met, the "right to intervention by the United States . . . is an absolute and not a permissive one." *Spangler v. United States*, 415 F.2d 1242, 1244 (9th Cir. 1969); *see also Melendres v. Skinner*, 113 F.4th 1126, 1129 n.3 (9th Cir. 2024). Furthermore, as explained in Section III.B.1 *infra*, the United States' motion is timely.

B. *The United States May Intervene as of Right Under Fed. R. Civ. P. 24(a)(2).*

The United States' motion to intervene should also be granted as of right under Fed. R. Civ. P. 24(a)(2). Under this rule, "[a] third party is entitled to intervention of right if (1) its motion is timely, (2) it has an interest in the subject matter of the litigation, (3) disposition of the case may impair that interest, and (4) existing parties do not adequately protect that interest." *Entergy Arkansas, LLC v. Thomas*, 76 F.4th 1069, 1071 (8th Cir. 2023). While the applicant has the burden

to show each element, “Rule 24 should be construed liberally, with all ‘doubts resolved in favor of the proposed intervenor.’” *Nat’l Parks Conservation Ass’n v. U.S. EPA*, 759 F.3d 969, 975 (8th Cir. 2014) (quoting *Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1999)).

1. The United States’ Motion is Timely.

First, there can be no reasonable dispute that the United States’ motion is timely. Timeliness focuses on “four factors: ‘(1) the extent the litigation has progressed at the time of the motion to intervene; (2) the prospective intervenor’s knowledge of the litigation; (3) the reason for the delay in seeking intervention; and (4) whether the delay in seeking intervention may prejudice the existing parties.’” *United Food & Com. Workers Union, Loc. No. 663 v. USDA*, 36 F.4th 777, 780 (8th Cir. 2022) (quoting *Smith v. SEECO, Inc.*, 922 F.3d 398, 405 (8th Cir. 2019)). Each of these factors weighs in favor of granting intervention here. This action was filed on February 4, 2026, and the United States moved to intervene approximately two months later. Accordingly, this litigation is at an early stage, with no discovery or dispositive motions, and no response to the initial complaint. There has been no delay and, consequently, no prejudice to the other parties.

2. The United States Has a Significant Protectable Interest in This Action.

The United States has a significant protectable interest in ensuring that state and local programs do not violate the Fourteenth Amendment. “The requirement of a significantly protectable interest is generally satisfied when the interest is protectable under some law, and there is a relationship between the legally protected interest and the claims at issue.” *City of Emeryville v. Robinson*, 621 F.3d 1251, 1259 (9th Cir. 2010) (quotation and alteration marks omitted). This interest need not rise to the level required for Article III standing, provided that at least one party has standing and the proposed intervenor does not “pursue[] relief that is broader than or different

from the party invoking a court’s jurisdiction.” *Little Sisters of the Poor Sts. Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020). Plaintiff and the United States both seek to enjoin the MSHSAA’s policies under the Equal Protection Clause of the Fourteenth Amendment.

It is well settled that “the United States suffers a concrete harm to its sovereignty when its laws are violated.” *La Unión del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512, 526 (W.D. Tex. 2022). *Accord Vt. Agency of Natural Res. v. United States*, 529 U.S. 765, 771 (2000) (United States suffers an “injury to its sovereignty arising from violation of its laws”). Furthermore, as multiple courts have held, “the United States’ sovereign interests are harmed when its laws are violated.” *United States v. Idaho*, 623 F. Supp. 3d 1096, 1107 (D. Idaho 2022). *See also United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (“The United States suffers injury when its valid laws in a domain of federal authority are undermined by impermissible state regulations.”); *United States v. Iowa*, 737 F. Supp. 3d 725, 749 (S.D. Iowa 2024), *aff’d as modified sub nom. Iowa Migrant Movement for Just. v. Bird*, 157 F.4th 904 (8th Cir. 2025) (same).

Congress has passed a statute to enforce the rights set forth in the Fourteenth Amendment. 42 U.S.C. § 1983. It has also authorized the Attorney General to intervene in such suits via Section 902 of the 1964 Civil Rights Act. 42 U.S.C. § 2000h-2. Numerous courts have found that the Attorney General’s sovereign interest in enforcing the Fourteenth Amendment is strong enough to support Article III standing, which exceeds what Rule 24(a)(2) requires. *See United States v. City of Jackson*, 318 F.2d 1, 14-17 (5th Cir. 1963) (“When a State, . . . by a law or pattern of conduct, takes action motivated by a policy which collides with national policy as embodied in the Constitution, the interest of the United States ‘to promote the interest of all’ gives it standing to challenge the State in the courts.”). The United States therefore has a “significant protectable interest” in this litigation.

3. Disposition of This Case May Impede the United States' Interests.

The United States' ability to protect the substantial legal interest described above would, as a practical matter, be impaired absent intervention in this case. The long-standing Eighth Circuit rule is that a petitioner has an absolute right to intervene where he "is asserting a right which would be lost or substantially affected if it could not be asserted at that time and in that form." *Whittaker v. Brictson Mfg. Co.*, 43 F.2d 485, 489 (8th Cir. 1930). *See also Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (citing Fed. R. Civ. P. 24 advisory committee notes).

The outcome of this case, including the potential for appeals by existing parties, implicates *stare decisis* concerns that warrant the United States' intervention. *See Kansas Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 60 F.3d 1304, 1308-09 (8th Cir. 1995) (holding that this "requirement is met by a minimal showing that representation 'may be' inadequate," and that "[w]here [parties'] interests are disparate, even though directed at a common legal goal, e.g., the avoidance of liability, intervention is appropriate.").

4. The United States' Interests Are Not Adequately Represented.

Finally, the United States' interests in this litigation are not adequately represented by the existing parties to the case. "A proposed intervenor typically need only 'carry a minimal burden of showing that their interests are inadequately represented by the existing parties.'" *Nat'l Parks*, 759 F.3d at 976 (quoting *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 999 (8th Cir. 1993)). "The inadequate representation condition is satisfied if the proposed intervenor shows that the representation of its interests by the current party or parties to the action may be inadequate. ... Doubts regarding the propriety of permitting intervention should be resolved in favor of allowing it, because this serves the judicial system's interest in resolving all related controversies in a single action." *Sierra Club v. Robertson*, 960 F.2d 83, 85-86 (8th Cir. 1992).

The existing parties cannot adequately represent the United States’ interests because no private party may adequately represent the United States’ sovereign interest in ensuring enforcement of fundamental rights under the Constitution. “[T]he United States has an interest in enforcing federal law that is independent of any claims of private citizens.” *United States v. E. Baton Rouge Sch. Dist.*, 594 F.2d 56, 58 (5th Cir. 1979); *see also EEOC v. Pemco Aeroplex*, 383 F.3d 1280, 1291 (11th Cir. 2004) (“Quite simply, it is so unusual to find privity between a governmental agency and private plaintiffs because governmental agencies have statutory duties, responsibilities, and interests that are far broader than the discrete interests of a private party.”). Thus, “[a]ggrieved individuals . . . lack the required ‘identity of interests’ with government agencies.” *Acosta v. Idaho Falls Sch. Dist. No. 91*, 291 F. Supp.3d 1162, 1168 (D. Idaho 2017). And absent “identical” interests, there can be no “adequate representation” under Fed. R. Civ. P. 24(a)(2). *See Berger v. N. Carolina State Conf. of the NAACP*, 597 U.S. 179, 195-196 (2022) (rejecting a presumption that the state board of elections adequately represented state legislators’ interests merely because they were “related” to the board’s interests). Accordingly, the United States meets this requirement for intervention.

C. The United States Meets the Permissive Intervention Standard Under Fed. R. Civ. P. 24(b).

Alternatively, this Court should permit the United States to intervene because the United States meets the requirements for permissive intervention under Rule 24(b), which provides as follows:

(1) In General. On timely motion, the court may permit anyone to intervene who:

...

(B) has a claim or defense that shares with the main action a common question of law or fact.

...

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b).

Here, Plaintiffs assert an Equal Protection claim regarding race-based discrimination. The United States also alleges an Equal Protection claim, namely that Defendant engaged in intentional discrimination on the basis of race, color, or national origin, in violation of the Equal Protection Clause. The United States' claim shares common questions of law and fact with Plaintiffs' claims. Indeed, the United States' proposed Complaint in Intervention largely tracks the substance of Plaintiffs' Complaint. As explained in Section III.B.1 *supra*, the United States' motion is timely and will not unduly delay or prejudice the adjudication of the original parties' rights. All other "relevant factors" the court may consider, weigh in favor of the government's intervention in a case involving a state-wide athletic association's policies that classify and discriminate against individuals on the basis of race, national origin, and/or sex. *See S. Dakota ex rel Barnett v. U.S. Dep't of Interior*, 317 F.3d 783, 787 (8th Cir. 2003).

IV. CONCLUSION

For the foregoing reasons, United States' motion to intervene should be granted.

DATED: April 2, 2026

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ATTORNEYS FOR INTERVENOR-PLAINTIFF
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 2, 2026, a true and accurate copy of the foregoing was filed via this Court's CM/ECF system, and therefore served on all parties of record.

/s/ Anthony J. Debre
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Assistant United States Attorney

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Case No. 4:26-cv-00171-SRC

**COMPLAINT IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

The United States of America (“United States”) brings this Complaint in Intervention pursuant to the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2, and alleges:

INTRODUCTION

1. Plaintiff Merlyn Johnson (“Dr. Johnson”) was nominated to serve on the Board of Directors for Defendant Missouri State High School Activities Association (“MSHSAA”).

2. Dr. Johnson met all the organization’s constitutionally required qualifications for serving on its Board.

3. He was a school superintendent of a member school in good standing in his district.

4. But Dr. Johnson’s candidacy was rejected by MSHSAA.

5. Despite being nominated, MSHSAA told Dr. Johnson he could not be a candidate for a board position for one immutable reason: he is a white male.



6. “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Students for Fair Admissions v. Harvard Coll.*, 600 U.S. 181, 208 (2023) (“SFFA”) (quoting *Rice v. Cayetano*, 528 U.S. 495, 517 (2000)).

7. Despite the constitutional mandate “that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class,” *SFFA*, 600 U.S. at 223 (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)), MSHSAA classifies candidates for seats on its governing Board by race and sex, and then treats such candidates differently based on these classifications.

8. By conditioning eligibility for seats on its governing Board on the candidates’ race and sex, MSHSAA has engaged in systematic unconstitutional race and sex-based discrimination and violated the Fourteenth Amendment’s Equal Protection Clause.

9. The United States invokes its authority under 42 U.S.C. § 2000h-2 and files this Complaint in Intervention for declaratory and injunctive relief to remedy MSHSAA’s unconstitutional discrimination against Dr. Johnson.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1343 because this case involves claims under a provision of the U.S. Constitution, and because the United States can intervene, as of right, in any action “seeking relief from the denial of equal protection of the laws under the [F]ourteenth [A]mendment to the Constitution on account of race, color, religion, sex or national origin.” 42 U.S.C. § 2000h-2.

11. This Court may grant the requested declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 2000h-2.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) because MSHSAA resides in the Eastern District and a substantial part of the events or omissions giving rise to the claims occurred in this district. Divisional venue is proper in the Eastern Division pursuant to this Court's Local Rule 2.07(A)(1).

13. This action concerns a violation of the Equal Protection Clause. Because this case is of general public importance, as certified by the Attorney General of the United States, *see* Ex. A, the United States is authorized under 42 U.S.C. § 2000h-2 to intervene in this matter.

PARTIES

14. Plaintiff-Intervenor is the United States of America.

15. Plaintiff State of Missouri is a sovereign State of the United States of America.

16. Plaintiff Catherine Hanaway is the 45th Attorney General of the State of Missouri and is authorized, by Missouri law, to bring actions on behalf of Missouri that are “necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary.” Mo. Rev. Stat. § 27.060.

17. Plaintiff Merlyn Johnson is a citizen of Missouri. Dr. Johnson is the Superintendent of Cassville R-IV School District.

18. Defendant MSHSAA maintains an office at 1 North Keene Street, Columbia, MO 65201. MSHSAA is “a voluntary, nonprofit, educational association of secondary schools established for the purpose of working collaboratively to develop and adopt standards of supervision and administration to regulate the diverse interscholastic activities and contests which are delegated by the member schools to the jurisdiction of the Association.” ECF 1; Ex. A at 17 (MSHSAA Const. art. II, § 2).

FACTS

19. MSHSAA has 724 member Missouri schools, most of which are public schools.
20. MSHSAA also has 249 affiliate-registered schools and 28 home-school associations. Many of these schools are also public schools. *See* Member School Listing, MSHSAA, <https://tinyurl.com/58524c3a> (last visited Feb. 13, 2026).
21. The majority of MSHSAA funding comes from ticket sales to games predominantly played by public schools. *See* ECF 1, Ex. C at 5.
22. MSHSAA employs over fifteen people. *See* ECF 1, Ex. A at 5.
23. MSHSAA's employees are eligible for membership in the state-retirement system. *See* ECF 1, Ex. D at 3.
24. MSHSAA is governed by its Board of Directors, which includes ten elected directors. *Id.* at 21 (MSHSAA Const. art. IV, § 2.a).
25. Jennifer Rukstad is the Executive Director of MSHSAA. As Executive Director, Dr. Rukstad is responsible for “carry[ing] out the policies of the Board of Directors.” ECF 1, Ex. A at 24 (MSHSAA Const. art. IV, § 7.a).
26. MSHSAA's Constitution establishes eligibility criteria for membership on its Board of Directors.
27. Membership on the Board of Directors is limited to superintendents, principals, or activities directors of a member school in good standing in their respective districts. MSHSAA Const. art. IV, § 2.b.
28. According to the MSHSAA's Constitution, eight of the ten directors are district members—one from each of the eight membership districts.

29. Two of the ten directors are elected from two different “At-Large” regions.¹ Additionally, “[e]ach of two At-Large positions shall be filled by a candidate representing the under-represented gender of the current Board, or an under-represented ethnicity.” *Id.* (MSHSAA Const. art. IV, § 2.b.2).

30. In 2025, Dr. Johnson was nominated for the MSHSAA Board of Directors At-Large Region 2 seat. *See* ECF 1, Ex. B at 12.

31. When Dr. Johnson was nominated, MSHSAA’s Board was comprised of a majority of male, white, non-Hispanic members. *Id.*

32. On March 18, 2025, Dr. Johnson received an email from MSHSAA’s Executive Director, Dr. Rukstad, explicitly informing him that “[s]ince [he] is a male,” he is “not eligible to be a candidate for” the at-large board position since males already constituted a majority of the Board. *Id.* (citing MSHSAA Const. art. IV, § 2.b.2 (Ex. A at 21)). Dr. Rukstad’s email continued by stating that “[t]he ethnicity of the board has a majority of white, non-Hispanic members.” *Id.* She invited Dr. Johnson to share “the minority ethnicity or race group in which [he] identif[ies]” but cautioned Dr. Johnson that unless he was something other than a white non-Hispanic person, he would fail to meet the eligibility requirements for the seat in question. *Id.*

33. Dr. Johnson is a Caucasian, non-Hispanic male.

34. Because of his ethnicity and sex, Dr. Johnson’s candidacy for Region 2, the At-Large seat, was disqualified. He otherwise met all necessary eligibility criteria.

¹ According to the MSHSAA’s Constitution, At-Large “Region 1 ... consist[s] of the Kansas City and St. Louis MSHSAA Board Districts,” and At-Large Region 2 of the remaining six districts. *See* ECF 1, Ex. A at 22 ((MSHSAA Const. art. IV, § 3.a).

35. After Dr. Johnson contacted the Missouri State Auditor about being denied an opportunity to run for the Board, the Auditor requested that MSHSAA confirm the existence of the race- and sex-based policies and justify them. ECF No. 1, Ex. B at 3, 10-11.

36. In response to the Auditor's inquiries, MSHSAA acknowledged the existence of the policies in question and defended them, writing that "[t]he constitutional language related to at-large board positions is deliberately designed to promote inclusivity while avoiding any form of exclusion or rigid identity-based quotas. It expands access, rather than restricts it." ECF 1, Ex. B at 7 (emphasis omitted).

37. The Board maintained that the race and sex requirements for At-Large seats "operate[] similarly to longstanding geographic representation practices, which ensure that every region of the state has a voice in governance." *Id.* According to the Board, "the language in question is not exclusionary and does not create any bar to participation" because "[a]ny individual, regardless of gender or ethnicity, is free to run for a seat on the board from their respective board district." *Id.*

38. Furthermore, according to the Board, even if the requirements for At-Large seats are discriminatory, such discrimination survives strict scrutiny. *Id.* at 8. The Board said that "ensuring inclusive representation on a statewide regulatory board that impacts 720 public and private school communities is a legitimate and compelling interest," and that because the race and sex requirements apply to only two out of ten seats, the provision is narrowly tailored to achieve the stated interest. *Id.*

39. The Board said that setting aside two seats “does not operate as a quota or barrier to any qualified member because it does not exclude anyone from candidacy or impose prerequisites. Rather, it invites broader, more intentional consideration of candidate diversity and promotes the inclusion of perspectives that may otherwise go unheard.” *Id.*

40. MSHSAA noted that in its 100-year history, it “never had a minority or female board member initially join the Board through the standard nomination and election process prior to the addition of the at-large provision. The enduring underrepresentation highlights the presence of systemic barriers to participation, and the at-large provision aims to address this imbalance.” *Id.* at 9.

41. MSHSAA denied Dr. Johnson the equal protection of the laws under the Fourteenth Amendment on account of his race and sex.

42. On February 4, 2026, the State of Missouri and Dr. Johnson instituted the present action against MSHSAA, asserting four causes of action for unlawful race and sex discrimination, unlawful discrimination with respect to conditions of employment, and discriminatory protection of the full and equal benefit of all laws. *See* ECF 1. Plaintiffs seek declaratory and injunctive relief, nominal damages, costs, and attorney fees.

43. Plaintiffs and the United States need judicial relief declaring that MSHSAA’s constitution and actions are unconstitutional under the Fourteenth Amendment of the U.S. Constitution.

**Count I:
Violation of the Fourteenth Amendment's Equal Protection Clause
Unlawful Race and Sex Discrimination**

44. The United States realleges and incorporates by reference paragraphs 1-43 of the Complaint as if fully stated herein.

45. The Fourteenth Amendment to the United States Constitution prohibits a State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

46. For the purposes of the Fourteenth Amendment, MSHSAA is a “state actor.” *See Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 296-98 (2001).

47. MSHSAA refused to consider Dr. Johnson for the at-large board position solely because of his race and sex.

48. MSHSAA’s constitution attempts to control the race and sex of the Board.

49. Refusing to consider a candidate for office because of his or her race is discrimination. *See Anderson v. Martin*, 375 U.S. 399, 401-02 (1964).

50. MSHSAA’s asserted interest of “ensuring inclusive representation on a statewide regulatory board,” ECF 1, Ex. B at 8, is not a cognizable compelling governmental interest and does not survive either heightened or strict scrutiny. *See Johnson v. Miller*, 864 F. Supp. 1354, 1379 (S.D. Ga. 1994), *aff’d and remanded*, 515 U.S. 900 (1995) (“To erect the goal of proportional representation is to erect an implicit quota for black voters. Far from a compelling state interest, such an effort is unconstitutional.”)

51. Even if inclusive representation was a compelling interest (and it is not), MSHSAA’s policy is not narrowly tailored to achieve that interest, because MSHSAA can

accomplish its goals by race-neutral means. The existence of race-neutral alternatives proves that the policy chosen by the Board is not narrowly tailored to achieve its interest.

52. Refusing to consider a candidate “simply because” of his or her sex is discrimination under the Equal Protection Clause. *See United States v. Virginia*, 518 U.S. 515, 532 (1996).

53. Just like it is an “offensive and demeaning assumption that [people] of a particular race, because of their race, think alike,” *Miller*, 515 U.S. at 911, it is an equally offensive and demeaning assumption that all men or women think alike based on their sex.

54. Even assuming that inclusive representation was a sufficiently important government interest to satisfy intermediate scrutiny (and it is not), MSHSAA can achieve this interest by race- and sex-neutral means.

55. Unless restrained by this Court, MSHSAA will continue to violate the Equal Protection Clause and cause Dr. Johnson harm.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court enter judgment against Defendant Missouri State High School Activities Association and grant the following relief:

- a. A declaratory judgment that MSHSAA’s policies and actions detailed herein are unlawful under Amendment XIV, § 1 of the U.S. Constitution and violate Plaintiff Dr. Johnson’s rights;
- b. A declaratory judgment stating that MSHSAA’s race and sex-based qualifications for at-large board positions are unconstitutional;
- c. A permanent injunction prohibiting MSHSAA and its officers, agents, and employees, from disqualifying candidates for the at-large board positions on the

basis of race or sex and from engaging in unlawful discrimination on the bases of race and sex.

- d. An award of such additional relief as the interests of justice may require.

DATED: April 2, 2026

THOMAS C. ALBUS
United States Attorney
Eastern District of Missouri

/s/ Anthony J. Debre
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ATTORNEYS FOR INTERVENOR-PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI *ex rel.*
CATHERINE L. HANAWAY,
ATTORNEY GENERAL OF MISSOURI,

&

MERLYN JOHNSON,
Plaintiffs,

v.

MISSOURI STATE HIGH SCHOOL
ACTIVITIES ASSOCIATION,

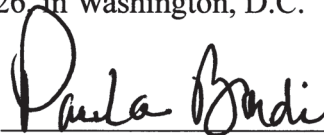
Defendant.

No. 26-cv-00171

CERTIFICATE OF THE
ATTORNEY GENERAL

I, Pamela Bondi, Attorney General of the United States, hereby certify, in accordance with
42 U.S.C. § 2000h-2 that the above-captioned case is of general public importance.

Signed this 31st day of March 2026, in Washington, D.C.



PAMELA BONDI

Attorney General of the United States

GOVERNMENT
EXHIBIT

2