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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

The Women’s Student Union,

*Plaintiff,*

v.

U.S. Department of Education,

*Defendant,*

Foundation for Individual Rights in  
Education, Independent Women’s Law  
Center, Speech First, Inc.,

*[Proposed] Intervenor-  
Defendants*

Case No. 3:21-cv-01626-EMC

**INTERVENOR-DEFENDANTS’ NOTICE OF  
MOTION AND MOTION TO INTERVENE AS  
DEFENDANTS**

Judge: Hon. Edward M. Chen

**Date: December 16, 2021**

**Time: 1:30 p.m.**

**Crtrm: 5, 17<sup>th</sup> Floor**

1 Putative Intervenor-Defendants, Foundation for Individual Rights in Education,  
2 Independent Women’s Law Center, and Speech First, Inc., by and through counsel, and pursuant  
3 to Federal Rule of Civil Procedure 24, move to intervene as of right in the above-captioned action  
4 or, in the alternative, permissively. In support of this Motion, Proposed Intervenor-Defendants rely  
5 on the following contemporaneously filed documents: (1) Memorandum of Points and Authorities  
6 in Support of Intervenor-Defendants’ Motion to Intervene as Defendants; (2) [Proposed]  
7 Intervenor-Defendants’ Answer; and (3) [Proposed] Order Granting Intervenor-Defendants’  
8 Motion to Intervene as Defendants.  
9

10 This motion has been calendared for hearing on December 16, 2021, at 1:30 p.m., in  
11 Courtroom 5, 17th Floor before Judge Edward M. Chen.  
12

13 For the reasons stated in this Motion and accompanying documents, Foundation for  
14 Individual Rights in Education, Independent Women’s Law Center, and Speech First, Inc.  
15 respectively request that the Court grant their Motion to Intervene. Movants satisfy the standards  
16 for both intervention as of right and permissive intervention. In support thereof, Proposed  
17 Intervenor-Defendants state as follows:  
18

19 Proposed Intervenor-Defendants have timely filed this motion. Plaintiff filed an Amended Complaint  
20 on October 4, Defendants have yet to answer the Amended Complaint, and nothing of substance  
21 has happened in the case.

22 Movants have significantly protectable interests in this action: as public interest groups that  
23 advocate for the free speech and due process rights the rule challenged in this case protects, movants  
24 have an interest in protecting the legality of the rule. Movants likewise have a protectable interest  
25 in the action because the rule affects Movants’ allocation of resources.  
26

27 Finally, Movants have a significantly protectable interest in safeguarding the free-speech  
28 rights of themselves and their members. This action threatens to impair Proposed Intervenor-Defendants’

1 interests. It is a premise of Plaintiff’s lawsuit that the rule’s definition of “sexual harassment” will  
2 significantly narrow the types of speech and expressive conduct that schools prohibit and punish.  
3 If Plaintiff succeeds, Movants unquestionably stand to gain or lose by the direct legal operation of  
4 the outcome of this case, and Movants have no alternate means to vindicate their interests if they  
5 are not permitted to intervene in this action.  
6

7 Proposed Intervenors’ interests are not adequately represented by the Department of  
8 Education. Movants have distinct and different interests from those of the Department, which will  
9 have direct consequences on the kinds of arguments each will make. Unlike the Department, which  
10 sought to balance competing interests in adopting the Title IX rule, Movants represent only the  
11 free-speech rights of students. Because proposed intervenors seek to make arguments that none of  
12 the existing parties are prepared or willing to advance, there is a compelling reason to conclude that  
13 their interests are not adequately represented.  
14

15 Accordingly, Proposed Intervenors are entitled to intervene as of right.

16 Alternatively, the Court should grant Proposed Intervenors permissive intervention.  
17 Movants do not seek to add additional claims, the motion is timely, and their defenses share  
18 common questions with the main action. Granting permissive intervention will not cause any undue  
19 delay or prejudice and, in fact, may promote judicial economy by resolving questions concerning  
20 the constitutionality of the rule through this action. Moreover, movants’ intervention will contribute  
21 to the resolution of the case by providing important perspectives that would otherwise be missing,  
22 and their experience and expertise regarding the questions in this case will meaningfully assist the  
23 Court.  
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Dated: November 3, 2021

Respectfully submitted,

/s/ Bradley A. Benbrook

/s/ Bryan K. Weir

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