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**FILED**  
OCT 09 2023  
JILL E. WHELCHER  
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF WHITMAN

WASHINGTON STATE UNIVERSITY, an institution of higher education and agency of the State of Washington; KIRK H. SCHULZ, in his official capacities as the President of Washington State University and Chair of the Pac-12 Board of Directors; OREGON STATE UNIVERSITY, an institution of higher education and agency of the State of Oregon; and JAYATHI Y. MURTHY, in her official capacities as the President of Oregon State University and Member of the Pac-12 Board of Directors,

Plaintiffs,

v.

THE PAC-12 CONFERENCE; and GEORGE KLIAVKOFF, in his official capacity as Commissioner of the Pac-12 Conference,

Defendants.

No. 23-2-00273-38

BRIEF OF AMICI CURIAE THE NINE ABSENT PAC-12 CONFERENCE MEMBER SCHOOLS IN SUPPORT OF PROPOSED-INTERVENOR-DEFENDANT UNIVERSITY OF WASHINGTON'S MOTION TO INTERVENE AND PROPOSED MOTION TO DISMISS

**TO: ALL PARTIES,**  
**AND TO: THEIR RESPECTIVE ATTORNEYS OF RECORD,**

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**STATEMENT OF INTERESTS OF AMICI CURIAE**

The relief sought by Plaintiffs Washington State University (“WSU”) and Oregon State University (“OSU”) in this lawsuit directly impacts the experiences of numerous athletics teams and thousands of student-athletes at the nine Pac-12 Conference members who are not parties to this lawsuit, amici curiae University of Arizona, Arizona State University, University of California–Berkeley, University of California–Los Angeles, University of Colorado Boulder, University of Oregon, University of Southern California, Stanford University, and University of Utah.

Each of these nine Conference members will be leaving the Pac-12 Conference after the 2023–24 academic year, but each remains a member of the Conference through this school year. WSU and OSU’s lawsuit seeks to expel these nine Conference members from the Pac-12 Board of Directors and prevent them from participating in Conference governance while they remain full Conference participants. Even though the lawsuit directly impacts amici, they were not named as parties and cannot be joined as parties for lack of personal jurisdiction and, for seven of the nine schools, because of sovereign immunity. Amici therefore submit this brief in support of Proposed-Intervenor-Defendant University of Washington’s (“UW”) motion to intervene and proposed motion to dismiss and in opposition to WSU and OSU’s anticipated motion for preliminary injunction.<sup>1</sup>

Amici understand that WSU and OSU are in a difficult position as the only two members of the Pac-12 Conference that are not leaving the Conference after the end of the 2023–24 academic year. The amici remain, as they always have, willing and ready to engage with WSU

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<sup>1</sup> Amici recognize that there is no specific rule permitting amicus participation in Washington Superior Court, but, as Washington courts have recognized, there is also no rule prohibiting it, and trial courts have the discretion to accept and consider amicus curiae briefs. *See, e.g., Parsons v. State, Dep’t of Soc. & Health Servs.*, 129 Wn. App. 293, 302 (2005) (“No specific rule permits amicus participation in the trial court, but neither is there any rule prohibiting it. We can see no reason a trial judge should not have discretion to permit such participation if it may be helpful to the court.”); Karl. B. Tegland & Douglas J. Ende, *Handbook on Civil Procedure*, 15A Wash. Prac. § 34.11. Amici respectfully request that the Court consider their brief here.

1 and OSU in productive discussions for how to resolve questions facing the Conference and each  
2 member's future. For that reason, the nine amici, as well as UW, entered into a mediation  
3 process with WSU and OSU shortly after WSU and OSU filed this lawsuit. The mediation is  
4 currently ongoing and scheduled to continue through October.

## 5 ARGUMENT

### 6 I. THE NINE ABSENT CONFERENCE MEMBERS AGREE WITH AND 7 SUPPORT UW'S MOTIONS TO INTERVENE AND DISMISS.

8 The amici, as departing Conference members absent from the litigation, agree with and  
9 support UW's arguments to intervene and dismiss the complaint or, in the alternative, to stay the  
10 action pending the completion of the Conference members' ongoing mediation.

11 *First*, like UW, the nine absent Conference members are indispensable parties to  
12 Plaintiffs' action because they are parties to the underlying Conference contract and they are the  
13 only entities that can rebut Plaintiffs' specific factual allegations and legal arguments related to  
14 each of the nine absent schools. *Bainbridge Citizens United v. Wash. State Dep't of Nat. Res.*,  
15 147 Wn. App. 365, 373–74 (2008); *Mudarri v. State*, 147 Wn. App. 590, 604–05 & n.14 (2008).<sup>2</sup>  
16 The relief that Plaintiffs seek, which would substantially affect the financial interests, bargained-  
17 for contractual rights, and experiences of the thousands of student-athletes of each of the nine  
18 amici, cannot be granted without these absent Conference members. RCW 7.24.110; *Matheson*  
19 *v. Gregoire*, 139 Wn. App. 624, 635 (2007); *Treyz v. Pierce Cnty.*, 118 Wn. App. 458, 462  
20 (2003).

21 *Second*, the amici institutions cannot intervene or be joined in this matter as parties  
22 because, as out-of-state institutions, they are not subject to personal jurisdiction and, for the  
23 seven public universities, because of state sovereign immunity defenses. *See, e.g., Ford Motor*  
24 *Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. --, 141 S. Ct. 1017, 1024–25 (2021) (requiring  
25 purposeful availment directly related to claims at issue for personal jurisdiction); *Franchise Tax*

26 \_\_\_\_\_  
27 <sup>2</sup> The trial court in *Mudarri* permitted sovereign entities to appear to argue in support of  
28 dismissal without waiving sovereign immunity. 147 Wn. App. at 599 n.10.

1 *Bd. of Cal. v. Hyatt*, 587 U.S. --, 139 S. Ct. 1485, 1492 (2019) (holding that “States retain their  
2 sovereign immunity from private suits brought in the courts of other States”).

3 *Third*, the amici agree with UW that well-established law in both Washington and  
4 California<sup>3</sup> holds that members of a voluntary association should be left to interpret their own  
5 bylaws, and the Court must abstain from interceding in interpreting the Conference’s Bylaws.  
6 *See, e.g., Couie v. Loc. Union No. 1849 United Bhd. of Carpenters & Joiners of Am.*, 51 Wn.2d  
7 108 (1957); *Oakland Raiders v. Nat’l Football League*, 93 Cal. App. 4th 572 (2001); *California*  
8 *Dental Ass’n v. Am. Dental Ass’n*, 23 Cal. 3d 346 (1979). Furthermore, the Pac-12 Bylaws set  
9 forth an internal dispute resolution procedure that all Conference members agreed to follow (but  
10 that WSU and OSU ignored).

11 *And fourth*, even if WSU and OSU could overcome these arguments for dismissal or  
12 stay, any motion for preliminary injunction should be denied because WSU and OSU are  
13 unlikely to succeed on the merits of their lawsuit and cannot show irreparable harm because the  
14 interpretation of the Bylaws that WSU and OSU urge this Court to adopt is wrong. Both  
15 common sense and the Bylaws read as a whole show that Plaintiffs’ interpretation is incorrect.  
16 Nothing in the Bylaws prevents a Conference member from leaving the Conference after its  
17 current media rights deals expire in the summer of 2024. A member breaches its obligations  
18 under Chapter 2-3 of the Bylaws only if it delivers a notice that it will actually withdraw before  
19 August 1, 2024. None of the ten schools that WSU and OSU seek to expel from the Board have  
20 delivered such a notice, because none of them will withdraw before August 1, 2024. At the very  
21 least, the Bylaws do not unambiguously support WSU and OSU’s interpretation, and the Court  
22 should abstain and either dismiss the lawsuit or stay the litigation until after the conclusion of the  
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24 <sup>3</sup> California law applies because the Pac-12 Conference is a California unincorporated  
25 association, and under the Restatement’s “internal affairs” doctrine, Washington courts apply the  
26 law of the “state of incorporation.” Restatement (Second) of Conflict of Laws § 302 & cmt. a.;  
27 *see id.* § 188 (also prescribing the “most significant relationship” test for matters of contract); *see*  
28 *also Bybee Farms, LLC v. Snake River Sugar Co.*, 625 F. Supp. 2d 1073, 1078 (E.D. Wash.  
2007) (applying the “internal affairs” rule under Washington law).

1 currently ongoing mediation. *See Davis v. Pleasant Forest Camping Club*, 171 Wn. App. 1027  
2 (2012) (under longstanding precedent, Washington courts “should not interfere” in intra-  
3 association interpretation disputes, unless the association’s “interpretation is arbitrary and  
4 unreasonable”); *Raiders*, 93 Cal. App. 4th at 582 (explaining that only if the challenged action  
5 “plainly contravenes” the association’s bylaws should a court engage in balancing act to  
6 determine whether to intervene).

7 **II. PLAINTIFFS SEEK A REMEDY THAT NECESSARILY WOULD AFFECT THE**  
8 **ABSENT CONFERENCE MEMBERS.**

9 In their complaint, WSU and OSU demand preliminary and permanent injunctive relief  
10 prohibiting (1) the nine amici and UW from voting on any matter before the Board, (2) the  
11 Commissioner from calling any Board meeting that includes a vote by any departing member,  
12 and (3) the Commissioner from executing any transaction “based on” votes cast by departing  
13 members in alleged violation of the Bylaws. Complaint ¶¶ 56–58. Plaintiffs also seek a  
14 declaration interpreting and applying the Pac-12 Conference Bylaws to conclude that the amici  
15 and UW have delivered “notice[s] of withdrawal” under the Bylaws, are “no longer members of  
16 the Pac-12 Board of Directors,” and “may not vote on any matter before the Pac-12 Board of  
17 Directors.” *Id.* at 15.

18 If the Court grants WSU and OSU the relief they seek, WSU and OSU would be able to  
19 make decisions by fiat through the Conference Board that would affect each of the indispensable  
20 amici institutions that cannot be joined, hundreds of millions of dollars in the schools’ revenue  
21 and liabilities, and the current and future experiences of their student-athletes. This would have  
22 far-reaching consequences:

- 23 • University of Arizona enrolls approximately 520 student-athletes and operates 19  
24 athletic programs that compete within the Conference.
- 25 • Arizona State University enrolls approximately 585 student-athletes and operates  
26 21 athletic programs that compete within the Conference.

- 1 • University of California–Berkeley enrolls approximately 800 student-athletes and  
2 operates 23 athletic programs that compete within the Conference.
- 3 • University of California–Los Angeles enrolls more than 620 student-athletes and  
4 operates 20 athletic programs that compete within the Conference.
- 5 • University of Colorado Boulder enrolls approximately 345 student-athletes and  
6 operates 15 athletic programs that compete within the Conference.
- 7 • University of Oregon enrolls more than 500 student-athletes and operates 17  
8 athletic programs that compete within the Conference.
- 9 • University of Southern California enrolls approximately 490 student-athletes and  
10 operates 18 athletic programs that compete within the Conference.
- 11 • Stanford University enrolls approximately 620 student-athletes and operates 24  
12 athletic programs that compete within the Conference.
- 13 • University of Utah enrolls more than 490 student-athletes and operates 16 athletic  
14 programs that compete within the Conference.

15 The nine amici schools in total operate 173 athletic programs that compete within the  
16 Conference for approximately 4,970 currently-enrolled student-athletes. The relief requested by  
17 WSU and OSU should not be granted without consideration of these nine absent Conference  
18 members’ significant interests.

19 **CONCLUSION**

20 For the foregoing reasons, the Court should grant UW’s motion to intervene and  
21 proposed motion to dismiss, and deny Plaintiffs’ anticipated motion for a preliminary injunction.  
22 In the alternative, the Court should stay this action pending the completion of the pending  
23 mediation.

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DATED this 9th day of October, 2023.

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies under penalty of perjury under the laws of the  
3 State of Washington, that on the 9th day of October, 2023, the foregoing was delivered to the  
4 following persons in the manner indicated:

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