

No. 24-43

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**In the Supreme Court of the United States**

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STATE OF WEST VIRGINIA, ET AL.,

v.

B.P.J., BY NEXT FRIEND AND MOTHER,  
HEATHER JACKSON,

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**JOINT APPENDIX (VOLUME II OF X)**

**(Pages 496-965)**

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(continued from front cover)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF ALANNA SMITH**

I, Alanna Smith, declare as follows:

1. I am an eighteen-year-old senior at Danbury High School in Danbury, Connecticut.
2. Though I am an elite female track athlete, I have personally experienced the devastating impact of competing against—and losing to—male athletes in my sport.
3. Though I only competed against these athletes during my freshman year of high school, they still impacted my placements, public recognition, medals, records, and how I physically and mentally prepared for competition.

***Athletic Background***

4. I was born into a family of athletes. My dad is a Major League Baseball Hall of Fame relief pitcher. My mom ran track in high school and still runs recreationally. One maternal uncle played professional football. Another played professional baseball. My twin brother is a three-sport athlete.

5. Sports was a big part of my world from a very young age, as I attended my dad's MLB games and events and ran with my mom. Having a twin brother who is naturally athletic helped instill a competitive drive in me, because as a little girl I loved to beat him in foot races at every opportunity.

6. The sports legacy that surrounds me was not something I consciously thought about—it just became a part of who I am. And without thinking about it too seriously, I knew I had the potential to excel athletically.

7. It wasn't until I started running with mom and developing endurance and strength that I considered competitively running track. So, in middle school, mom enrolled me in the local middle school track program. Between 2015 and 2018, I tried shot put, the long jump, the 55-meter dash, the 100-meter, 200-meter, 400-meter, and 800-meter races.

8. As I tried different track and field competitions, I realized that I enjoyed and excelled at running shorter distances. That's when I knew I wanted to concentrate on the 100-meter, 200-meter, and 400-meter distances. I wanted to run and get it over with!

9. During middle school, I became a three-peat 100-meter Connecticut State Champion. In eighth grade, I was also the 400-meter state champion.

10. My freshman year of high school I was a varsity cheerleader in the fall and winter and made it to the 2019 Connecticut High School Coaches Association All-State cheerleading team.

11. After cheerleading finished, I started outdoor track in the spring of 2019. I was nervous. The first few practices were hard. I felt that my teammates had high expectations based on my middle school track performance. And it didn't help that the first few track meets were outside in cold or rainy weather, courtesy of New England.

12. But I won. And it felt amazing. I had proven to myself, the coaches, and my teammates that I could be a contributor to a winning season.

13. As my freshman season played out, I set personal, conference, state and regional facility records; improved my personal strength and technique; and accomplished personal goals. I contributed to the Danbury High School sweeping the 2019 outdoor FCIAC, Class LL, State Open, and New England Regional Championship competitions, and received numerous honors such as The Ruden Report Player of the Week, The Ruden Report Player of the Year, the 2019 All-FCIAC First Team in the 100-meter, 200-meter, 400-meter, 2019 CHSCA All-State Girls' Outdoor Track, and was a recognizable component of the 2019 CHSCA Connecticut Team of the Year award.

14. Excelling on the track and setting personal records gives me a sense of personal achievement and confidence that carries over into all parts of my life. I love training, I love competing. Competing against girls like myself who work hard is rewarding. I compete to be the best, to be the fastest, to be a champion.

***Competition Against Males***

15. In spite of my focused, diligent practice and training, my success on the track has been limited by biological males competing in the girl's high school track in Connecticut.

16. I first competed against a male at the New York Relays in April 2019. My team was invited to attend, along with teams from approximately seventeen other states. I knew going in that there would be a male athlete named Terry Miller from another Connecticut school in my race, and I was upset. I knew I wouldn't win, and I knew we girls were competing for second place and beyond. As expected, Terry won the 100-meter dash. I placed fourth. Had Terry not competed in that race I would have been recognized as third place.

17. I learned later that Terry had competed for three seasons in Connecticut boys' high school track before switching to girls' track.

18. Later that season, I found out I would be racing against Terry Miller and a second male athlete, Andraya Yearwood, in the 100-meter dash at the 2019 Connecticut State Open that.

19. After learning this news, I thought "I don't stand a chance to win." I felt defeated before I even got set in my blocks. Terry was in the lane next to me in the 100-meter finals, and I assumed going in that Terry would win. Terry was disqualified from the race due to a false start. I felt badly for Terry as an athlete, but I could tell the rest of us girls were a bit relieved that the race would now be a little more fair.

20. Also at the 2019 Connecticut State Open, I raced Terry Miller in the women's 200-meter dash. Terry placed

first. Because of a male in my race, I was pushed from second place to third place.

21. Thus, at the 2019 State Open, I had one fair race: the 400-meter dash. I won that event.

22. From the State Open Championship, I advanced to the New England Regional Championship meet, which is quite an accomplishment for any athlete, but especially a freshman.

23. I won the 400-meter title at the New England Regional Championships. It was exhilarating, not only because I won, but because my race was free of male athletes. It was a level playing field.

24. The 200-meter dash was a different story. I would have also been runner-up in the 200-meter and received a silver medal and earned my team more overall points, but Terry Miller placed first and pushed me down in the rankings to third. Third place is nothing to be ashamed of if it is won fair-and-square, but my race was anything but fair.

25. My story is not unique. Girls across Connecticut have experienced similar displacement, loss of recognition, and even championship title losses solely because my state allowed two biological males to compete against biological females. Between 2017-2020, these two male competitors won 15 women's state championship titles and set 17 new meet records in track and field. These statistics are in the back of my mind no matter how hard I train and how well I perform

26. Even though the males have graduated now and are no longer competing against us girls in Connecticut, we still feel the effects of their participation. For example, in the 2022 Connecticut indoor track and field season—long after Terry Miller and Andraya Yearwood



graduated—I ran a 6:96 time in the 55m dash. This would have set a new Connecticut girls’ state record. But back in 2019, Terry Miller set a record of 6.95 in the 55m dash, eclipsing my best time. If not for Terry competing in the girls’ category three years ago, I would have been recognized for my accomplishment—setting a new record for female athletes in my state.

***Fairness in Women’s Sports***

27. It has taken me years to develop the personal confidence and sense of belonging I now feel on my track team. The addition of males to girls’ sports fills me with a sense of defeat before I even set up in the blocks. I deserve the opportunity to be confident, to be running against girls who have the same biological makeup that I do.

28. The addition of males in girls’ sports is frustrating and disappointing to me. So often I go to the blocks and know that I am the fastest girl on the line. But I also know that my best effort will not be enough when I’m faced with a competitor who is bigger, faster, and stronger than me simply because he was born male.

29. I want to make sure that female athletes of today and tomorrow do not have to face the same sense of defeat, disappointment, and lack of support that I have felt. So many girls across my state believe the situation is unfair but are afraid to stand up and speak out for fear of retaliation from coaches, schools, the media, and strangers.

30. I am proud of all female athletes who stay strong and do their very best when rules and laws put unfair challenges in their way. I am proud to be a voice for female athletes who are surrounded by unfairness in their sport.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Alanna Smith

Alanna Smith

Dated: 04/12/2022

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF SELINA SOULE**

I, Selina Soule, under penalty of perjury, declare as follows:

1. I am a nineteen-year-old resident of Boca Raton, Florida, in Palm Beach County and have personal knowledge of the information below.

2. I am a sophomore and female athlete at Florida Atlantic University (FAU) in Boca Raton, Florida. Competing in track and field is my passion.

***Athletics Background***

3. Sports are a huge part of my family. Both of my parents were multi-sport athletes. My dad competed in track, cross-country, baseball, and football. My mom was a competitive runner and figure skater, and now coaches figure skating.

4. My mom first coaxed me onto the ice rink at Rockefeller Center when I was just three years old. At age five, I started taking figure skating lessons. During elementary school, I began entering figure skating competitions—something I continued through my sophomore year of high school.

5. Figure skating was something my mom and I did together. We spent a lot of time on the ice, as she not only helped me learn to skate but even skated with me at times. By age thirteen, I was a volunteer figure skating coach helper, which turned into a paid coaching position at age fifteen. I continued coaching figure skating until I moved away for college.

6. The axel jump—a figure skating showstopper!—is my favorite figure skating element. Figure skating is not only a beautiful, graceful sport, but it is athletic too. It requires strength, speed, balance, and skill to execute those jumps and spins.

7. But I remember one thing very distinctively about figure skating: I did not like the scoring. Scoring was subjective; it was harder to clearly measure my achievements. (This is one reason I love track. My race times clearly show how fast I run so scoring is objective, not based on the subjective opinion of an individual judge.)

8. My mom introduced me to running when I was just five years old. I began running in our community's summer mile-long "fun runs" with my mom. Even at that young age, I knew two things with certainty: I loved to run, and I hated running long distances!

9. When I was around eight years old, my mom signed me up for my first Hershey Track and Field meet that was held in our town in the spring. It was the first time I set foot on a track—and I loved it. I realized that I was fast,

and that I enjoyed competing to win. Running became my passion. And I enjoyed some success in the Hershey events as I competed there in third through sixth grade. For example, I qualified twice for state level meets. In sixth grade, I won all three of my events.

10. After the Hershey events, I competed in the Nutmeg State games, the largest amateur multi-sport sporting event in my home state of Connecticut. These meets were ones my mom and I could do together. My favorite memory of the Nutmeg games was that my mom taught me how to long jump just a couple weeks before my first competition. And I went on to *win* the long jump that year for my age category.

11. But my freshman year at Glastonbury High School in Connecticut was my first school opportunity to compete in track and field. It was my first time on a school team with organized team practices and workouts—and I loved it.

12. Track and field competitions involve a variety of races and events. In track there are sprints, middle distance races, long-distance races, relay races, and hurdle races. And field events include long jump, triple jump, high jump, pole vault, shot put, discus throw, javelin throw, and hammer throw.

13. I am a short-distance sprinter and long-jumper. During high school, I competed in the 55-meter dash, 100-meter dash, 200-meter dash, the 4x200 and 4x100-meter relays, and the long jump. I also ran the 300-meter dash a handful of times.

14. When I joined my high school track team in my freshman year, I quickly became the school's best long jumper. And after only a few competitions, I became the permanent starter for the 4x200-meter relay.

15. I am proud of my high school athletic accomplishments. I was a ten-time All-Conference Honoree recipient, a five-time state title holder, three-time All New England award recipient, a four-time National qualifier, and set five new Glastonbury high school records (including one that was previously set in 1976).

16. Track means everything to me. It is my passion and my happy place. When I run, I set aside everything else in life and just run.

***Facing Male Competition in Girls' Track***

17. But my high school track and field experience was not without frustration. During all four years of high school, I had the deflating experience of competing against male athletes in the girls' category.

18. The first time I competed against a male athlete in the girls' category was during my freshman year of high school at the May 2017 Middletown Invitational in the 200-meter dash. The gun went off at the start of the race, the male athlete left most of us girls in the dust. I knew immediately that this was not right and that girls would miss opportunities to succeed. Just days later, that same male went on to win the 2017 Connecticut Interscholastic Athletic Conference (CIAC) Class M Women's outdoor track championship in both the 100-meter and the 200-meter sprints.

19. The losses happened again and again. During my sophomore year, another male athlete joined girls' track and I had to face two male competitors at the 3rd Greater Bristol outdoor track and field invite in the 200-meter dash. The males took first and second; I crossed the finish line third. Had the males not been competing in the girls' category, I would have won that race.

20. These two males, Terry Miller and Andraya Yearwood, impacted my placement at statewide championship meets. At the 2018 CIAC State Open Championship in the Women's Outdoor 100-meter dash, the males again took first and second. Because of their participation in the women's category, I was bumped down to sixth place when I should have earned fourth place.

21. But one of my more painful memories of loss involved the 2019 Connecticut State Open Championship. I missed qualifying for the state championship 55-meter final by just one spot, and the chance to qualify for the New England Regional championship by just two spots. The top two spots were taken by males. If not for those two male competitors in my race, I would have had the opportunity to compete in the championship final and for a coveted spot at the New England Regional championship.

22. While I was in high school, these two males collectively won 15 Connecticut women's state championship titles in girls' high school track and field and set 17 new individual meet records.

23. It is demoralizing and frustrating to compete against someone who has unfair physical advantages over you, because no matter how hard I train or how hard I try, there is nothing I can do to overcome that disparity. We girls train to win; not to win second place or receive a participation trophy. Some girls I know were so demoralized by the experience of losing to males that they abandoned certain track events and changed sporting events entirely. Other times coaches tried to convince girls to change their events just so the girls would have a chance to succeed.

24. Because of male competition, I have lost opportunities to compete at world class tracks. I have lost opportunities to compete in front of college coaches and scouts. I have lost opportunities to win titles and public recognition of my achievements. I have lost opportunities to win recognition and event points for my school.

25. And the heartbreaking thing is that my story is not unique. Many other girls across the state of Connecticut lost out on similar opportunities.

26. It felt so unfair. I knew I had to stand up. My parents and I reached out to school administrators and coaches. We reached out to CIAC officials to ask for a policy change. But no one would listen to us. Instead, they silenced us.

27. My parents and I were left with no other option but to file a federal lawsuit to protect the integrity of women's sports under Title IX. It was a huge step, a scary step. But someone needed to speak out for girls in Connecticut. That lawsuit is still ongoing.

### ***Competing in Women's Collegiate Athletics***

28. It was my dream to run track in college. Despite the unfairness of my high school track experience, I hoped to put that experience behind me and have a fresh start and level playing field in college.

29. After visiting several colleges, I decided to attend the College of Charleston in South Carolina. I attended the College of Charleston in 2020-21 for my freshman year. However, it was a tough school year with COVID and at the end of the year, I re-visited my options.

30. I received an offer to run for Florida Atlantic University, and I immediately knew that was the right fit for me. My dream has always been to attend college and



run in Florida, and I finally have the opportunity to fulfill that goal. And I had always hoped to end up somewhere warm with lots of sunshine, so competing in Florida was a dream come true.

31. FAU has a NCAA Division I track and field team and competes in the East Division of Conference USA.

32. Being part of the team is quite an honor. And there are many additional side benefits to being a collegiate athlete: access to top-tier coaching, facilities, and equipment; consultation with nutritionists and dieticians; paid travel to games, academic support services; medical and wellness care; access to psychologists; access to the NCAA Student Assistance Fund; team gear and apparel; and the opportunity to make money on my own name, image, and likeness.

33. For example, the Florida Panthers, a professional ice hockey team, recently announced that they were sponsoring FAU female athletes and giving us an opportunity to partner with them. I do not yet know all that will entail, but we receive tickets to home games, team apparel, the opportunity to partner with their brand. As athletes, we also have the opportunity to make money on our name, image, and likeness by appearing in ad campaigns for brands like Nike and Adidas.

34. At the end of the 2021-22 academic year, I will still have four more years of NCAA eligibility due to COVID.

35. My teammates and I train hard to win. We weightlift, complete running drills, and run sprints time and time again. It takes incredible work and dedication to win a race determined by hundredths of a second. I have trained much of my life striving to shave mere fractions of seconds off my race times.

36. I had to make many sacrifices over the course of my athletic career to play the sport I love. I have missed school dances and spring breaks, family events and holiday trips, and friends' birthdays and vacations. I have given up weekends and free time. I stayed late after school for practice. And the commitment to track has only increased during my time spent training in college.

37. But I make these sacrifices because I want to be the best that I can be. I want to win—not just for myself, but also for my teammates. And the motivation to win is what compels me to train as hard as I can.

38. I love my sport. I get on the track and I can let everything in my life go and I can be free to focus on running. It's exhilarating to see all the training and hard work pay off on the track.

39. But track has taught me more than just how to run fast down the track. I have also learned life skills. It has taught me physical and mental toughness. I have learned perseverance and good sportsmanship. I have learned that hard work pays off. And that making sacrifices to excel at something reaps future benefits. It opened new financial opportunities, personal development opportunities, and even academic opportunities. And it has given me something to strive for.

40. I am currently majoring in criminal justice with the goal of being a lawyer. But I always have my eyes on the track, and I would love to go pro after college if the right door opens.

### ***Fairness in Women's Sports***

41. When I heard that Florida's legislature passed the Fairness in Women's Sports Act in late April 2021 to

protect the integrity of women's sports, I enthusiastically supported it.

42. In fact, it was my incredible honor to be invited to attend the bill signing ceremony in early June 2021 because my own personal story had played such a role in motivating lawmakers to pass a bill protecting Florida's female athletes. Little did I know at the time that Florida's Fairness in Women's Sports Act would later protect me, too, as I start competing for a public university women's team in Florida.

43. When that law was later challenged in federal court, I decided to speak up for girls who are afraid of retaliation from the media, school officials, and coaches and filed a motion to intervene in the lawsuit. I fear that too many women feel pressured to remain silent about their real views. And if someone does not speak up for women, I fear that we could see the end of women's sports. There will be boys' sports and co-ed sports. But women's sports as we know it will be gone.

44. I know from my own past experience in high school that males competing in women's sports takes away opportunities from women—whether that is a spot on the team, a spot on the podium, an athletic scholarship, the ability to benefit from her likeness, or recognition and awards—and it defies the entire purpose of having separate women's sports.

45. Women have fought hard for many years to have equal athletic opportunities. I want to make sure that girls in the future can continue to compete in the sports they love. If girls do not have equal opportunities, I fear they may choose not to be involved in sports at all if they feel they cannot win or possibly even get physically hurt competing against a stronger, faster male.

46. I believe that ensuring an equal playing field for women to be champions in their own sport is a women's rights issue. But this isn't just about fair play and winning for me. I want to protect the fairness and safety of women's sports for female athletes everywhere. I want to ensure that future generations of women have access to the same equal athletic opportunities that shaped me and my love of sports.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Selina Soule

Selina Soule

Dated: 04/13/2022

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF DARCY ASCHOFF**

1. I am a 2 year resident of Lehi, Utah, and have personal knowledge of the information below.

2. As a former collegiate athlete, high school varsity volleyball coach, and mother of two competitive high school volleyball players, I have observed the mental and psychological toll on female athletes of being forced to compete against a male.

***Athletic Background***

3. Volleyball runs in my family. My mom played as a youth, I competed in college, and now my daughters are star high school volleyball athletes with dreams of competing in college.

4. I began playing competitive volleyball as a freshman at Delta High School as a middle blocker.

During my senior year, my volleyball team won the 1995 Utah State Championship, and I was awarded MVP (most valuable player) for our team.

5. Throughout my sophomore, junior, and senior years of high school, I also played club volleyball.

6. I was recruited and given a scholarship to play varsity volleyball at Dixie State College (now Dixie State University), an NCAA Division I school. From 1996 to 1997, I played for Dixie State College.

7. After my sophomore year of college, I transferred to Hawaii Pacific University, an NCAA Division II school, where I was also offered a volleyball scholarship. From 1998 to 1999 during my junior and senior years of college, I played volleyball for Hawaii Pacific University.

8. In 1998, during my junior year of college, my Hawaii Pacific volleyball team won the NCAA Division II Nationals Championship. This was the highlight of my volleyball career.

9. In 2016, my entire Hawaii Pacific University volleyball team was inducted into Hawaii Pacific's Hall of Fame to honor our 1998 Nationals Championship.

10. I continued to play volleyball recreationally after college. My two daughters, Ajah and Jahslyn, have said that one of their earliest memories is watching me play recreational volleyball at a park across the street from our home. I would bring my daughters with me, and Ajah would beg whoever was on the sidelines not playing volleyball to pass the ball with her.

11. Both of my daughters went to volleyball summer camp at young ages, and eventually began competing in school and club volleyball.

12. As my girls reached high school, I started coaching their school and club teams.

13. In 2015, I coached Lanakila club volleyball for the 14 and under team, and in 2016 I coached Lanakila club volleyball for the 12 and under team, respectively.

14. From 2018 to 2020, I also coached girl's Hawaiian Style Volleyball, a competitive club volleyball team on Maui. In the 2018-2019 season, I coached the girls' 14 and under team, and in the 2019-2020 season I coached the girls' 16 and under team.

15. I served as assistant girls' varsity volleyball coach at Maui High School during the 2018 and 2019 seasons. Maui High School competes in the Maui Interscholastic League of the Hawaii High School Athletic Association.

***My Daughters' Experience Competing Against a Male Athlete***

16. The 2019-2020 volleyball season was my girls' final volleyball season at Maui High on our beloved island of Maui. Ajah was a sophomore and a team captain, and Jahslyn was a freshman. The Maui High team was a young team in a building season.

17. Ajah and Jahslyn worked so hard to develop their volleyball skills to become their best. They attended summer camps, participated in daily practice during high school season, and then continued to play volleyball year-round with highly competitive national club teams. These teams travel nationally and practice 2-3 times per week.

18. But despite my daughters' hard work, the 2019-2020 varsity girls' volleyball season was unusually tough: they were forced to face a male athlete on another team.

19. Both of my daughters knew this athlete, Jhene Saribay, from summer volleyball camps because training

is co-ed. From what I learned, this male competed on the Kamehameha boys' volleyball team for several years, and only recently switched to competing on the girls' team.

20. My daughters heard rumors from other girls on the Maui High team that this male athlete was planning to play on the Kamehameha High girls' varsity volleyball team, but at first they didn't believe it.

21. I first heard about the situation from the Maui High head coach. Initially I thought it was a joke: this could not be happening. But it was. And our coach's hands were tied—the Maui High athletic director made clear that our head coach could not make waves about this situation, or he would lose his job. Other parents at Maui High were upset but were not willing to act.

22. My daughters competed against this athlete 3 times and their volleyball team lost every match.

23. Based on my observations as a mother and assistant coach at my daughters' volleyball games, this male athlete dominated Maui varsity girls' volleyball in the 2019-2020 season. He dominated playing time. He jumped higher. He spiked the ball harder and faster and further. From my perspective, he was one of the best hitters on Maui, despite his average stature.

24. The girls, on the other hand, were nervous and intimidated by the male on the other side of the net. They seemed mentally defeated before stepping onto the court. They would often "duck and cover" or assume a defensive position rather than prepare to respond to his spikes. My daughters said they were afraid of getting hurt. My daughters' teammates told us that they felt demoralized. Some wondered why they should even bother playing in matches against Kamehameha that season, because they knew the male athlete's team would beat them.



25. Volleyball is a very physical sport. And a male competing in girls' volleyball is a safety issue. I'm concerned that one of my daughters could be hurt, or that a male could take away their scholarship opportunities to compete in college.

26. Both of my daughters love the friendships they built through volleyball, as well as the comradery and competitive nature of the sport. They grew stronger and more powerful in hitting and jumping. They gained self-confidence and poise. I am proud of their hard work and drive to be the best they can be at their sport. Volleyball is all about testing your limits—how high you can jump, fast you can run, hard you can swing—and knowing that males have an advantage makes it hard for girls to compete.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Darcy Aschoff

Dated:

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF CYNTHIA MONTELEONE**

I, Cynthia Monteleone under penalty of perjury, declare as follows:

1. I am a forty-six-year-old resident of Lahaina, Maui County, Hawaii, and have personal knowledge of the information below.

2. I am a mother, a coach, and track and field athlete for Team USA. Both my daughter and I have had the frustrating experience of competing against a male athlete in our sport.

***My Competition Against a Male Athlete***

3. In September 2018, I competed at the World Masters Athletics Championships in Malaga, Spain. I was eager to put my hard work to the test. And it paid off: I

took bronze in the W40 400, along with USA golds in the 4x100 and 4x400.

4. But I was shocked to find out that one of my competitors was a biological male from Colombia who had just recently started identifying as female. The athlete had a much larger build than any of the female athletes.

5. I began to ask questions as to the fairness of this issue. The European officials stopped the track meet, conferred, and decided that the race had to continue and urged me to file a complaint with the Team USA managers.

6. Not only did the Team USA managers refuse to file a complaint or inquiry, they warned that for my own safety, I should not speak up about this issue.

7. My freedom of speech is important to me. I will not be silenced. I continue to defy this directive and speak up because I see firsthand the harm being done to my fellow female athletes.

8. This is not about being a sore loser—I beat the male athlete by just a few tenths of a second. This is about fairplay for all women. The same male athlete just a year later beat my USA teammate in the hurdles for a place on the podium at the 2019 World Masters Athletics Championships in Poland.

9. I see the psychological and emotional heartbreak of women. After training so hard to be the best that they can be at their sport, and spending so much time away from their families, they are devastated to see that sacrifice wasted because they were beaten by a biological advantage that no amount of training or sacrifice can overcome.

10. Many of the girls I coach suffer from anxiety over having to compete against male athletes. We all know the powerful scientific neurotransmitter connection between our minds and our bodies: When you *think* you can win, you have a better chance of doing it. It's proven.

11. Science and common sense tell us that male and female bodies are different. No amount of testosterone suppression can change the amount of myonuclei in a male body, making it easier at any point in their life to build more muscle than the female sex. Not only that these cellular level advantages dictate that male bodies will be more powerful with faster twitch fibers than those of the female sex.

12. Women are not just hormones. Our athletic performance is impacted by our cycle, birth control, and pregnancy—something no male who identifies as female has to address.

13. As a masters athlete, I am especially concerned because female hearts shrink as we age, while the male hearts enlarge, all of this despite any “hormone treatment.”

### ***My Daughter's Competition Against a Male Athlete***

14. But it was not just on the world stage that I experienced the demoralizing trend of males displacing females in their own competitions; it was also on my home island of Maui, Hawaii.

15. A year and a half after my experience in Spain, my daughter, Margaret, lined up for her very first high school track meet. I had watched proudly as my strong and determined girl did all the right things — made personal, difficult sacrifices to train her body to be as fast and fit as possible for her first race.

16. Yet all her hard work seemed for naught as she raced against a male-bodied athlete who had just transferred from the boys' volleyball team to the girls' team the season before. The athlete breezed right by Margaret to win first place, pushing her into second place.

17. My daughter lost her very first race to this athlete who ran so fast in the first 100 meters of the 400-meter race that the individual could have set a state record.

18. The Maui athletic community is small and tightknit. I learned that this biological male had grown up wrestling and had just injured a girl during volleyball, giving her a concussion with a powerful spike. This individual was casually trying out track and had trained only two weeks before running next to my daughter who had trained all year.

19. This athlete also raced against the girls I coached. One senior girl was crying because she told me she knew there was nothing she could do to win the conference championship that she had dreamed of winning since she was a freshman. She told me, right after that male athlete raced, that she was quitting track, even though I told her she had what it took to possibly run in college. She turned to me and asked, "What's the point, if it's not fair?"

20. COVID cancelled the rest of our season, but these horrible memories were never cancelled from my mind. We must consider the mental and physical health and safety of the biological female athletes and provide an equal and level playing field for them to achieve all of the opportunities the male sex has.

21. We must not hold the feelings and mental health of one group as more important than another. The mental health of our daughters, granddaughters, sisters, and teammates matter.

22. All of the lessons I teach as a coach about hard work paying off: these lessons fall apart when a mid-level male athlete doesn't have to work as hard and can beat our hardest working, most talented females.

23. In 2019 in Hawai'i, about 350 out of 700 male athletes ran faster than the fastest female in Hawai'i. Quite literally, a mediocre boy could beat the best girl. Tens of thousands of high school boys could run faster than the most decorated Olympian in history, Allyson Felix. If we do not protect women's sports, our girls will see their athletic dreams crushed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Cynthia Monteleone

Cynthia Monteleone

Dated: April 19, 2022

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF MADISON KENYON**

I, Madison Kenyon, declare as follows:

1. I am a twenty-year-old resident of Pocatello, Idaho, and have personal knowledge of the information below.

2. I am a junior and female athlete at Idaho State University in Pocatello, Idaho,

where I compete in women's cross-country and track. Running is my passion.

***Athletics Background***

3. Athletics has been my world from a very young age. Both of my parents were high school athletes, so competition—especially among my siblings—was like the air I breathed growing up.

4. I first kicked a soccer ball at age three, and I was hooked. That first encounter with a ball led me to compete for 15 years on various club soccer teams.

5. Through playing soccer, I learned both that I am fiercely competitive and that I love to run.

6. Admittedly, I hated running at first, because it is hard work. But the more I ran, the faster I got and the more I enjoyed it.

7. In 6th grade, that love of running and competition led me to try cross-country—a sport I have competed in every fall since. In my freshman year of high school, I also started running track.

8. Running is my happy place. I love pushing my body to its limits, spending time outdoors, and doing it all with a sense of camaraderie and fun alongside some of my closest friends.

9. I'm proud of my accomplishments. In high school, I set five different school records, and as a sophomore was even voted unanimously by our coaches for the honor of "athlete of the year."

### ***Competing in Women's Collegiate Athletics***

10. I decided to attend college at Idaho State University (ISU) because it is a big university nestled in a small town with plenty of opportunities for outdoor activity and track competition. The athletic scholarship I received from ISU has not only helped finance my athletic career but has also helped finance my dream of becoming a nurse someday. I am currently pursuing a degree in nursing.

11. As an ISU freshman in the 2019-2020 academic year, I made the cross-country team and competed in the



4-kilometer (2.49-mile), 3-mile, 5-kilometer (3.12-mile), and 6-kilometer (3.73-mile) events. I was thrilled.

12. But that enthusiasm turned into confusion when, at the start of the fall 2019 cross-country season, I was informed that I would be competing against a male athlete.

13. At first, I was incredulous that any biological male would be allowed to compete in the women's category. This couldn't be happening.

14. So I researched the student. I found out that June Eastwood competed on the University of Montana's men's cross-country team for three years, before switching to compete on its women's cross-country team. I also learned that while competing as a man, Eastwood ran times in at least one event that was faster than the NCAA collegiate women's record. My heart sank.

15. So as I got into position at the starting line of my first ever collegiate cross-country race, I faced a hurdle I never expected to encounter: a male athlete.

16. In the 2019 cross-country season, I lost to Eastwood three times:

- a. 2019 Montana State Cross-Country Classic in the 3-mile event.
- b. 2019 Big Sky Cross-Country Championships in the 5k event.
- c. 2019 NCAA Division I Mountain Region XC Championships in the 6k event.

17. In all three races, Eastwood not only beat me by a significant margin, but also bumped me down to a lower placement than I would have received had I only competed against other women. That may not seem like a big deal to

some, but placements matter to athletes. I want to know that I earned my placement fair and square. Fair competition pushes me to better myself and try harder; unfair competition leaves me feeling frustrated and defeated.

18. It was discouraging. My heart sank as I watched Eastwood placing and medaling in the women's cross-country races in meet after meet.

19. Cross-country athletes, like me, usually also compete in indoor and outdoor track. So, during the winter 2020 indoor track season, I competed in the 3k (1.86-mile), the mile, and the distance medley relay events.

20. Again, I raced this male athlete during the indoor track season. At the 2020 Stacy Dragila Open Women's Indoor Mile, Eastwood took 2nd place and I took 8th. Eighth place is nothing to be ashamed of if won fairly—especially as a freshman competing in a race dominated by juniors and seniors—but the competition is not fair when one of the athletes in the women's category is a male with the strength and speed advantages that come from male physiology.

21. And at the 2020 Indoor Big Sky Championship I, along with three other ISU teammates, competed in the distance medley relay against Eastwood's relay team. A distance medley relay is made up of a 1200-meter leg, a 400-meter leg, an 800-meter leg, and a 1600-meter leg. Montana State's relay team was in 6th place before Eastwood began the final 1600-meter leg of the race. During Eastwood's leg, Eastwood advanced Montana's relay team not one or two, but *four* positions to finish in 2nd place. My team took 5th, though we would have placed 4th if not for Eastwood's participation. We lost not only a placement, but team points as well.

22. Also at the Big Sky Championship, I watched in disbelief as one of my teammates lost her bronze medal and place on the championship podium because Eastwood took first place in my teammate's women's mile event and bumped her to fourth place. It was heartbreaking to watch.

### ***Fairness in Women's Sports***

23. I believe that allowing males to enter women's sports defeats the entire idea of fair competition. Sex segregation in sports helps maintain fair competition so that no athlete has an unfair advantage over another. And it helps ensure that if women like me work hard, we have a shot at winning.

24. I am studying nursing and plan to enter the medical field. In my biology coursework, it is clear that the biological differences between male and female are not matters of personal opinion, or features that can be changed or chosen. I *am* female, not because I chose to be female, or identify as female, but because every cell in my body is marked with XX chromosomes and my entire body developed in alignment with those female markers.

25. But you do not need to be a medical expert to understand this. I know from everyday experience that since the boys in my class went through puberty, the males around me are generally bigger, faster, and stronger than the females, simply because they are male. Even the rules of sport implicitly acknowledge this. For example, men's cross-country races are longer than women's cross-country races.

26. In March 2020, Idaho became the first state in the country to pass a law to protect women's sports. H.B. 500, the Fairness in Women's Sports Act, protects women's sports by ensuring that only female athletes compete in

sports designated for women or girls. I intervened in a lawsuit to help defend that law because I want my races to be fair and a test of skill and hard work. I do not want to wonder whether I am training countless hours for inevitable defeat, or whether I will even have a chance to win against a physically advantaged male athlete.

27. I fear that if we are no longer allowed by law to recognize the objective existence of women, that it will be a huge loss to women's rights.

28. Sports was like the air I breathed growing up, and I want my kids to have that same experience. And as hard as my teammates and I work to be competitive, I do not want to see women's sports fade away as a separate category because males compete in women's divisions, and women give up trying to compete because they do not think they can win. I fear that we will soon effectively have men's sports and co-ed sports, but no dedicated category for females only.

29. And I do not want to see women lose their legal protection and progress under the law because we can no longer identify what a woman is.

30. To my knowledge, June Eastwood has graduated. But I learned through my involvement in defending Idaho's Fairness in Women's Sports Act that another male, Lindsay Hecox, wants to compete on the women's team at Boise State University—a university that my team competes against. And if Title IX and Idaho's law aren't upheld, other males will almost certainly follow.

31. I believe everyone should be able to compete, but it must be done fairly. It is not fair for women's competitions to be open to male athletes. And women's sports itself will lose its meaning, and its specialness, if males can be redefined as females.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Madison Kenyon  
Dated: April 14, 2022

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF MARY MARSHALL**

I, Mary Marshall, declare as follows:

1. I am a twenty-one-year-old resident of Twin Falls, Idaho, and have personal knowledge of the information below.

2. I am a senior and female athlete at Idaho State University in Pocatello, Idaho, where I compete in cross-country and track and field.

***Athletics Background***

3. I first started playing basketball at 7 or 8 years old, and I continued through my sophomore year of high school. I enjoyed the competition, the adrenaline rush, and the sheer fun of the game.

4. In 8th grade, I started running track. My sophomore year of high school I started running cross

country to get in shape for basketball. But to my surprise, I found out that I loved running *more* than playing basketball! So, I kept running races. And my sophomore year of high school, I dropped basketball altogether and started focusing on cross country and track.

5. I discovered that I am good at running. In two back-to-back years, my high school medley relay team won the State championship in our division. My junior year I won the state championship in the 300 intermediate hurdles. And in my senior year of high school, I won the State championship in the 800m for my division.

6. I love to run. It gives me confidence, improves my mood, and allows me to explore the great outdoors on foot. But being a competitive female athlete is about more than just running long distances. It is about community. My teammates have become my closest friends. We push each other to be our best, help one another through disappointments and losses, and cheer one another on as we celebrate victories. We travel together for sporting events and share overnight lodging: it's like a sisterhood. We enjoy one another so much that we even spend our free time together. Through running competitively, I have made some of my closest lifelong friends.

### ***Competing in Women's Collegiate Athletics***

7. I chose to attend college at Idaho State University (ISU) because it is close to home and I really liked my track coaches. And I am grateful to be one of the lucky ones to benefit from a women's track scholarship.

8. In college, I am primarily a mid-distance track athlete, focusing on shorter distances like the 800-meter and the mile. But I also compete in cross-country to stay in shape. In cross-country, I generally compete in the 5k.

9. Training is hard work. On Tuesdays and Thursdays, I usually have a two-hour workout with my team. On alternate days, my teammates and I get together for a five-to-six-mile run. Additionally, we have an hour-long weightlifting session on Mondays and Wednesdays.

10. But in the fall of my sophomore year of college, I learned that I would be racing against a male athlete who was competing on the University of Montana women's team because he identifies as female. I was appalled. I do not know how anyone could think this was fair to female athletes. Males are naturally fitter and faster than females.

11. I raced against this athlete, June Eastwood, not once, but twice. First, I competed against Eastwood in the Montana State Cross-Country Classic 3-mile event in the fall of 2019. And then I competed against Eastwood again in January 2020 at the Stacy Dragila Indoor mile event.

12. I lost both times. I was displaced and pushed down to a lower spot in the rankings than I would have earned had the playing field been level.

13. When I lose to another woman, I assume that she must train harder than I do and it drives me to work harder. If I lose to a man, it feels completely different. It's deflating. I wonder whether he works as hard as I do, whether he was even trying, or was that an easy race for him. It makes me think that no matter how hard I try, my hard work and effort will not matter.

14. Members of the men's track team sometimes do easy runs with me and my teammates on the women's track team. But we women are under no illusion that we would be competitive in a race against these men. Even our easy runs are at different paces. For example, an easy



run for women is usually at an 8:30 pace, while an easy pace for men is around 7:30.

***Fairness in Women's Sports***

15. When I first heard about Idaho's H.B. 500 Fairness in Women's Sports Act, I was really excited. I hoped that this would be the solution we needed to keep men out of women's sports. And that's why—when the law was later challenged in court — I chose to stand up and intervene in the lawsuit to defend the law. I wanted to make sure that the voices of women were heard.

16. I have personally seen the negative impact on women when Eastwood was allowed to compete against women's teams, and I fear that as men realize they only need to "identify" as women in order to compete in the women's category, others might follow suit. In fact, I learned through my lawsuit that a male athlete, Lindsay Hecox, wants to compete on the Boise State women's track and cross-country team—a team that I compete against. I want to stop this before it becomes popular.

17. I want to preserve the camaraderie and sisterhood that comes from competing with an all-female team. There is no way that I would feel comfortable sharing a hotel room with a male athlete, regardless of how that person identified.

18. And I want other young women to benefit from sports as I did. I did well in high school sports. But if a boy had decided to compete against me in basketball, or track, or cross-country, I am not sure that I would have kept on competing. Success drives endeavor. And if I knew that I could not win, I might have dropped out of sports altogether.

19. That very idea concerns me. Sports has played such an important role in my life. It taught me how to work in groups and as a team. It taught me how to persist through disappointment. It taught me that if I put in the work, I will get the results. It has taught me how to interact with people I do not know, and how to respond to those in authority over me. It has given me the confidence to study business, marketing, management, and economics at ISU because I hope to be an entrepreneur and own a business someday. These are the benefits that I want to preserve for the next generation of women.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Mary Marshall  
Mary Kate Marshall  
Dated: 4/19/22

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF HALEY TANNE**

I am a 22 year-old senior at Southern Utah University and have personal knowledge of the information below.

***Athletic Background***

1. I have always loved running. As a kid, I was fast and could outrun a lot of people. But I didn't get into running seriously until the summer before my freshman year of high school. My older sister (who later ran in college) "forced" me to get up early with her and run. Once I got into shape, I loved it.

2. As a high school freshman, my coach pulled me aside and said that I had the potential to run in college. I was surprised!

3. And I started training harder. My family wasn't financially well off so I worked hard to earn the

participation fees and gear fees to run in high school. I worked in my coach's woodshop over the summer, and later transitioned to be a pool instructor to earn money.

4. It was a lot of work. I worked throughout my summers, went to bed early and missed out on the typical teenage experience of my peers.

5. In high school, I was our school's top ranked female athlete. I felt a lot of pressure being at the top. But the desire to be the best and potentially earn a scholarship for college kept me pushing to stay at the top.

6. Being a female athlete is not easy and requires sacrifice. To get faster and hold my spot required a lot of self-discipline in my diet, bedtime, and homework.

7. My teammates say I'm fiercely loyal. I'm hardworking, smart, reliable, and I invest deeply in relationships.

8. I love racing! I love the feeling when my legs are burning, almost numb, lungs are burning, arms are burning and so fatigued. But when you cross that finish line, all the pain melts away.

9. There are never "days off" in the life of a distance runner. You have to really love running to excel in this sport. I have many favorite runs near the Southern Utah University campus. I love the Canyon Run, Dikes Run, and the Main Street Run. I love running in this part of Utah and losing myself to the scenery. It gives me temporary relief from stresses or negative emotions I'm facing.

10. When I was deciding on which college to attend, I looked all throughout Utah. I had many options, and many schools were interested. But I ultimately decided to go to

Southern Utah University because of the team dynamic and the kind, caring, and capable coaches.

11. Going to college was something that was not a likely option for me because of the low-income status I came from. Gratefully, running allowed me to earn a scholarship and attend college. Running has completely shaped my college career. It has taught me even greater discipline than I had in high school. I have learned mental toughness from hard workouts and practices. I have also developed many leadership traits from being on a team, and even though I am one of the youngest runners on the team as a sophomore, I still have a position of leadership.

12. My teammates have made my college athletic career worth it. We are with each other through anything and everything. My teammates have seen me at my lowest lows and my highest highs. It is a special bond, and we are all so close. While we have a lot of personalities on the team, we all mesh together so well. I love my teammates and every one of those girls means the world to me.

13. One day I want to be nurse and nursing school will be my next step. I've always been interested in the human body and medicine and I have always wanted to be involved in a health career. After nursing school, I would like to settle down and move forward in my career and have a family.

### ***Competition Against a Male Athlete***

14. I remember learning that there was a male signed up to compete on the women's cross-country team at the University of Montana. My coach sat us all down before the season started and informed us that there was a male who transitioned and would be racing against us. I remember being so shocked. I never imagined this would happen in my lifetime.

15. This male, June Eastwood, had competed on the men's team for three years and was not an exceptional athlete. But even as a mid-level runner, Eastwood posted times that were faster than women's NCAA records.

16. I competed against Eastwood twice and I lost to Eastwood both times. The first time I competed against Eastwood was in the 2019 Big Sky Cross Country Championships. I also competed against Eastwood in the NCAA Division 1 Mountain Region Cross Country Championships.

17. One of my teammates, Madison Fruchey, was also knocked off from being an All-Conference athlete because of June Eastwood's involvement. Eastwood was in the top-10 and Madison was 11<sup>th</sup>. You can mentally exclude Eastwood from the top 10, but when the All-Conference list was published, Madison's name was not on it.

18. Eastwood's participation is frustrating. My teammate lost opportunities for accomplishments she worked hard to achieve. I do not want to have anger towards Eastwood, but when I see Eastwood lining up in a women's race, it just feels wrong.

19. Eastwood has an advantage when competing. Us women are already at a loss once Eastwood stands at the starting line. Eastwood's presence is intimidating, and it is hard to mentally compete at our best when we know we can't win.

20. Males run track with more physicality than women. They throw elbows and compete with a more aggressive strategy. They are especially more aggressive in college and when they progress to more elite races.

21. Like I mentioned earlier, obtaining an athletic scholarship was vital to pursuing my dream of being a nurse. Running was the only way I could afford to

participate in academic programs at my school. When I heard Eastwood was participating on the University of Montana's girls' team through a girls' scholarship, it was frustrating. There is a limited number of athletic scholarships that each school can distribute, and Eastwood took an opportunity from another woman. It makes you wonder if there may have been another female athlete in my shoes that may not have been able to afford school without an athletic scholarship.

### ***Fairness in Women's Sports***

22. Title IX was created to provide a space for women, like me, to compete on a fair playing field and be a champion in my own sport. But allowing males to compete in women's sports destroys that opportunity and sets women back half a century.

23. Generally speaking, males are stronger, faster, and bigger than woman. June Eastwood towered over the female competitors like me. And if men take over, I fear that women will lose the drive to compete in the sport altogether.

24. Eastwood displaced women in races and in scholarships. Because of Eastwood's involvement, a woman missed the opportunity to receive an athletic scholarship and may have impeded her ability to attend school at all. Women should not have their opportunities taken by biological males.

25. I decided to stand up and speak out because I don't want my daughters to have to deal with what I've had to deal with. I want to protect women's sports for all the women that will come behind me.

26. I know what I'm doing is right and I know what we're fighting for is right.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Haley Tanne  
Haley Tanne  
Dated: April 19, 2022



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**DECLARATION OF LINNEA SALTZ**

I, Linnea Saltz, declare as follows:

1. I am a resident of Washington, D.C., and a former elite track athlete at both Southern Utah University and Georgetown University.

***Athletic Background***

2. Growing up, I loved cheer, gymnastics, and dance. But with a brother who ran cross-country and a mother who ran triathlons, I decided to try out for track my sophomore year of high school. I surprised everyone—including myself—by running the fastest time of my high school tryouts in the 400-meter.

3. That initial success on the track led to a love of running. I joined my varsity girls' track team and even competed on a club team. By my senior year, I gave up all

other extracurricular activities and focused on getting faster and stronger in order to be the best version of myself.

4. That hard work paid off with an athletic scholarship to run track for Southern Utah University. I received offers from bigger schools, but ultimately chose to attend SUU because I could tell they really cared about their athletes.

5. Being a student-athlete opened doors for me to make connections on campus and provided a ready-made support and friendship network in my teammates.

6. But being a collegiate athlete is not easy. It involves early morning workouts and afternoon practices; weekend travel for meets; and lots of self-discipline in diet, bedtime, and homework. I missed out on sleeping in, spring break, and social events.

7. But it was absolutely worth it. Every time I earned a new Big Sky Championship medal or put my name on the record book for my school, it made all the sacrifice worth it.

8. I am proud of what I achieved in my time at SUU. I am a two-time Big Sky Champion in the 800-meter, once in outdoor and once in indoor. And by the time I graduated, I held seven school records:

- indoor 4x400-meter relay,
- indoor distance medley relay,
- indoor 400-meter,
- indoor 600-meter,
- indoor 800-meter,
- outdoor 800-meter,

- outdoor 4x4 relay.

***Competition against a male athlete***

9. My senior year of college, I learned about a male athlete at the University of Montana who would be competing in women's cross-country and track.

10. This male, June Eastwood, had competed for three years on the men's team and was not a stand-out athlete. But even as a mid-level male athlete, Eastwood still posted times as a man that were faster than multiple women's NCAA records.

11. In the fall of 2019, Eastwood bested some of my teammates in cross country competitions. I thought it was so unfair. Why would someone who knows they have a physiological advantage over these women compete against them?

12. After my teammates' experience, I spent weeks reading the NCAA's transgender handbook. The NCAA policy at that time—which had been in place since 2011—required males to undergo one year of testosterone suppression before competing on a women's team. I thought this could not be true. I could see for myself that testosterone suppression did not eliminate the male advantage. (Thankfully, the NCAA scrapped that old policy in late 2021, but did not replace it with any policy that actually protects female athletes.)

13. In the winter of 2020, I learned that Eastwood would be competing in the indoor Big Sky Conference Track and Field Championships.

14. As the defending 800-meter Big Sky Conference Champion, I immediately jumped online to see what I was going to have to be competing against this season. All hope was lost when I realized that the male athlete was going

to be competing against had a personal best time of 1:55 in the 800-meter, not only 10 seconds faster than the best time I had posted the season prior, but faster than the NCAA women's record in the event.

15. I took a step back and realized that my senior year was no longer going to be about the sacrifices, hard work, pain, and dedication I had put forth the last four years. It was going to be about fairness in women's sports being stripped away right in front of me. Title IX was passed in order to create an equal and fair playing field for all—yet allowing male athletes to compete in women's sports discourages young women and deters them from their sports. Sports that encourage independence, strength, strong will, and give you the confidence of being a competitive athlete.

16. Instead of looking forward to my races, I was anxious. I could not bear the thought of losing my Big Sky Championship title to a former male athlete. I tried hard to focus on my training, but it was mentally exhausting to anticipate racing a male athlete with all the advantages of male puberty.

17. To my relief, Eastwood did not enter the 800-meter race. But I competed against Eastwood in the distance medley relay (DMR). In the middle of that relay, after finishing my leg, I overheard the University of Montana coach cuing this athlete from the sidelines, telling Eastwood to do something I had never heard in competition: to slow down. Eastwood took the University of Montana's relay team from nearly the bottom of the pack to a 2nd place finish.

18. Eastwood also bested some of my SUU teammates in the women's mile at Big Sky. Remarkably, this athlete

finished four seconds ahead of the next competitor—a massive amount of time in an elite track competition.

***Fairness in Women's Sports***

19. Female-only sports exist for a reason: to give women like me the chance to podium, showcase our talents, and receive the recognition our hard work and talent deserve. But allowing a male to compete in the women's category shatters these opportunities.

20. Simply by observation, males are generally bigger, faster, and stronger than women. Eastwood's over six-foot-tall frame towered over the female competitors. June's cadence, stride length, broader shoulders, and lack of fatty tissue around the hips and chest all spoke to June's male advantage. Personally, I would find it demeaning to stand on the podium beneath an athlete that had been on the podium with boys a couple years ago.

21. It is mentally draining to run against a male athlete. While in prior years I could just focus on my training, in 2020, I spent a lot of time in preseason stressing over competing against a male.

22. It only takes three males to displace females on the podium. And only eight males to displace females from All-Conference honors, and even worse from first-team All-American status which some women athletes could only dream of accomplishing.

23. I don't want to look back at the SUU school record books five or ten years down the line to find my name erased by males.

24. Because if men take over, I fear that women will lose the drive to compete in sports entirely.

25. Men are able to celebrate fairness in their sports, so it should only make sense that we can as well. It is

discouraging for girls and women to think that they may have to compete against an individual that has a biological advantage over them. Taking away our opportunities will run us out of the sports world, which we already had to fight so hard to be a part of.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Linnea Saltz

Linnea Saltz

Dated: April 14, 2022

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA  
CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

**DECLARATION OF HEATHER JACKSON**

I, Heather Jackson, pursuant to 28 U.S.C. § 1746,  
declare as follows:

1. I make this declaration of my own personal  
knowledge, and, if called as a witness, I could and would  
testify competently to the matters stated herein.

2. I am 54 years old. My husband, Wesley, and I are  
the parents of two sons, ages 20 and 14, and an 11-year-

old daughter. We have been married for 21 years. We live in Lost Creek, West Virginia.

3. Our daughter's name is B.P.J. My daughter and I have a very deep connection and I believe she knows that she can come to me for anything—I love her very much.

4. Wesley and I are fiercely protective of B.P.J. As her parents, we want to see B.P.J. happy and achieve all her goals.

5. B.P.J. is bright and studious; she makes “straight As” and loves math and science.

6. B.P.J. is also transgender.

7. B.P.J. knew from a very young age that “she didn’t want her boy parts.” She never wanted to be naked for bathing because she was deeply uncomfortable with and did not want to see certain parts of her body. B.P.J. also did not like standing up to urinate. She would often ask me a lot of questions about my own body and about why our bodies were physically different, if we were both girls.

8. As a child, B.P.J. also presented differently than my other children, both of whom are boys. At or around the age of four, B.P.J. started asking and was allowed to play dress-up in my clothes around our home. Whenever B.P.J. was provided with the opportunity to pick out her clothes or toys, she always went straight for the “girly” items. I knew this was not a “phase” for her, and that there was something different happening.

9. When B.P.J. told us that she is a girl and wants to be addressed as a girl, we were not surprised because we spend so much time with her.

10. Because B.P.J. and I have such an open and communicative relationship, we would have conversations about how she was feeling. The more we talked and the



more comfortable she became with expressing how she was feeling and who she is, the more she was able to clearly communicate that she knew she was a girl.

11. By the time B.P.J. was in the third grade she had chosen her name and was living as herself at home. Towards the end of that school year, B.P.J. informed her father and me that she did not want to continue going to school “dressed as a boy.” We agreed she could start going to school dressed as herself.

12. In 2019, when B.P.J. was heading into the fourth grade, I met with several school staff at Norwood Elementary School to discuss and create a gender support plan for B.P.J. The Gender Support Plan is a document the school uses to help guide school staff in supporting B.P.J. in navigating her educational experience as her authentic self. The plan required school staff to be informed that B.P.J.’s authentic gender is female, and instructed school staff to refer to her with her female name and female pronouns. School staff were also instructed on how to support B.P.J. if she faced problems from others at school because of her gender. A true and correct copy of this Gender Support Plan is attached as Exhibit A.

13. In 2019, we brought B.P.J. to the UPMC Children’s Hospital of Pittsburgh’s Gender and Sexuality Development Program because B.P.J. was worried about the possibility of going through endogenous puberty. B.P.J. was diagnosed with gender dysphoria by the Medical Director of the Gender and Sexuality Program, Dr. Gerald T. Montano. When B.P.J. was initially diagnosed, we were told that puberty delaying treatment was not yet appropriate because she had not begun puberty. Dr. Montano told us about the first signs of

puberty to look out for at home, and we made regular follow-up appointments to monitor B.P.J.'s development.

14. Once B.P.J. reached the beginning of puberty, Dr. Montano prescribed puberty-delaying treatment on June 15, 2020. B.P.J. has continuously receive puberty delaying treatment since June 15, 2020, under the care of a multidisciplinary team of providers with expertise in treating transgender adolescents.

15. Our family enjoys participating in sports, and I am proud to see B.P.J. enjoying sports too.

16. During the 2019-20 and 2020-21 school years, B.P.J. was a member of the cheerleading team for the Bridgeport Youth Football League. All members of that team were girls. Even before B.P.J. started cheering with her team, she spent a year learning all the cheer team's routines from the stands. When B.P.J. received her girls' cheer uniform, she was glowing. B.P.J. always wanted me to be in the front row of her competitions. During the 2019-20 season, for the first time ever, B.P.J.'s cheer team placed at a cheer competition.

17. Being on the cheer team dramatically increased B.P.J.'s confidence and happiness. B.P.J. was supported and accepted by the other girls on her team and her coaches. B.P.J.'s participation on her cheer team taught her the importance of responsibility, trust, and team building. B.P.J. is especially proud to have served as part of the base for her cheer team's pyramids because it demonstrated to her that her teammates trusted and relied on her in order to complete their routine.

18. Participating in cheer was a meaningful way for B.P.J. to learn responsibility. As her mother, I can preach about the importance of responsibility, but her position on her cheer team provided her with the real-life experience

of having others rely on her to attend practice and participate, and this has helped her understand responsibility in a deeply personal and meaningful way.

19. Although B.P.J. enjoyed cheerleading, she joined the cheer team in part because it was one of the only sports offered to her grade level in which she was interested. When B.P.J. began junior high, however, she was excited to try out for Bridgeport Middle School's girls' cross-country and track teams.

20. Having the opportunity to run on the girls' cross-country and track teams is important to B.P.J. because B.P.J. comes from a family of runners. When she was younger, I would take B.P.J. on runs with me through parks and she grew up watching her brothers run on their school teams. Additionally, she wanted a continued sense of belonging and camaraderie like she had with the cheer team and hoped to gain that through joining the girls' cross-country team in the fall.

21. Wesley and I were so excited for B.P.J. to run and I was truly looking forward to attending her future cross-country and track meets. B.P.J.'s brothers were also both excited for B.P.J. and looked forward to seeing their sister compete.

22. B.P.J. has the support of her family, coaches, instructors, and peers. Our family is very supportive, and my 76-year-old mother (B.P.J.'s grandmother), and my step-father (B.P.J.'s step-grandfather) are B.P.J.'s biggest supporters.

23. On May 18, 2021, I met with B.P.J.'s new Principal at Bridgeport Middle School, David Mazza, to discuss and create B.P.J.'s Gender Support Plan for the sixth grade. Like the plan we developed for B.P.J. at her elementary school, the plan for Bridgeport Middle School emphasizes

that B.P.J. is secure in her identity as a girl and well supported by her parents, school administrators, teachers, and friends. A true and correct copy of that Gender Support Plan is attached as Exhibit B.

24. During the May 18, 2021 meeting I informed Principal Mazza that B.P.J. wanted to participate on the girls' cross-country and track team. Principal Mazza communicated to me that, due to H.B. 3293, my daughter would not be permitted to participate on the girls' cross-country or track teams.

25. On July 12, 2021, conditioning and practice started for the fall 2021 season of cross-country. While my daughter and I were happy to know she was able to participate in training and conditioning due to an agreement by the Defendants in this case to not enforce H.B. 3293 against her during that period, I was concerned about whether she would be able to try-out for and participate on the girls' cross-country team.

26. On July 21, 2021, I learned that the court ruled that my daughter would be allowed to try-out for the girls' cross-country and track teams! At the beginning of August, B.P.J. participated in try-outs for the girls' cross-country team and soon thereafter our family learned that she made the team.

27. During her first cross-country season, B.P.J. participated in the Mountain Hollar MS Invitational meet and the Doddridge Invitational meet. At the Mountain Hollar Invitational, B.P.J. placed 51 out of 66 participants and at the Doddridge Invitational, she placed 123 out of 150 participants.

28. B.P.J. told me that she learned a lot about team work, and that she made many friends through participating on the cross-country team. She said that she

had no problems with any of her teammates and that they had a fun season. Photos from B.P.J.'s cross-country season are attached hereto as Exhibit C.

29. It was no surprise to me that by the time track season came, B.P.J. was ready to keep on running. At the beginning of March, my daughter participated in the required two-week try-outs for the girls' team and on March 11, 2022, we learned that she made the girls' track team.

30. B.P.J. is a girl. It is wrong and senseless to try to make her participate on boys' sports teams when there are girls' teams available. Forcing B.P.J. to compete on the boys' cross-country or track teams when girls' teams are available would completely erase who she is, and it would devastate her because she is a girl. My daughter is simply saying, "Accept me for who I am."

31. B.P.J. was so happy to be able to run this school year, and she is so afraid of having that opportunity taken away from her. Prohibiting her from participating on the girls' team would also set back her medical treatment, which calls for her to be treated as the girl she is in all aspects of her life, and her mental health would suffer if she could no longer do the thing she loves because West Virginia refuses to treat her as a girl. Forcing her to run with the boys is a clear sign to her and others that the state refuses to see her and accept her for the girl that she is, and would be profoundly harmful to her.

\*\*\*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 04/19/2022

/s/ Heather Jackson  
Heather Jackson



Dr. Mark A. Manchin  
Superintendent

— Confidential —

### Gender Support Plan

The purpose of this document is to create shared understandings about the ways in which the student's authentic gender will be accounted for and supported at school. School staff, caregivers and the student should work together to complete this document.

School/County: Norwood Elementary- Harrison

Today's Date: 8-23-19

Name Student Uses: B [REDACTED]

Name on Birth Certificate: [REDACTED] P [REDACTED] J [REDACTED]

Student's Gender Identity: female

Assigned Sex at Birth: Male

Student Grade Level: 4<sup>th</sup>

Student's DOB: [REDACTED]

Parent(s), Guardian(s), or Caregiver(s) /relation to student: Heather Jackson / Wesley Pepper

Meeting Participants: Sarah Starkey, Heather Jackson, B [REDACTED], Tara Shields, Jasmine Lowther, Nurse Tina

<b>PARENT/GUARDIAN INVOLVEMENT</b>
------------------------------------

Are guardian(s) of this student aware of their child's gender status? X Yes \_\_\_ No

If not, what considerations must be accounted for in implementing this plan? Mom very supportive, dad has struggled but coming around. Seeking outside help through church and paternal side of family's help/support.

<b>CONFIDENTIALITY, PRIVACY AND DISCLOSURE</b>
--

Molly Oberfechter – Leggett – WVU

How public or private will information about this student's gender be (check all that apply)?

X County staff will be aware (Superintendent, Student Support Services, District Psychologist, etc.)  
Specify the adult staff members: Dr. Manchin, Sarah Starkey

X Site level leadership/administration will know (Principal, counselor, etc.)  
Specify the adult staff members: Tara Shields and school counselors

X Teachers and/or other staff will know  
Specify the adult staff members: All teachers

\_\_\_ Student will not be openly "out," but some students are aware of the student's gender  
Specify the students:

X Student is open with others (adults and peers) about gender

\_\_\_ Other – describe: B [REDACTED] is comfortable with others knowing her Gender Identity and transition.



If the student has asserted a degree of privacy, what steps will be taken if that privacy is compromised, or is believed to have been compromised? N/A

How will a teacher/staff member respond to any questions about the student's gender from:

Other students? Be open and honest – she is B [REDACTED], and that makes her happy.

Staff members? Be open and honest – she is B [REDACTED], and that makes her happy.

Parents/community? Be open and honest – she is B [REDACTED], and that makes her happy.

<b>STUDENT SAFETY</b>
-----------------------

Who will be the student's "Trusted Adult" at School?  
Feels comfortable with all teachers →

If this person is not available, what should student do?  
Feels comfortable with all teachers. We showed classrooms with "safe space" stickers.

What are expectations in the event the student is feeling unsafe and how will student signal their need to help:

During class: Raise hand / get up and walk to teacher – yell help

Field Trips: Find Closest trusted adult yell help

In the halls: " \_\_\_\_\_ "

Other:

Other safety concerns/questions: B [REDACTED] feels safe and comfortable and very much supported.

What should the student's parents do if they are concerned about how others are treating their child at school?

Mom and/or dad will contact Tara Shields.

<b>NAMES, PRONOUNS AND STUDENT RECORDS</b>
--

What name and gender marker are listed on the student's identity documents? [REDACTED] P [REDACTED] J [REDACTED] male but B [REDACTED] in ()

Name/gender marker entered into the Student Information System B [REDACTED] Pronouns her, she hers

Can the student's name/gender marker be reflected in the SIS?      If so, how? If not, why not?

Gender will be male but B [REDACTED] will be in () next to birth name.

If not, what adjustments can be made to protect this student's privacy (see below)?

Who will be the point person at school for ensuring these adjustments are made and communicated as needed?  
Tara Shields

How will instances be handled in which the incorrect name or pronoun are used by staff members? If intentional – will be addressed by principal and or/co

By students? “ ” B [REDACTED] will report to teacher, Mrs. Shields, counselor if continues to be intentional.

If unable to change the student’s profile in the student information system, how will the student’s privacy be accounted for an maintained in the following situations or contexts:

During registration:

Completing enrollment:

With substitute teachers: Jasmine will leave info in plans for sub teacher.

Standardized tests: Populated in WVEIS

School photos: Name B [REDACTED] will be used

IEPs/Other Services:

Student cumulative file: Populated in WVEIS

After-school programs:

Lunch lines:

Taking Attendance: B [REDACTED] will be in ()

Teacher gradebook(s): Live Grades populated from WVEIS

Official school-home communication:

Unofficial school-home communication (PTA/other):

Outside district personnel or providers:

Summons to office: staff will use name B [REDACTED]

Yearbook: B [REDACTED] P [REDACTED] -J [REDACTED]

Student ID/library card: what parents fill out on picture form

Posted lists:

Distribution of texts or other school supplies:

Assignment of IT accounts/email address:

PA announcements:

If the student's guardians are now aware and/or supportive of the student's gender status, how will school-home communications be handled? Parents are supportive.

What are some other ways the school needs to anticipate the student's privacy being compromised? How will these be handled? Maintain confidentiality and handle as needed.

## USE OF FACILITIES

Student will use the following bathroom(s) at school: In teacher lounge first on on R.

Student will change clothes in the following place(s):

“ \_\_\_\_\_ ”

If student/parent have questions/concerns about facilities, who should they contact? Tara Shields

What are the expectations regarding the use of facilities for any class trips? Use family/gender neutral bathroom.

Go to teacher & teacher make sure bathroom empty (female) if no gender neutral bathroom.

What are the expectations regarding rooming for any overnight trips?

Are there any questions or concerns about the student's access to facilities? No

### **EXTRA CURRICULAR ACTIVITIES**

In what extra-curricular programs or activities will the student be participating (sports, theater, clubs, etc)?

Becky is on a cheerleading team outside of school. Strings or choir are optional.

What steps will be necessary for supporting the student there? N/A

Does the student participate in an after-school program? N/A

What steps will be necessary for supporting the student there? N/A

Questions/Notes:

### **OTHER CONSIDERATIONS**

Does the student have any sibling(s) at school? \_\_\_\_\_  
Factors to be considered regarding sibling's needs? Not at Norwood – brother is in the middle school BMS

Does the school have a dress code? Yes How will this be handled? Not gender specific – no short shorts, or spaghetti straps common sense.

Are there lessons, units, content or other activities coming up this year to consider (growth and development, swim unit, social justice units, name projects, dance instruction, Pride events, school dances etc.)? N/A Plan will be

reviewed at least yearly. Health education will be discussed next year.

Are there any social dynamics with other students, families or staff members that need to be discussed or accounted for? No

What training(s) will the school engage in to build capacity for working with gender-expansive students? How will the school work to create more gender inclusive conditions for all students? Norwood Staff received training on tolerance and cultural diversity and LGBTQ+IA on 8/21 and provided protocol and multiple resource sources.

Does the student use school- or district-provided transportation services? If so, how will the student's gender be accounted for? Bus driver Randy #234 will be educated that B [REDACTED] is name to be used and of chosen pronouns.

Are there any other questions, concerns or issues to discuss? N/A

<b>SUPPORT PLAN REVIEW AND REVISION</b>
---

How will this plan be monitored over time? Reviewed at least yearly but can be revisited at anytime within school year if needed.

What will be the process should the student, family, or school wish to revisit any aspects of the plan (or seek additions to the plan)? Contact Tara Shields or teacher.

What are specific follow-ups or action items emerging from this meeting and who is responsible for them?

Action Item	Who?	When
N/A		

Date/time of next meeting or check-in \_\_\_\_\_

Location \_\_\_\_\_

Will schedule at end of school year for next school year.

/s/ Sarah Starkey MSW, LGSW

/s/ B [REDACTED]

/s/ Heather Jackson

/s/ Tara Shields

/s/ Jasmine Lowther



Dora L. Stutler  
Superintendent

## **HARRISON COUNTY SCHOOLS**

445 WEST MAIN STREET  
POST OFFICE BOX 1370  
CLARKSBURG, WEST VIRGINIA 26302-1370  
(304) 326-7300  
FAX (304) 326-7382

### **Preferred Name Request Form**

The Harrison County Board of Education is committed to inclusion and recognizes that students may need to use a preferred name to identify themselves comfortably. Please note that although the HCBOE recognizes the importance, in many instances, of using preferred name, your legal name may continue to be necessary for Board of Education business where the legal name is required. Students who use a preferred name should always be prepared to provide legal name identification when needed. Only the first name is permitted to be updated with the Preferred Name Request Form.

Please fill out this form clearly and completely and return it to the Principal of your school. Please note, a parent signature is required. If you have any questions or concerns, please contact the Principal of your school prior to the submission of this form. The preferred name will remain in use until and student requests that it be deactivated. This process for using a preferred name does not impact students who officially change their legal name.



**Legal Name:**

<b>Legal First Name:</b> [REDACTED]	<b>Legal Middle Name:</b> [REDACTED]	<b>Legal Last Name:</b> P [REDACTED]-J [REDACTED]
<b>WVEIS#</b> 330049261	<b>School:</b> BMS	<b>Grade:</b> 6

**Preferred Name:**

<b>Preferred First Name:</b> B [REDACTED]
--

**Signature:** /s/ B [REDACTED] P [REDACTED]-J [REDACTED]      **Date:**

**Parent Signature:** /s/ Heather Jackson      **Date:** 5-18-2021

**For Office Use Only:**

Principal Signature: /s/ David R. Mazza Date Received:
---



Dora L. Stutler

— Confidential —

### Gender Support Plan

The purpose of this document is to create shared understandings about the ways in which the student's authentic gender will be accounted for and supported at school. School staff, caregivers and the student should work together to complete this document.

School/County: Bridgeport Middle - Harrison

Today's Date: 5/18/21

Name Student Uses: Becky

Name on Birth Certificate: [REDACTED] P [REDACTED] J [REDACTED]

Student's Gender Identity: female

Assigned Sex at Birth: Male

Student Grade Level: 4<sup>th</sup>

Student's DOB: 5/11/10

Parent(s), Guardian(s), or Caregiver(s) /relation to student: Heather Jackson / Wesley Pepper

Meeting Participants: Tara Shields, Amber Davis, David Mazza, Lauren Merrill, Heather Jackson, Becky Pepper-Jackson

<b>PARENT/GUARDIAN INVOLVEMENT</b>
------------------------------------

Are guardian(s) of this student aware of their child's gender status? ☒ Yes ☐ No

If not, what considerations must be accounted for in implementing this plan?

<b>CONFIDENTIALITY, PRIVACY AND DISCLOSURE</b>
--

How public or private will information about this student's gender be (check all that apply)?

☒ County staff will be aware (Superintendent, Student Support Services, District Psychologist, etc.)  
Specify the adult staff members: Dora Stutler, Sarah Starkey

☐ Site level leadership/administration will know (Principal, counselor, etc.)  
Specify the adult staff members: Mr. Mazza, Mr. Oldaker, and Lauren Merrill

☒ Teachers and/or other staff will know  
Specify the adult staff members: All teachers

☐ Student will not be openly "out," but some students are aware of the student's gender  
Specify the students:

☒ Student is open with others (adults and peers) about gender

☐ Other – describe: Becky is comfortable with others knowing her Gender Identity and transition.

If the student has asserted a degree of privacy, what steps will be taken if that privacy is compromised, or is believed to have been compromised? N/A

How will a teacher/staff member respond to any questions about the student's gender from:

Other students? Be open and honest – she is Becky, and that makes her happy.

Staff members? Be open and honest – she is Becky, and that makes her happy.

Parents/community? Be open and honest – she is Becky, and that makes her happy.

<b>STUDENT SAFETY</b>
-----------------------

Who will be the student's "Trusted Adult" at School? Mr. Mazza & Mrs. Merrill

If this person is not available, what should student do? Find teacher(s) that Becky feels comfortable speaking with.

What are expectations in the event the student is feeling unsafe and how will student signal their need to help:

During class: Raise hand / get up and walk to teacher – yell help

Field Trips: Find Closest trusted adult; yell help

In the halls: “\_\_\_\_\_”

Other:

Other safety concerns/questions: Becky feels safe and comfortable and very much supported.

What should the student's parents do if they are concerned about how others are treating their child at school?

Mom and/or dad will contact Mr. Mazza.

### **NAMES, PRONOUNS AND STUDENT RECORDS**

What name and gender marker are listed on the student's identity documents? ██████ Pepper Jackson; male but Becky in ()

Name/gender marker entered into the Student Information System Becky Pronouns her, she hers

Can the student's name/gender marker be reflected in the SIS?      If so, how? If not, why not?

Gender will be male but Becky will be in () next to birth name.

If not, what adjustments can be made to protect this student's privacy (see below)?

Who will be the point person at school for ensuring these adjustments are made and communicated as needed?  
David Mazza

How will instances be handled in which the incorrect name or pronoun are used by staff members? If intentional – will be addressed by principal and/or counsel

By students? “\_\_\_\_\_” B[REDACTED] will report to teacher, Mr. Mazza, counselor if it continues to be intentional.

If unable to change the student’s profile in the student information system, how will the student’s privacy be accounted for an maintained in the following situations or contexts:

During registration:

Completing enrollment:

With substitute teachers: Teacher will leave info in plans for sub teacher.

Standardized tests: Populated in WVEIS

School photos: Name Becky will be used

IEPs/Other Services:

Student cumulative file: Populated in WVEIS

After-school programs:

Lunch lines:

Taking Attendance: Becky will be in ()

Teacher gradebook(s): Live Grades populated from WVEIS

Official school-home communication:

Unofficial school-home communication (PTA/other):

Outside district personnel or providers:

Summons to office: staff will use name Becky

Yearbook: Becky Pepper-Jackson

Student ID/library card: what parents fill out on picture form

Posted lists:

Distribution of texts or other school supplies:

Assignment of IT accounts/email address:

PA announcements:

If the student's guardians are now aware and/or supportive of the student's gender status, how will school-home communications be handled? Parents are supportive.

What are some other ways the school needs to anticipate the student's privacy being compromised? How will these be handled? Maintain confidentiality and handle as needed.

<b>USE OF FACILITIES</b>
--------------------------

Student will use the following bathroom(s) at school: In counselor's/nurse's suite

Student will change clothes in the following place(s):

“ \_\_\_\_\_ ”

If student/parent have questions/concerns about facilities, who should they contact? David Mazza

What are the expectations regarding the use of facilities for any class trips? Use family/gender neutral bathroom. Go to teacher & teacher make sure bathroom empty (female) if no gender neutral bathroom.

What are the expectations regarding rooming for any overnight trips?

Are there any questions or concerns about the student's access to facilities? No

### **EXTRA CURRICULAR ACTIVITIES**

In what extra-curricular programs or activities will the student be participating (sports, theater, clubs, etc)?

Cross country and track

What steps will be necessary for supporting the student there? Coaches would need to be aware of Becky's transition. If teammates have questions, they could approach the coach or administration.

Does the student participate in an after-school program? Cross country, track, band.

What steps will be necessary for supporting the student there? Teahcer would need to be aware of transition and also feel comfortable with answering any student questions. If not, students can ask administration or counselor.

Questions/Notes:

### **OTHER CONSIDERATIONS**

Does the student have any sibling(s) at school? \_\_\_\_  
Factors to be considered regarding sibling's needs? Brother at Bridgeport Middle School.

Does the school have a dress code? Yes How will this be handled? Not gender specific – no short shorts, or spaghetti straps common sense.

Are there lessons, units, content or other activities coming up this year to consider (growth and development, swim unit, social justice units, name projects, dance instruction, Pride events, school dances etc.)? Plan will be reviewed at least yearly.



Are there any social dynamics with other students, families or staff members that need to be discussed or accounted for? No

What training(s) will the school engage in to build capacity for working with gender-expansive students? How will the school work to create more gender inclusive conditions for all students? BMS will receive training on tolerance and cultural diversity and LGBTQ as arranged by Mr. Mazza during upcoming school year.

Does the student use school- or district-provided transportation services? If so, how will the student's gender be accounted for? Bus #281 Mr. Hollansworth and #234 mr. Lantz will be informed of name being Becky and preferred pronouns.

Are there any other questions, concerns or issues to discuss? N/A

<b>SUPPORT PLAN REVIEW AND REVISION</b>
---

How will this plan be monitored over time? Plan will be reviewed yearly but can be revisited at any time per request.

What will be the process should the student, family, or school wish to revisit any aspects of the plan (or seek additions to the plan)? Contact Mr. Mazza.

What are specific follow-ups or action items emerging from this meeting and who is responsible for them?

Action Item	Who?	When
N/A		

Date/time of next meeting or check-in \_\_\_\_\_  
 Location \_\_\_\_\_

Meeting will be scheduled at end of school year for next school year.

/s/ Lauren Merrill, BMS Counselor

/s/ Becky Pepper Jackson

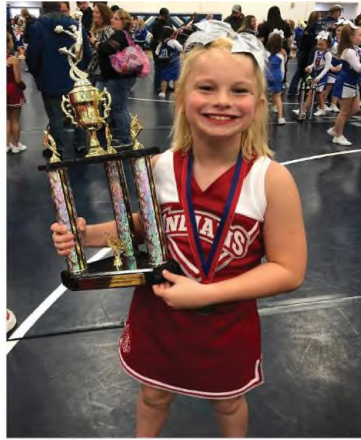
/s/ Heather Jackson

/s/ Tara Shields

/s/ Amber Davis

/s/ David R. Mazza





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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA  
CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DECLARATION OF J**

I, B.P.J., pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.

2. I am a girl who is also transgender. I am 11 years old, and I am in the sixth grade at Bridgeport Middle

School. I have two older brothers, ages 14 and 20. I live with my brothers; my mom, Heather; and my dad, Wesley in Lost Creek, West Virginia.

3. Some of my favorite things to do include playing outside with our family's dogs, riding my bike, running with my friends and family, and jumping on the trampoline. I am very passionate about math and science and make straight As in school. Also, I like to play videogames like Apex Legends, Minecraft, and Overwatch. I also got an Oculus this year, and I love playing the Beat Saber game.

4. I knew from when I was very little that I am a girl. When I was younger, I remember always feeling like I wasn't in the right body and wanting to play in my mom's clothing.

5. My mom has always been supportive of me, so it felt normal for me to talk to her about how I was feeling about being a girl and that I wanted to go by the name B.P.J. While talking to my dad was a little bit harder in the beginning, he supported me in wanting to be referred to as B.P.J. and in the fact that I am a girl.

6. During my fourth-grade year, I went to school dressed in clothes that girls wear, and teachers and staff were using my chosen name. My mom and I met with my principal, teacher, and others at my school to make a plan for how my school could best support me as a girl. I was happy with the plan we developed together, and I really felt supported by my classmates and by my school.

7. One of the ways my parents supported me in being the girl that I am is that they took me to see a team of healthcare professionals who work with transgender people. I was diagnosed with gender dysphoria in 2019.

8. I am currently on puberty-delaying medication and have been for almost two years.

9. In fourth grade, I joined a cheerleading team with other girls. I first got into cheering because my mom encouraged me to try a sport. Since I had spent time learning cheer routines while in the stands at football games and my friends were also on the cheer team, I decided to pursue cheer.

10. I really liked being a cheerleader. It was fun. I liked having the chance to be on a team with my friends and learning how to do all the cheers. I never had any problems with the other girls on the team.

11. During my first year on the cheer team, our team placed at a cheer competition for the first time ever. It made me feel proud and good about myself to work hard and improve as a team.

12. Heading into junior high school, I was excited to try out for the girls' cross-country and track teams. Although I really enjoyed my time on the cheer team, I sometimes got "stage fright" and preferred to take up a new sport.

13. Since I was young, I have always enjoyed running and everyone in my family runs. My older brothers run cross-country, and my mom runs too. Seeing my family run has motivated me to want to try out and participate.

14. Last spring, my mom told me about a law called H.B. 3293 that prevents transgender girls like me from playing on girls' sports teams. Knowing that I could not try out for the girls' cross-country and track teams just because I am a transgender girl was horrible and made me feel angry and sad. It hurt to know that I would not be able to have the chance to run on the girls' team like my friends can because of who I am.



15. I am not a boy. I do not want to run with the boys when there is a girls' team and I should not have to run with the boys when there is a girls' team.

16. Running with the girls means a lot to me because I am a girl, and I should be treated like a girl, just like all my friends who are girls. If I did not get to participate in cross-country or track, I would have missed out on the opportunity to spend time with my friends and grow with a new team.

17. In July 2021, I participated in training and conditioning before the August try-outs for the girls' cross-country team. Participating in training and conditioning was a positive experience—I had fun getting to know the coaches and teammates, and challenging myself to run as well as I could.

18. Following try-outs at the beginning of August, I learned that I made the girls' cross-country team. My first cross-country season was awesome, and I felt supported by my coaches and the other girls on the team. I made so many new friends and loved competing with and supporting my teammates. We learned about teamwork, having a positive attitude, and how to have fun while being competitive.

19. Since I was also interested in participating on the girls' track team, I looked forward to spring try-outs.

20. In early March, I participated in two weeks of try-outs for the girls' track team and on March 11, 2022, I learned that I made the girls' track team. I was ecstatic.

21. Ultimately, I just want to have the opportunity to participate in school sports like any other girl. Sports are an important part of my experience at school, and I was so happy to be able to have the chance to participate in cross-country and track this year with the other girls in my

school. I look forward to many more years of running with my peers. It is so upsetting and hurtful that some people want to take that chance away from me and treat me differently from everyone else just because I am transgender.

\* \* \*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 04/19/2022

/s/ B.P.J.

B.P.J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**RESPONSES TO PLAINTIFF'S FIRST SET OF  
INTERROGATORIES TO DEFENDANT,  
STATE OF WEST VIRGINIA**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the applicable Local Rules of the District of West Virginia and this Court, Defendant the State of West Virginia provides the following in response to Plaintiff's First Set of Interrogatories to Defendant, State of West Virginia ("First Set of Interrogatories").

**GENERAL OBJECTIONS**

1) The State of West Virginia objects to the following definition as stated in Plaintiff's First Set of Interrogatories:

**"YOU, YOUR, or YOURS means the State of West Virginia and its governors, attorneys general, agencies, legislators, officials, affiliates, attorneys, accountants, consultants, representatives, and agents."**

\*\*\*

[9]

**INTERROGATORY NO. 6: Identify all governmental interests that YOU believe are advanced by H.B. 3293.**

**RESPONSE:** The State objects to the word "believe" as used in this interrogatory; the State is not a natural person capable of belief or non-belief. Further objecting, the government interests advanced by the Protection of Women's Sports Act, also known as H.B. 3293, are a subject of legal determination. Without waiver of any objections, the State asserts the following interests, primarily and in general, which are advanced by the Protection of Women's Sports Act:

1. To Protect Women's Sports
2. To follow Title IX
3. To protect women's safety in female athletic sports.

The State reserves the right to further address this issue as this matter progresses, either in its discovery responses, its expert witness disclosures, or its legal briefing.

**INTERROGATORY NO. 7: Identify all ways that YOU believe the governmental interests identified in Interrogatory No. 6 are advanced by H.B. 3293.**

**RESPONSE:** Defendant State of West Virginia incorporates the specific objections to Interrogatory 6 above into this response. The State also objects to the extent that this interrogatory seeks to preview legal arguments relative to governmental interests, which are a subject of legal determination, and is therefore inappropriate. Without waiver of any objections, Defendant State of West Virginia notes its Brief in Opposition to Motion for Preliminary Injunction and its attached materials and other documents. In addition, the State may provide further materials and documents through additional expert witness ...

**[End of Excerpt]**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants.

**RESPONSES TO PLAINTIFF’S SECOND SET  
OF REQUESTS FOR ADMISSION  
TO DEFENDANT, STATE OF WEST VIRGINIA**

Pursuant to Federal Rules of Civil Procedure 33 and 36 and the applicable Local Rules of the Southern District of West Virginia and this Court, the Defendant, State of West Virginia (the “State”), provides these responses to Plaintiff’s Second Set of Requests for Admission to Defendant, State of West Virginia (“Second Set of RFAs”).

**GENERAL OBJECTIONS**

The State objects to the definitions of the terms “Cisgender,” “Gender Identity,” “Transgender,” and “Transgender Girl” in the Second Set of RFAs’ instructions. Those terms have no definitive legally recognized definition, and those terms do not have an

agreed or stipulated meaning in this matter. Any requests for admissions based on these disputed and unproven definitions would necessarily be admissions as to Plaintiff's definitions, which the State declines to do at this point in the litigation.

Objecting further, Plaintiff's instructions state: "3. GENDER IDENTITY is synonymous with the meaning used in Plaintiff's First Amended Complaint, paragraphs 19-23." Yet those paragraphs do not contain any definition of the term "gender identity." Accordingly, the instructions for the Second Set of RFAs, even if otherwise acceptable, are vague and unclear.

Further objecting, the Defendant State objects to the definition of "YOU," "YOUR," and "YOURS." As previously discussed in this case, the State of West Virginia alone intervened and was then added as a named defendant via the Amended Complaint, and the Attorney General represents only the State of West Virginia. The Attorney General does not represent any of the other entities or individuals listed in the definition of "YOU, YOUR or YOURS" in these requests and cannot speak on behalf of those entities and individuals here. Accordingly—and consistent with other discovery responses in this matter—any responses are on behalf of the State only.

Further objecting, to the extent that the RFAs ask that the Defendant State admit to its awareness, it is unclear how "awareness" is meant to be applied to the State of West Virginia as (i) "awareness" is distinct from "knowledge" and (ii) the State is an entity which does not have "awareness" as that term is typically understood. Any RFAs seeking such an admission are unclear and consequently seem inappropriate.

Further objecting, the Defendant State objects to any instructions which go beyond Federal Rule 36 and will follow that rule in the event the instructions conflict or go beyond that rule.

**RESPONSES TO REQUESTS FOR ADMISSION**

Defendant State of West Virginia incorporates by reference all of the foregoing objections into each of the responses below. Any admission in the responses below are made without waiver of the foregoing objections.

**REQUEST NO. 5: Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.**

**RESPONSE:** The State objects to this request as it is vague in the sense that the term “diagnosed” suggests a medical diagnosis. The assertion of a diagnosis of gender dysphoria relates to a subjective psychological diagnosis, and it is the State’s understanding that the standards for such diagnosis vary and that different medical providers reach such a diagnosis differently. Further responding, the State denies for lack of knowledge. The State acknowledges and admits that there are medical records that record and reflect a diagnosis of gender dysphoria for BPJ that was provided by Dr. Montano and that there has been deposition testimony consistent with these records, but denies all other requests included within this Request.

**REQUEST NO. 6: Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School’s girls’ cross-country team.**

**RESPONSE:** The State admits this Request.

**REQUEST NO. 7: Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls’ middle school cross country Mountain Hollar MS Invitational meet in 2021.**



**RESPONSE:** The State denies this Request for lack of knowledge. The State has no knowledge of the source of this information or the validity of such information.

**REQUEST NO. 8: Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.**

**RESPONSE:** The State denies this Request for lack of knowledge. The State has no knowledge of the source of this information or the validity of such information.

**REQUEST NO. 9: Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross country team.**

**RESPONSE:** The State objects to this request as it would not be the recipient of such complaints. Without waiver of the foregoing, the State admits this Request.

**REQUEST NO. 10: Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.**

**RESPONSE:** The State objects to this request as the term "harmed" is vague and has multiple meanings. Without waiver of the foregoing, the State denies for lack of knowledge and further states that it is perhaps unknowable what effect B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021 has had on other participants on that team, participants on other teams, or on others who wanted to participate in this or other events but were dissuaded from such participation or otherwise felt harmed in some way, psychologically or otherwise. Further responding, the State has no knowledge of any physical harm to any

middle school girl as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

**REQUEST NO. 11: Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.**

**RESPONSE:** The State objects to this request as the term "injured" is vague and has multiple meanings. Without waiver of the foregoing, the State denies for lack of knowledge and further states that it is perhaps unknowable what effect B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021 has had on other participants on that team, participants on other teams, or on others who wanted to participate in this or other events but were dissuaded from such participation or otherwise felt injured in some way, psychologically or otherwise. Further responding, the State has no knowledge of any physical injury to any middle school girl as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

**REQUEST NO. 12: Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School's girls' cross-country team in 2021.**

**RESPONSE:** The State denies this Request for lack of knowledge. This type of information is not within the knowledge of the State.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA  
CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT SUPERINTENDENT DORA  
STUTLER'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S SECOND SET OF REQUESTS FOR  
ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant Superintendent Dora Stutler ("Superintendent Stutler") hereby responds and objects to "Plaintiffs Second Set of Requests for Admission to Defendant Harrison County Superintendent Dora Stutler" as follows:

**GENERAL OBJECTION:** Superintendent Stutler objects to the definitions of “County Board” and “County Superintendent” as set forth in Plaintiffs requests for admission.

\*\*\*

[8]

**REQUEST NO. 25:** Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the Harrison County Board of Education (“County Board”) and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

**REQUEST NO. 26:** Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls’ athletic teams at Bridgeport Middle School.

**RESPONSE: OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County [9] Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

**REQUEST NO. 27:** Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler is not in a position to admit or deny this request because it concerns the West Virginia Secondary School Athletic Commission's obligations under H.B. 3293.

**REQUEST NO. 28:** Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School

**RESPONSE: OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler is not in a position to admit or deny this request because it concerns the West Virginia Secondary School Athletic Commission's obligations under H.B. 3293.

**REQUEST NO. 29:** Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

**RESPONSE:** Denied.

\*\*\*

[15]

**REQUEST NO. 48:** Admit that when enforcing West Virginia State law you act on behalf of the State of West Virginia.

**RESPONSE: OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler admits this request.

**REQUEST NO. 49:** Admit that when enforcing West Virginia State law you are a State Actor for purposes of 42 U.S.C. § 1983.

**RESPONSE: OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler admits this request.

**REQUEST NO. 50:** Admit that you are required to enforce H.B. 3293 assuming the Court has not enjoined you from doing so.

**RESPONSE: OBJECTION.**

Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA  
CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT HARRISON COUNTY BOARD OF  
EDUCATION'S RESPONSES AND OBJECTIONS  
TO PLAINTIFF'S SECOND SET OF  
REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant Harrison County Board of Education ("County Board") hereby responds and objects to "Plaintiff's Second Set of Requests for Admission to Defendant Harrison County Board of Education" as follows:



**GENERAL OBJECTION:** The County Board objects to the definitions of “County Board” and “County Superintendent” as set forth in Plaintiff’s requests for admission. Those definitions are overly broad and outside the permissible scope of discovery under the

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**REQUEST NO. 25:** Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

**REQUEST NO. 26:** Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls’ athletic teams at Bridgeport Middle School.

**RESPONSE: OBJECTION.** The County Board objects to the extent this request is seeking a legal

conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

**REQUEST NO. 27:** Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board is not in a position to admit or deny this request because it concerns the West Virginia Secondary School Athletic Commission's obligations under H.B. 3293.

**REQUEST NO. 28:** Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School

**RESPONSE: OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board is not in a position to admit or deny this

request because it concerns the West Virginia Secondary School Athletic Commission's obligations under H.B. 3293.

**REQUEST NO. 29:** Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

**RESPONSE:** Denied.

**REQUEST NO. 30:** Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-

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Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

**REQUEST NO. 49:** Admit that but for the injunction in this case (Dkt. 67) the Harrison County School Board and schools within the Harrison County School District would not take any actions that violated H.B. 3293.

**RESPONSE: OBJECTION.** The County Board objects to the extent this request is seeking a legal

conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

**REQUEST NO. 50:** Admit that, but for the injunction in this case (Dkt. 67), the Harrison County School Board and Bridgeport Middle School would not have permitted Plaintiff

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Board admits that it has delegated some, but not all, regulation of interscholastic athletic events to the West Virginia Secondary School Activities Commission.

**REQUEST NO. 65:** Admit that the State Board of Education controls you. See Code of West Virginia §18-2-5.

**RESPONSE: OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board denies this request because West Virginia Code §18-2-5 states that “the State Board of Education shall exercise general supervision of the public schools of the state, and shall promulgate rules[.]”

**REQUEST NO. 66:** Admit that you receive federal financial assistance.

**RESPONSE:** Admitted.

**REQUEST NO. 67:** Admit that you must comply with Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*

**RESPONSE: OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits this request.

Dated this the 10<sup>th</sup> day of March, 2022.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT WEST VIRGINIA STATE BOARD OF  
EDUCATION'S RESPONSES TO PLAINTIFF'S  
SECOND SET OF REQUESTS FOR ADMISSION**

**NOW COMES** Defendant West Virginia State Board of Education (hereinafter "WVBOE"), by and through counsel, Kelly C. Morgan, Kristen V. Hammond, Michael W. Taylor, and the law firm of Bailey & Wyant, P.L.L.C., and, pursuant to Rule 33 of the *Federal Rules of Civil Procedure*, hereby responds and objects to "*Plaintiff's*

*Second Set of Requests for Admissions to Defendant West Virginia State Board of Education*” as follows:

**GENERAL OBJECTIONS AND PRELIMINARY  
STATEMENT**

A. WVBOE objects to the definitions as stated in Plaintiff’s Second Set of Requests for

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**RESPONSE: Objection.** The phrase “derive social benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

**REQUEST NO. 45:**

Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

**RESPONSE: Objection.** The phrase “derive psychological benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

**REQUEST NO. 46:**

Admit that interscholastic athletic competition benefits middle school students.

**RESPONSE: Objection.** The phrase “benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to middle school students who participate in interscholastic sports.

**REQUEST NO. 47:**

Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

**RESPONSE: Objection.** The phrase “benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to middle school students who participate in interscholastic sports.

**REQUEST NO. 48:**

Admit that Plaintiff B.P.J.’s gender is identified as “male” in the West Virginia Education Information System (“WVEIS”).

**RESPONSE: WVBOE admits this Request.**

**REQUEST NO. 49:**

Admit that you have the ability to change Plaintiff B.P.J.’s gender in WVEIS to “female.”

**RESPONSE: WVBOE denies this Request as it does not have this ability.**



**REQUEST NO. 50:**

Admit that you are required to supervise public secondary schools in West Virginia. **RESPONSE: WVBOE admits that it has general supervision and oversight over the free schools of the state of West Virginia, not including private schools.**

**REQUEST NO. 51:**

Admit that you have control over the county boards of education in West Virginia.

**RESPONSE: WVBOE admits that it can only exercise such “control” as it possesses by West Virginia Constitution or statute. WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v.

Civil Action No. 2:21-cv-00316  
Honorable Joseph R. Goodwin

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT STATE SUPERINTENDENT W.  
CLAYTON BURCH'S RESPONSES TO  
PLAINTIFF'S SECOND SET OF REQUESTS FOR  
ADMISSION**

**NOW COMES** Defendant Superintendent W. Clayton Burch (hereinafter "Defendant"), by and through his counsel, Kelly C. Morgan, Kristen V. Hammond, Michael W. Taylor, and the law firm of Bailey & Wyant, P.L.L.C., and, pursuant to Rule 33 of the *Federal Rules of Civil*

*Procedure*, hereby responds and objects to “*Plaintiff’s Second Set of Requests for Admissions to Defendant W. Clayton Burch*” as follows:

**GENERAL OBJECTIONS AND PRELIMINARY  
STATEMENT**

A. This Defendant objects to the definitions as stated in Plaintiff’s Second Set of Requests for Admission, including specifically the following definitions:

“STATE BOARD means the West Virginia State Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.”

“STATE SUPERINTENDENT means W. Clayton Burch in his official capacity as Superintendent of the STATE BOARD, as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to him in his official capacity. It also means any PERSON who assumes any of Mr. Burch’s official positions or responsibilities in part, whether temporarily or permanently.”

These definitions are overly broad and outside the permissible scope of discovery under the *Federal Rules of Civil Procedure* as these definitions improperly broaden the identity of parties in this case. These responses are made by this Defendant only.

B. These responses are based upon information and documentation presently available to this Defendant and which he believes to be complete and accurate. Said responses are made without prejudice to this Defendant’s

right to rely upon subsequently discovered facts or evidence.

C. No incidental or implied admission of fact by this Defendant is made as to the responses provided herein. The fact that this Defendant has responded to the discovery requests of Plaintiff, may not properly be taken as an admission that this Defendant accepts or admits the existence of any facts set forth or assumed by such response or that such response constitutes admissible evidence.

D. Responses to Plaintiff's discovery requests may be supplemented by this Defendant upon further investigation and acquisition of information or documentation which he does not possess or have knowledge of at this time. However, any such further supplementation shall be made only in accordance with *Federal Rules of Civil Procedure*.

E. This Defendant objects to each and every request insofar as it seeks information which is protected by the attorney-client privilege, or which falls within the scope of the work-product doctrine. This Defendant also objects to Plaintiff's discovery requests to the extent that the information and/or documentation sought has or could have been obtained from other sources that were more convenient, less burdensome, or less expensive.

F. This Defendant objects to any definitions and instructions set forth in Plaintiff's discovery requests to the extent that such definitions and instructions are inconsistent and confusing, and to the extent that they attempt to impose requirements which are more burdensome or in addition to those set forth in the *Federal Rules of Civil Procedure*.

G. This Defendant objects to Plaintiff's discovery requests to the extent that they seek to discover confidential information or documentation. This Defendant will produce such information and/or documentation, if essential to the litigation, only upon the entry of an appropriate Protective Order and upon permission of any third parties with whom Superintendent Burch may have obligations concerning confidential information.

H. This Defendant objects to Plaintiff's discovery requests based on insufficient information, knowledge, or belief to admit or deny any assertions set forth in such requests.

I. This Defendant states that the word usage and sentence structure may be that of the attorney assisting in the preparation of the following responses and, thus, does not necessarily purport to be the precise language of the executing party.

J. This Defendant is answering and responding to these discovery requests in conformity with the requirements set forth in *Federal Rules of Civil Procedure* and not necessarily in compliance with the instructions and definitions set forth in "*Plaintiff's Second Set of Requests for Admission to State Superintendent W. Clayton Burch.*"

K. This Defendant objects to the discovery requests to the extent that the information and/or documents sought are not in his possession.

### **REQUESTS FOR ADMISSION**

#### **REQUEST NO. 5:**

Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

**RESPONSE:** This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. has produced documentation that attests Plaintiff B.P.J. has been diagnosed with gender dysphoria and that Plaintiff B.P.J.'s witnesses have testified to the same. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions set forth in this Request.

**REQUEST NO. 6:**

Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team.

**RESPONSE:** This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. has produced documentation that attests Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team in 2021 and that Plaintiff B.P.J.'s witnesses and Defendant Dora Stutler have testified to the same. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions in this Request.

**REQUEST NO. 7:**

Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls' middle school cross country Mountain Hollar MS Invitational meet in 2021.

**RESPONSE: RESPONSE:** This Defendant has made a reasonable inquiry and lacks sufficient knowledge or

**information to admit or deny the assertions in this Request.**

**REQUEST NO. 8:**

Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 9:**

Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross country team.

**RESPONSE: This Defendant admits this Request.**

**REQUEST NO. 10:**

Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 11:**

Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 12:**

Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School's girls' cross-country team in 2021.

**RESPONSE: This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. and Defendant Dora Stutler have testified that all Bridgeport Middle School girl students who tried out for Bridgeport Middle School's girls' cross-country team in 2021 made the team. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions in this Request.**

**REQUEST NO. 13:**

Admit that Bridgeport Middle School's girls' cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

**RESPONSE: This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. and Defendant Dora Stutler have testified that all Bridgeport Middle School girl students who tried out for Bridgeport Middle School's girls' cross-country team in 2021 made the team. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions in this Request.**



**REQUEST NO. 14:**

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls' cross-country team.

**RESPONSE: Objection. The phrase “unfair athletic advantage” is vague, undefined, and subject to multiple interpretation. Without waiving this objection, this Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 15:**

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls' cross-country team.

**RESPONSE: Objection. The phrase “unfair athletic advantage” is vague, undefined, and subject to multiple interpretation. Without waiving this objection, this Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 16:**

Admit that cross country is a sport that requires “competitive skill” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

**RESPONSE: This Defendant denies as “competitive skill” is not defined in H.B. 3293 or *West Virginia Code* § 18-2-25d and said provision has not yet been defined by a Court having jurisdiction over this Defendant or through regulations.**

**REQUEST NO. 17:**

Admit that cross country is a sport that requires “competitive skill” as that phrase is used in 34 C.F.R. § 106.41(b).

**RESPONSE:** This Defendant denies as “competitive skill” is not defined in 34 C.F.R. § 106.41(b) and said provision has not yet been defined by a Court having jurisdiction over this Defendant or through regulations.

**REQUEST NO. 18:**

Admit that cross country is not a “contact sport” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

**RESPONSE:** This Defendant denies as “contact sport” is not defined in H.B. 3293 or *West Virginia Code* § 18-2-25d and said provision has not yet been defined by a Court having jurisdiction over this Defendant or through regulations.

**REQUEST NO. 19:**

Admit that cross country is not a “contact sport” as that phrase is used in 34 C.F.R. § 106.41(b).

**RESPONSE:** This Defendant denies as “contact sport” is not fully defined in 34 C.F.R. § 106.41(b) and this Defendant is not aware of any exhaustive definition by a Court having jurisdiction over this Defendant or through regulations.

**REQUEST NO. 20:**

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle School's girls' cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

**RESPONSE:** This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d(c)(2)) would not have been permitted Plaintiff B.P.J. to be a member of Bridgeport Middle School's girls' cross-country team after July 8, 2021 and that the injunction issued in this case permitted Plaintiff B.P.J. to be a member of the same.

**REQUEST NO. 21:**

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

**RESPONSE:** This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d(c)(2)) would not have been permitted Plaintiff B.P.J. to be a member of any girls' athletic team offered at Bridgeport Middle School after July 8, 2021 and that the injunction issued in this case would have permitted Plaintiff B.P.J. to be a member of the same.

**REQUEST NO. 22:**

Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

**RESPONSE:** This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

**REQUEST NO. 23:**

Admit that the State Board of Education and the State Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE:** This Defendant admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.

**REQUEST NO. 24:**

Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

**RESPONSE:** This Defendant admits that all persons and entities must comply with the law but denies the remaining request as it misstates the law. H.B. 3293 only requires WVBOE to promulgate rules to "implement" *West Virginia Code* § 18-2-25d, not to enforce it.

**REQUEST NO. 25:**

Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: This Defendant admits that all persons and entities must comply with the law, unless enjoined from doing so by a court.**

**REQUEST NO. 26:**

Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

**RESPONSE: This Defendant admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.**

**REQUEST NO. 27:**

Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: This Defendant admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.**

**REQUEST NO. 28:**

Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

**RESPONSE: This Defendant admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.**

**REQUEST NO. 29:**

Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 30:**

Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 31:**

Admit that there are no cross-country teams designated as "coed or mixed," as that phrase is used in

H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 32:**

Admit that there are no athletic leagues designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 33:**

Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

**RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.**

**REQUEST NO. 34:**

Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls' athletic team offered at Bridgeport Middle School.

**RESPONSE:** This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls' athletic team offered at Bridgeport Middle School.

**REQUEST NO. 35:**

Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls' athletic team offered by her public secondary school.

**RESPONSE:** This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls' athletic team offered by her public secondary school.

**REQUEST NO. 36:**

Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from joining a girls' athletic team offered at Bridgeport Middle School.

**RESPONSE:** This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits a Bridgeport Middle School transgender girl student from joining a girls' athletic team offered at Bridgeport Middle School.



**REQUEST NO. 37:**

Admit that H.B. 3293 prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

**RESPONSE:** This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

**REQUEST NO. 38:**

Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School.

**RESPONSE:** This Defendant admits to the extent that Section 3.8 of 127 C.S.R. 2 is applicable.

**REQUEST NO. 39:**

Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

**RESPONSE:** This Defendant admits to the extent that Section 3.8 of 127 C.S.R. 2 is applicable.

**REQUEST NO. 40:**

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

**RESPONSE: This Defendant admits this Request.**

**REQUEST NO. 41:**

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

**RESPONSE: This Defendant admits this Request.**

**REQUEST NO. 42:**

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

**RESPONSE: This Defendant admits this Request.**

**REQUEST NO. 43:**

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

**RESPONSE: This Defendant admits this Request.**

**REQUEST NO. 44:**

Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

**RESPONSE: Objection.** The phrase “derive social benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

**REQUEST NO. 45:**

Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

**RESPONSE: Objection.** The phrase “derive psychological benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

**REQUEST NO. 46:**

Admit that interscholastic athletic competition benefits middle school students.

**RESPONSE: Objection.** The phrase “benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to middle school students who participate in interscholastic sports.

**REQUEST NO. 47:**

Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

**RESPONSE: Objection. The phrase “benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to middle school students who participate in interscholastic sports.**

**REQUEST NO. 48:**

Admit that when you perform your official duties as State Superintendent you are acting on behalf of the State Board of Education.

**RESPONSE: This Defendant admits this Request.**

**REQUEST NO. 49:**

Admit that when you perform your official duties as State Superintendent you are acting on behalf of the State of West Virginia.

**RESPONSE: This Defendant admits this Request.**

**REQUEST NO. 50:**

Admit that you are a State Actor for purposes of 42 U.S.C. § 1983 when fulfilling duties in your official capacity as the State Superintendent.

**RESPONSE: This Defendant admits this Request as he must comply with the law.**

**REQUEST NO. 51:**

Admit that as a member of the State Board of Education, you are required to promulgate rules implementing H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law, unless enjoined from doing so by a court.**

**REQUEST NO. 52:**

Admit that any rules you promulgate pursuant to H.B. 3293 cannot conflict with the plain language of H.B. 3293.

**RESPONSE: This Defendant admits this Request all persons and entities must comply with the law, unless enjoined from doing so by a court.**

**REQUEST NO. 53:**

Admit that under any rules you promulgate pursuant to H.B. 3293, students defined as “male” under H.B. 3293 would not be allowed to participate on girls’ athletic teams offered by public secondary schools in West Virginia.

**RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law.**

**REQUEST NO. 54:**

Admit that under any rules you promulgate pursuant to H.B. 3293 Plaintiff B.P.J. would not be allowed to participate on girls’ athletic teams offered by public secondary schools in West Virginia.

**RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law.**

**REQUEST NO. 55:**

Admit that the West Virginia Secondary School Activities Commission must comply with any rule you promulgate pursuant to H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law.**

**REQUEST NO. 56:**

Admit that the Harrison County Board of Education and Harrison County School Superintendent must comply with any rule you promulgate pursuant to H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law, unless enjoined from doing so by a court.**

**REQUEST NO. 57:**

Admit that you selected Heather Hutchens to be the person responsible for promulgating rules implementing H.B. 3293.

**RESPONSE: This Defendant denies this request as stated; however, this Defendant admits that Heather Hutchens and/or other counsel on behalf of the West Virginia Department of Education are generally tasked with drafting rules.**

**REQUEST NO. 58:**

Admit that you must comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*

**RESPONSE:** This Defendant admits this Request as he must comply with the law, unless enjoined from doing so by a court.

**REQUEST NO. 59:**

Admit that you must comply with the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

**RESPONSE:** This Defendant admits this Request as he must comply with the law, unless enjoined from doing so by a court.

**REQUEST NO. 60:**

Admit that you are required to enforce H.B. 3293 assuming the Court has not enjoined you from doing so.

**RESPONSE:** This Defendant denies this Request as *West Virginia Code* § 18-2-25d only requires WVBOE to promulgate rules, including emergency rules, pursuant to *West Virginia Code* § 29A-3B-1 *et. seq.*, to implement the provisions of this section.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA  
CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**WVSSAC'S RESPONSES TO SECOND SET  
OF REQUESTS FOR ADMISSION**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, and responds to Plaintiffs Second Set of Requests for Admission, as follows. Defendant West Virginia Secondary School Activities Commission has not completed discovery in this civil action and has not completed its preparation for trial. For these reasons, the Defendant's responses are based upon only such information and documents as are



presently available and known to WVSSAC. Further discovery and independent investigation may lead to other responsive information and/or documents. The following responses are given in good faith but without prejudice to the Defendant's right to produce evidence of subsequently discovered facts or documents.

\*\*\*

REQUEST NO. 27: Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

**RESPONSE:**

**Admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC. However, WVSSAC admits that it must follow all laws that include a duty for it.**

REQUEST NO. 28: Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

**RESPONSE:**

**Objection; calls for a legal conclusion; incomplete hypothetical. Further, WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, adopting or enforcing related policies. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying**

**variables as relates to this student, WVSSAC admits only that it cannot adopt or enforce any policy that conflicts with state law.**

REQUEST NO. 29: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

**RESPONSE:**

**Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.**

REQUEST NO. 30: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

**RESPONSE:**

**Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.**

REQUEST NO. 31: Admit that there are no cross-country teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

**RESPONSE:**  
**Admitted.**

REQUEST NO. 32: Admit that there are no athletic leagues designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

**RESPONSE:**

**Objection; form of the question (which WVSSAC does not understand). In a good faith effort to respond and reserving all rights to amend, revise, retract or other upon clarification, WVSSAC asserts that the coed or mixed sports of football, cheer, wrestling, baseball allow for competition between schools.**

REQUEST NO. 33: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)),” that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

**RESPONSE:**

**Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.**

REQUEST NO. 34: Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle

School from joining a girls' athletic team offered at Bridgeport Middle School.

**RESPONSE:**

**Objection; calls for a legal conclusion. Without waiving that objection, on information and belief, admitted.**

\*\*\*

REQUEST NO. 47: Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

**RESPONSE:**

**Objection; form of the question — overly broad, vague (`benefits'). However, on information and belief only, WVSSAC admits that, in general, participation in interscholastic athletics `benefits' middle school students, .win or lose, by providing provides an opportunity for leadership, personal health, camaraderie and cooperation.**

REQUEST NO. 48: Admit that after H.B. 3293 was signed into law you decided that, for athletic eligibility purposes, a student athlete's gender would be determined by referring to the gender identified in West Virginia Education Information System ("WVEIS").

**RESPONSE:**

**Denied. The extent to which WVSSAC relied upon WVEIS was not changed by H.B. 3293. However, of note, WVSSAC has no access to and therefore no direct reliance upon WVEIS.**

REQUEST NO. 49: Admit that Plaintiff B.P.J.'s gender is identified in WVEIS as "male."

**RESPONSE:**

**WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.**

REQUEST NO. 50: Admit that, as long as H.B. 3293 is in effect, you will not permit a student designated as "male" in WVEIS to participate on Bridgeport Middle School's girls' cross-country team unless ordered to permit that student to participate by a court.

**RESPONSE:**

**WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, adopting or enforcing related policies. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables in WVEIS as relates to the referenced student, WVSSAC admits that it cannot adopt or enforce any policy that conflicts with state law.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA**

**CHARLESTON DIVISION**

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION,  
et al.,

Defendants,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT – INTERVENOR LAINIEY  
ARMISTEAD’S RESPONSES AND OBJECTIONS  
TO PLAINTIFF’S SECOND SET OF REQUESTS  
FOR ADMISSION**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and the applicable Local Rules of the District West Virginia and this Court, Defendant-Intervenor Lainiey Armistead provides the following

answers to Plaintiffs Second Set of Requests for Admission to Defendant-Intervenor.

### **GENERAL OBJECTIONS**

1. Ms. Armistead objects to the following Definitions presented in Plaintiffs First Set of Requests for Admission to Defendant-Intervenor:

**CISGENDER means a person whose gender identity aligns with the sex they were assigned at birth.**

\*\*\*

which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

Subject to these objections, Ms. Armistead admits that other than Plaintiff B.P.J., she is currently not aware of and has no personal or independent knowledge of the current internal sense of self of members of the athletic teams at Bridgeport Middle School, nor does she have any reason to know or possess that information.

#### **REQUEST NO. 43:**

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

**ANSWER:** Ms. Armistead objects to the definition of “transgender” as provided in Plaintiff’s First Amended Complaint paragraph 23: “A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.” There is no definitive, legally recognized definition of “transgender”, Plaintiff’s definition relies on the term “gender identity” which, as

noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

Subject to these objections, Ms. Armistead admits that she is currently not aware of, and she has no personal or independent knowledge of the internal sense of self of members of the athletic team offered by a public secondary school in West Virginia, nor would she have any reason to know or possess that information.

**REQUEST NO. 44:**

Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

**ANSWER:** Ms. Armistead objects to the term “social benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of social benefits different individuals experience and Ms. Armistead has no personal or independent knowledge of the social benefits that students other than herself may or may not derive from participating on athletic teams. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead admits that she has personally derived social benefits as a student from playing soccer when the competition was safe and fair such as mental and physical toughness, perseverance, good sportsmanship, the value of hard work and discipline, the importance of teamwork, and leadership. Ms. Armistead further admits that she has observed other fellow athletes similarly benefiting from participation on athletic teams and believes that students generally benefit from participation when the competition is safe and fair.



But Ms. Armistead never participated in sports in secondary schools in West Virginia and therefore cannot speak to the personal experience of every student.

**REQUEST NO. 45:**

Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

**ANSWER:** Ms. Armistead objects to the term “psychological benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of psychological benefits different students may or may not experience from participating on athletic teams offered by public secondary schools in West Virginia. And Ms. Armistead has no personal or independent knowledge of the psychological benefits that students other than herself may or may not derive from participating on athletic teams. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead admits that she has personally derived psychological benefits from playing soccer when the competition was safe and fair such as mental and physical toughness, perseverance, good sportsmanship, the value of hard work and discipline, the importance of teamwork, and leadership. Ms. Armistead further admits that she has observed fellow athletes similarly benefitting from participation on athletic teams when the competition is safe and fair. But Ms. Armistead never participated in sports in secondary schools in West Virginia and therefore cannot speak to the personal experience of every student.

**REQUEST NO. 46:**

Admit that interscholastic athletic competition benefits middle school students.

**ANSWER:** Ms. Armistead objects to the term “benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of benefits different students may or may not experience from interscholastic athletic competition. And Ms. Armistead has no personal or independent knowledge of the all the benefits that middle school students may or may not derive from interscholastic athletic competition. Ms. Armistead also objects to the term “middle school students” as overbroad, vague, and ambiguous. It is not clear whether Plaintiff refers to middle school students in West Virginia, the United States of America, or the entire world. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead lacks personal and independent knowledge of how and if interscholastic competition benefits each and every middle school student, but she admits that interscholastic competition—when fair and safe—generally benefits students and she has personally benefitted from such fair and safe competition.

**REQUEST NO. 47:**

**[End of Excerpt]**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
WEST VIRGINIA  
CHARLESTON DIVISION

---

B.P.J., by her next friend and  
Mother, HEATHER JACKSON,

Plaintiff

vs. Case No. 2:21-CV-00316

WEST VIRGINIA STATE BOARD OF  
EDUCATION, HARRISON COUNTY  
BOARD OF EDUCATION, WEST  
VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION, W.  
CLAYTON BURCH in his official  
Capacity as State Superintendent,  
DORA STUTLER in her official  
Capacity as Harrison County  
Superintendent, PATRICK MORRISEY  
In his official capacity as Attorney General, and THE  
STATE OF WEST VIRGINIA,

Defendants.

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**VIDEOTAPED VIDEOCONFERENCE  
DEPOSITION OF BPJ**

January 21, 2022

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[14]

**BPJ,**

**CALLED AS A WITNESS IN THE FOLLOWING  
PROCEEDING, AND HAVING FIRST BEEN DULY  
SWORN, TESTIFIED AND SAID AS FOLLOWS:**

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**COURT REPORTER:**

Thank you.

**ATTORNEY HARTNETT:**

Before we begin this morning, if it's okay with Mr. Capehart, the parties were going to put on the record a couple of stipulations about objections that they had reached for today's proceedings. I would just direct the record in this case to the record of the deposition yesterday of Heather Jackson held on January 20th, and the same stipulations with respect to objections for legal/medical and expert testimony with respect to terminology and with respect to potentially [15] mischaracterization of the evidence. Those same stipulations would hold today. And so for the record, the Plaintiff agrees to that. And it would be helpful I think if the other Defendants could just assent to those stipulations for today on the record.

**ATTORNEY DENIKER:**

This is Susan Deniker. I stipulate to that.

**ATTORNEY GREEN:**

This is Roberta Green on behalf of WVSSAC. We stipulate to that.

**ATTORNEY HAMMOND:**

This is Kristen Hammond, and we also stipulate to that.

**ATTORNEY DUCAR:**

This is Tim Ducar. We also stipulate to that.

ATTORNEY CAPEHART:

And the State does as well.

ATTORNEY CAPEHART:

Anything else, Kathleen, or should I go ahead?

ATTORNEY HARTNETT:

Nothing here.

ATTORNEY CAPEHART:

All right. Thanks very much.

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**EXAMINATION**

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BY ATTORNEY CAPEHART:

[16]

Well, good morning. Nice to finally get to meet you. My name is Curtis Capehart, as I said just a minute ago. I represent the State of West Virginia in this. Now up to this point we've been referring to you by the initials as BPJ because that is the way you have been identified in the Complaint that started this lawsuit. Now, is that okay or would you prefer that I call you something else while we're talking here today? Because initials can be a little awkward. So if you feel more comfortable with me calling you something else, that's perfectly fine. You just let me know what that could be.

A. You can call me B.

Q. Okay.

ATTORNEY HARTNETT: If I could just say for the record, not to interrupt, that we filed with the BPJ initials in light of the Rules of Court, but the Plaintiff Counsel has no objection to you referring to her as B in this deposition.

ATTORNEY CAPEHART: Okay.

BY ATTORNEY CAPEHART:

Q. You are represented by counsel here today and is that Kathleen, Ms. Hartnett, that was speaking just now?

A. Yes.

[17]

Q. Have you ever been involved in a lawsuit before?

A. No.

Q. So you've probably never been deposed before, have you?

A. Can you repeat the question?

Q. Sure. You haven't been deposed before then, have you?

A. No.

Q. Okay. Also if there is a time where you have trouble understanding me or hearing me, just do what you just did there, let me know and I'll try and speak up a little bit. We don't have the best microphone placements in here, so that might be a thing as we go through today.

So as I go through and answer --- I'm sorry, if I go through and ask you questions today, I just need you to try to remember to answer verbally, not just nod your head or shake your head because there is a video, but we need to have those verbal responses so we can truly understand what your answer is. And if you do not understand a question, that's fine. You just need to say so

so that I can try and put together a better question or try to explain more of what I'm trying to [18] learn. Okay?

Now, if you answer one of questions that I ask you today, we are going to assume that you understand it. So if there is any kind of confusion, we don't want to deal with any of that. It's better you just ask me and I'll try and improve my question for you.

Does that all make sense?

A. Yes.

Q. Okay. Also, I want to kind of touch on a couple of other things here before I get started with some questioning. Just understand that we are not here to judge you. We're just trying to learn some of the facts here, things we don't know. This lawsuit was filed trying to have a West Virginia State Law declared invalid under the U.S. Constitution and another Federal Law referred to as Title 9. And that's --- that's pretty serious. So we, as the lawyers for the State, have an obligation to defend that law. That means I have to ask you some questions that might make all of us uncomfortable a little bit, but I have an obligation to try and get through these. That's not my goal. I'm just trying to find out information. Okay?

Now, also if I ask you a question that makes [Page 19] you very uncomfortable, tell me, and I can try, if I can, to rephrase it in a way to make you not uncomfortable. I can't say that I won't ask those kinds of questions because there's some things that we have to ask questions about, some things that we need to get your testimony on, but I'm not trying to make you feel bad or upset you in any way.

Okay?

A. Okay.

ATTORNEY HARTNETT:

I would just object to the extent you're seeking the witness to agree with your description of your role. But on the other hand, I appreciate you letting her know that she can let you know if she has an upsetting question.

BY ATTORNEY CAPEHART:

Q. Also, I'm just going to --- a word about objections. Sometimes when we go through these, your lawyer might make an objection. I may ask a question, Kathleen may same objection, something else. Now, if that happens, the lawyers may have to have a conversation. It's unlikely, but the lawyers may have to talk about something, at which point you wouldn't be able to hear us or see us. We don't think that's going to happen, but we at least want to let you know.

[20]

Also, generally, if your lawyer says objection, you can go ahead and answer the question unless your lawyer directs you not to.

A. Okay.

Q. Oh, and one last thing. If you need to take a break for any reason, go to the bathroom, get more water, something of that nature, just let me know and we will take a break as soon as we can. We just can't take a break if I've asked a question and we are waiting for you to finish your answer.

Does that make sense?

A. Yes.

Q. Okay. Great. We will try and get through this as quickly as we can. I'm sure you have a lot of other things that you would rather do on a Friday. So with that, let me



ask you, if you can, to please state your name for the record.

A. First and last?

Q. Yes, please.

A. B P J .

Q. Great. What is your address?

A. Could you repeat the question?

Q. Sure. What is your home address?

[21]

A. I'm not sure.

Q. Okay. And where do you go to school?

A. Bridgeport Middle School.

Q. Do you remember signing a document called a Declaration back when this lawsuit was first getting started?

A. I can't remember.

Q. Okay. If you could look at --- it's marked Exhibit 31.

ATTORNEY CAPEHART:

Court Reporter, if you could pull up that exhibit also.

BY ATTORNEY CAPEHART:

Q. So do you have Exhibit 31 in front of you?

A. Yes.

Q. It's also up on the screen, just to make sure that we're all looking at this document here?

MS. JACKSON: This is this.

BY ATTORNEY CAPEHART:

Q. There's on the screen electronic version of it, too.

ATTORNEY HARTNETT: For the record, we have copies of the exhibits face down in the room with [Page 22] the witness, and the witness may feel free to pick up the exhibit once it's referred to by the questioning counsel and look at the hard copy.

BY ATTORNEY CAPEHART:

Q. Okay. Looking at this, now if you look at the last page, I believe it is number page four, it has the initials BPJ there and then some handwritten signature-like initials of BPJ. Looking at those, do you recognize those?

A. Yes.

Q. And that's your handwriting, I guess?

A. Yes.

Q. Okay. Thanks very much. Looking at this, does it jog your memory a little bit that this is something you had to deal with back when the lawsuit was started?

A. Not really.

Q. Okay. And do you remember signing it?

A. A little bit.

Q. I know it's been a while, so I thought you might want to go and look at a couple of these things to remember what was in here.

[23]

MS. JACKSON: Do you want to read through it?

THE WITNESS: No.

BY ATTORNEY CAPEHART:

Q. If you want to take a minute, you can kind of read all through it. You just go ahead and let us know when you've had a chance to do that.

MS. JACKSON: You need to tell them when you're done.

THE WITNESS: Oh, I'm done.

BY ATTORNEY CAPEHART:

Q. Thank you. Now, since you signed this back in May of last year, obviously it's been quite a while since May. And is anything --- well, let me rephrase. Back at that time, if you look on page two, this was --- in paragraph 11 you were talking about trying out for cross-country and track. And obviously, with the passage of time, you tried out for the track team, right, cross-country track team.

ATTORNEY HARTNETT: Objection, form.

THE WITNESS: I tried out cross-country. Track is not a sport that was available at that time.

BY ATTORNEY CAPEHART:

[24]

Q. Is track a spring sport?

A. Yes.

Q. Okay. So you tried out for cross-country. Did you make the cross-country team?

A. Yes.

Q. Back on the bottom of the first page, under the paragraph number four, it describes that you when you were younger would play with your mom's clothes, liked paint and girly items. Whenever you said girly items there with the quotations around it, what kind of items are those?

A. Items that had maybe unicorns on it, sparkles, anything that would stick out in general that was maybe a mystical creature that was like a unicorn maybe. I had some stuff that was pandas because I really like pandas, and they were always multi-colored. And that's about it.

Q. Okay. I'm going to set that off to the side for a minute and just ask you a few other questions. Your mother told us that you are comfortable explaining your gender identity. Are you?

ATTORNEY HARTNETT: Objection to form.

[25]

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Can you explain to me what is your gender identity?

A. I am female and I go by the pronoun she or her.

Q. Do you also refer to yourself as a transgender girl?

A. No. I refer myself as a girl because I am a girl, and that's it.

Q. Okay. Does it bother you if someone does refer to you as a transgender girl?

A. No, because that's still calling me a girl, but I prefer to be called as just a girl.

Q. Okay. Did you have a problem with --- looking back at your Declaration, at Exhibit 31, in paragraph 12 it says, the second line, I am a transgender girl. Is that okay with you that that's written that way?

A. Yes, that is fine because that is --- that's still showing that I am a girl and that is on a --- that's on my Declaration.

Q. And transgender female or transgender girl, are both of those terms accurate?

[26]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes, because I am a transgender female and a transgender girl.

BY ATTORNEY CAPEHART:

Q. Okay. I just want to make sure I got the terminology down. Do you remember the first time you heard the term transgender?

A. I can't remember.

Q. Okay. As long as you remember, you just --- have you always had an understanding of what transgender means?

A. I don't know, I don't think so.

Q. So --- and I'm not trying to put words in your mouth. I'm just trying to understand. So do you think there was a time that you didn't, but at some point you learned it, you just don't remember when that was?

A. Yes.

Q. All right. Do you have any recollection of a time when you were not a transgender girl?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: A little bit of a memory, but not much.

[27]

BY ATTORNEY CAPEHART:

Q. What kind of a memory do you have --- let me back up. How old is that memory?

A. Four or five years.

Q. Okay. Was that memory --- what were you doing that you can remember, I guess, maybe not being a transgender girl at that time?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I think I was learning something in school and I found it really interesting.

BY ATTORNEY CAPEHART:

Q. Okay. You don't remember what that was that you were learning, do you?

A. No.

Q. Your mother also told us that at some point when you were younger you told her that you were a girl. Do you remember the first time you told your mother that?

A. I can't remember.

Q. Okay. Do you remember the first time you told someone other than your mother that you were a transgender girl?

ATTORNEY HARTNETT: Objection to form.

[28]

THE WITNESS: I --- can you say it again?

BY ATTORNEY CAPEHART:

Q. Sure. I will try to make it a little bit better, too. Do you remember the time that you first told someone other than your mother that you were a girl?

A. Yes.

Q. Okay. Can you tell me about that?

A. It was in school. It was new, whenever I just came out, and it was the year of 4th grade.

Q. Okay. Do you remember who you were talking to?

A. I don't remember.

Q. Now, you said that was 4th grade, that that was the year that you came out. Do you use terminology like socially transition when you talk about that time?

A. Could you repeat the question?

Q. Sure. Let me ask a different one. Are you familiar with the term social transition or to socially transition?

A. No.

Q. Okay. When you --- and I'm going to use your term, [29] okay. When you said you came out in 4th grade and that was the time when you maybe started talking to other people about being a girl, you don't really remember who that was, but generally how was that time for you?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: It was good because I made a lot of new friends. A lot of people were really nice to me.

BY ATTORNEY CAPEHART:

Q. Were your old friends nice to you, too?

A. Yes.

Q. How was everybody at your school, teachers and other folks that worked there?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: They were very good about it.

BY ATTORNEY CAPEHART:

Q. Did you have any bad experiences that year?

A. No.

Q. Okay. B, for you what does it mean to be female or to be a girl?

A. Could you repeat the question?

Q. Sure. I'm trying to understand your perspective [30] on things, and so that's why I'm just asking, to you, what does it mean to be a girl or to be female?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: It means --- it means everything. I've always wanted to be a girl.

BY ATTORNEY CAPEHART:

Q. Okay. And what is it about a girl or female that makes them different from boys or males?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: How they act and how they dress their selves.

BY ATTORNEY CAPEHART:

Q. Okay. Anything else other than how they act or how they dress?

A. Not that I can think of right now.

Q. Okay. How do girls or females dress differently than boys or males?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Females would wear --- normally wear dresses and males would normally wear tuxedos and suits. And their casual clothes are most of [31] the time different but sometimes can be the same.



BY ATTORNEY CAPEHART:

Q. Okay. So do I look like I'm dressed like a male because I'm wearing a suit jacket and tie?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Okay.

A. Because that is also how you present yourself.

Q. Okay. Is presenting one's self, when you say that, is that different than how one dresses and how one acts or is it both of those together?

ATTORNEY HARTNETT: Objection to form. Sorry.

THE WITNESS: It's kind of a mix of all of it.

BY ATTORNEY CAPEHART:

Q. Now, when you say that how someone acts is different regarding girls to boys, what do you mean by that?

A. Normally ---.

ATTORNEY HARTNETT: Objection to form.

[32]

THE WITNESS: Most of the time males will look very big and buff and females most of the time do not like that look, but some can.

BY ATTORNEY CAPEHART:

Q. Okay. What else about how a person acts puts them in a more of a female category than a male category?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: They would maybe --- they wouldn't want to look like a guy. A guy wouldn't want to look like a girl and a girl wouldn't want to look like a guy unless --- unless you do, which sometimes people do do that.

BY ATTORNEY CAPEHART:

Q. Okay. So if someone is trying to look like a guy, then they are going to wear more what I'll call traditional attire, like you said, maybe like a tuxedo or a suit with a coat and a tie and they may want to look bigger and buff and in an overall way present themselves as male. Is that right?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Most of the time but not [33] all the time.

BY ATTORNEY CAPEHART:

Q. Okay. Are there actions or things that people do that make you think this person is acting more like a male or someone is acting more like a female?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Sometimes.

BY ATTORNEY CAPEHART:

Q. Okay. When you say sometimes what are you thinking about?

A. Maybe people are walking around because sometimes it's how they walk that you can tell and their hair sometimes.

Q. What kind of hair is more male as compared with hair that is more female to you?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I think longer hair is more ladylike and short hair is more manly, but sometimes people do like an option of that where people --- where guys will like long hair and girls will like short hair.

BY ATTORNEY CAPEHART:

Q. I think my father would agree with you on what [34] you said there. Are there other kind of behaviors that people exhibit that are more male or more female besides walking and maybe kind of their physical posture?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not really, no.

BY ATTORNEY CAPEHART:

Q. Okay. Besides, as you said, males would be more big and buff and females not really liking that look as much, although some of them do, are there other physical attributes that makes you think someone is more male or more female?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not really.

BY ATTORNEY CAPEHART:

Q. Does height have anything to do with it?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: No, because that can go either way. That's genetics if you're tall or not.

BY ATTORNEY CAPEHART:

Q. As you have been growing up, from what I understand, you talk with your mom a lot. Right?

A. Yes.

[35]

Q. Have you ever talked with your mother about what it means to be female?

A. Yes.

Q. Okay. What did your mother --- strike that. Did your mother try to help you as you were going through this process to kind of understand this a little bit more what is male and female?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. As you've been growing up and as you've been talking with your mother over the years as you realized, as you said, you're a girl and as we were just talking about, that there are certain things in your mind that go more with being female rather than being male, did you and your mom have conversations about that same kind of thing we were just discussing?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Okay. What did you all talk about?

[36]

A. We talked about looks and --- mainly looks and that was about it.

Q. Okay. Did you talk about makeup?

A. Yes.

Q. Okay. Is that something to you that is more female or more male?

A. More female, but some males do wear them --- wear it.

Q. Did you and your mom talk about jewelry?

A. Ish, not really because jewelry can be worn by males and females.

Q. That's fair. I'm wearing some myself right now. Did you all talk about anything else other than those few things that you just provided to me and also the makeup?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not really.

BY ATTORNEY CAPEHART:

Q. Okay. Have you ever had any of those kinds of conversations with your father?

ATTORNEY HARTNETT: Objection to form.

[37]

THE WITNESS: Not really because I don't think he would understand it because he is a guy that is --- he really --- he likes doing manly stuff and I don't think he'd understand makeup.

BY ATTORNEY CAPEHART:

Q. So with all that in mind, I'm just trying to understand how you think about some of these things. How do you define girls and boys?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Males try to look muscular and they do --- they lift weights and have short hair, but girls can also do that, but it's most commonly found with guys. With

girls, they usually have long hair, but guys can have that, too. They wear makeup and have different clothing than males.

BY ATTORNEY CAPEHART:

Q. Okay. Are there activities that girls or females like to do that men don't like to do or that males don't like to do?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not really because sports are for everyone and they should --- and every --- and any person should be able to play.

[38]

BY ATTORNEY CAPEHART:

Q. I thank you for that. I was making it a little bit more broad than that even though. Are there other things outside of sports that may be girls and females like to do that typically, from your experience, boys and males don't like to do?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not really because anything that a female could do a male could do, and anything a male could do a female could do.

BY ATTORNEY CAPEHART:

Q. And among all of your friends, are they mostly girls, mostly boys or all across both boys and girls?

A. They are mostly girls, but I do have some guy friends.

Q. What do you like to do with your friends that are girls?

A. We hang out, sometimes we play video games.

Q. Do you go --- do you like going to the mall or shopping? I know that has been harder recently since COVID?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Sometimes, but not really because of COVID.

[39]

BY ATTORNEY CAPEHART:

Q. Do you do the same kind of things with your friends that are boys?

A. We also hang out. We talk about video games, we play video games, so, yes, about the same.

Q. Okay. At some point you decided to change your name. Do you remember when you decided to do that?

A. When I came out.

Q. So in 4th grade, as you mentioned earlier?

A. I came out in the third --- the summer of third grade. But when I was like actually talking to people and stuff about it, it was 4th grade. So yes, when I came out.

Q. Okay. And so when did you start going by B?

A. The summer of third grade.

Q. Did you go by B at school at that time, too, or did you wait until fourth grade for that?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: It was the summer of third grade and I was kind of presenting through third grade, but I didn't go by B, just --- at that point I waited until fourth grade.

[40]

BY ATTORNEY CAPEHART:

Q. Okay. How did you select your new name?

A. I've always liked the name, so that's what I liked.

Q. Okay. And why did you decide at that time that you needed a new name?

A. Because I didn't think my name fit for me.

Q. Okay. And you're familiar with the term dead name. Right?

A. Yes.

Q. Okay. Do you remember the first time that you encountered that word --- or I'm sorry, that term?

A. That term? When I came out, I was told that I could be dead named and they told me what that was. And then later I looked it up and figured out what it was more in depth.

Q. Okay. Do you remember who it was that had told you that you could be dead named?

A. I can't remember.

[41]

Q. Was it your mom?

A. It may have been, but I can't remember.

Q. From what your mother and your father told us, it sounds like your mother has been the parent that has taken you to all but maybe one of your appointments to talk to people about being a transgender girl. Is that about right from your recollection?

ATTORNEY HARTNETT: Objection to form.



THE WITNESS: Yes, that is about right.

BY ATTORNEY CAPEHART:

Q. Have you had a lot of appointments to talk with doctors or other healthcare providers about being a transgender girl?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I wouldn't say it was a lot, but I also wouldn't say it was like a little. It was a good amount of appointments.

BY ATTORNEY CAPEHART:

Q. Okay. After one of those appointments you received a diagnosis of gender dysphoria. Have you been told that before?

A. Yes.

Q. Okay.

[42]

Q. When was the first time you remember encountering that term gender dysphoria?

A. I don't know the date, but I think my mom told me that I had it.

Q. Okay. Do you remember generally when that was?

A. I can't remember. It may have been 2021 or 2022.

Q. Also, when you're remembering something, if you remember it by year, I know that is how I remember a lot of things growing up, if something happened at a particular year of school rather than a calendar year. You know, if that's a frame of remembering for you, too, that is fine also. Calendar years aren't as important. Do you know what gender dysphoria is?

A. A little bit about it, but I don't know the actual definition.

Q. Okay. Did you look it up and research it like you did dead name after you heard it?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't think so because if I did I'd probably know more about it.

BY ATTORNEY CAPEHART:

[43]

Q. And you said --- do you remember the doctor visit where you first heard one of your doctors use that term?

A. I can't remember.

Q. Do you remember an appointment with Dr. Montano?

A. Yes, I remember some of the appointments with him.

Q. Okay. There is some medical records that show that you had an appointment with Dr. Montano where he did a full assessment of you in the summer of 2019. Do you remember that by any chance?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not really because that was a long time ago.

BY ATTORNEY CAPEHART:

Q. Do you remember any appointment with Dr. Montano that was a longer appointment where you talked about a lot of things?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not really because they all felt like they went by so fast because during the things I usually had to miss a day of school, and I was always thinking about what I missed.

[44]

BY ATTORNEY CAPEHART:

Q. I did the same thing at your age. Whenever you had those appointments with Dr. Montano or at Dr. Montano's office, I know oftentimes at those appointments it's not just the doctor, that there are sometimes other people that work there that will come in and see a patient during the appointment time. What do you recall about those appointments and who you met with?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I can't remember, but I --- I don't remember their name, but I remember a time where someone else went in there.

BY ATTORNEY CAPEHART:

Q. Do you remember the kinds of things that you would talk about with Dr. Montano or any of the other people at those appointments?

A. Maybe --- I don't know. I can't remember.

Q. When you were at appointments at Dr. Montano's office, do you recall him or any of his staff running tests on you?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I can't recall.

BY ATTORNEY CAPEHART:

[45]

Q. Okay. At those appointments do you remember hearing people talking about how to treat gender dysphoria?

A. I can't remember.

Q. Has your mother discussed with you how your gender dysphoria is being treated now?

A. Maybe back whenever I --- whenever I was diagnosed with it, but I can't remember.

Q. Whenever there's any decisions that have to get made about your treatment for your gender dysphoria, does your mother talk with you about that and explain everything that's happening?

A. Yes.

Q. Okay. When you all are having those conversations and a decision has to be made, does your mother let you make those decisions?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes, I am part of the making of the decisions what happens to me.

BY ATTORNEY CAPEHART:

Q. Okay. Do you and your mother ever disagree about what should be done?

[46]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not --- not --- I don't think we have, but there is a possibility that could happen or could have happened and I don't recall.

BY ATTORNEY CAPEHART:

Q. Okay.

Give me just a second.

ATTORNEY HARTNETT: Also, I think it might be a good time to take a quick break just given the youth and amount of water consumption. So maybe we can take a five to ten-minute bathroom break when it's good for you, Curtis.

ATTORNEY CAPEHART: Oh, yeah, that's actually perfectly fine.

ATTORNEY HARTNETT: Can we take a ten-minute break? Yeah, let's just take a ten-minute break so we're are not all back too early.

ATTORNEY CAPEHART: Sounds great.

VIDEOGRAPHER: Going off the record. The current time reads 11:01 a.m.

OFF VIDEOTAPE

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

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[47]

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 11:13 a.m.

BY ATTORNEY CAPEHART:

Q. Okay. Well, during the break I was going back over some notes and just have a couple of questions that kind of relate to some things we already talked about and then I'm going to move on. Okay?

A. That Declaration that we had looked at earlier, I recall that you had mentioned when you first looked at it you didn't recall seeing it, you didn't recall signing it, you

then looked at your initial signatures and then you had read the rest of the document. After we went through all of that, did that jog your memory any. Do you remember signing it?

A. I do remember signing it, but I kind of have a little bit of memory seeing it, but I do have a memory signing it.

Q. Okay. Also, when you recalled learning and hearing the term about dead name and that someone might do that to you at school, did anyone actually do that to you at [48] school?

A. Not that I can remember.

Q. Okay. I think you had also said you kind of did some research. What kind of research did you do looking into that term?

A. Just looking what it meant, looking up what it meant.

Q. Did you look it up in a book or on the internet?

A. The internet.

Q. Okay. Do you recall where on the internet you found it?

A. I think I looked it up on Google and I did another one, but I can't remember what it was. It was one of the unpopular ones.

Q. Okay. Also, when you were --- or when we were talking about the characteristics or things that make a person more female or more male you had said that height really didn't make a difference, that that was really more genetic. Do genetics have something more to do with being a girl or a boy?

ATTORNEY HARTNETT: Objection to form.

[49]

THE WITNESS: I wouldn't know.

BY ATTORNEY CAPEHART:

Q. Also, is there anything that definitively makes a person a girl or a female versus a boy or a male?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. And I will preface it with kind of what we were kind of talking about before. You were describing how there were a lot of things that are typically --- and I don't think you used that word but I'm going to use it, more typically associated with males like tuxedos or suits, short hair, being buff, working out, that sort of thing, and other things that were more typically associated with being female, wearing dresses, longer hair, not preferring to have that maybe over muscled physique, wearing makeup, that sort of thing, and that there were even some other things you said are maybe more associated with males, but that doesn't mean that females don't do it or vice versa. I think that's what you said. So I'm wondering is there anything in your mind that if you see a person doing that or wearing that or [50] whatever that thing might be, is there something that you, if you see it associated with a person, you think only boys do that or only girls do that?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: No, because if I see someone like that and I don't --- I don't immediately go, oh, that's a guy, oh, that's a girl. I ask them, oh, what are your pronouns, what is your gender identity. And that's --- that's the better way to figure out what they --- what they are and if

they're male or female or what --- if they're nonbinary or whatever they are.

BY ATTORNEY CAPEHART:

Q. You mentioned a term nonbinary. Can you explain what nonbinary means?

A. It is a person that doesn't identify as a male or female and they go by they/them pronouns.

Q. Do you know anyone that is nonbinary?

A. One of my lawyers is.

Q. Do you know anybody at your school or your hometown that is nonbinary?

A. I don't think so.

Q. Okay.

ATTORNEY HARTNETT: Heather, do you want [51] a minute for a break?

MS. JACKSON: Just to get a sip of water.

ATTORNEY HARTNETT: Can you give her a mute to, the court reporter, just to let her work through that? It's happened to all of us. No worries.

MS. JACKSON: It went down the wrong pipe.

ATTORNEY CAPEHART: And again, if you need to take another break, that's fine, too. All okay on your end?

MS. JACKSON: We're good.

ATTORNEY CAPEHART: Okay.

BY ATTORNEY CAPEHART:

Q. I don't want to upset you, but I need to ask a couple of questions about some comments that, according to what we learned, your father had made in the past.



ATTORNEY HARTNETT: Objection to form.

ATTORNEY CAPEHART: That wasn't a question, but okay.

BY ATTORNEY CAPEHART:

Q. We understand that ---.

ATTORNEY HARTNETT: Sorry. Just to make clear my objection was that you were stating that certain statements had been made, and I'm objecting to [52] the foundation.

ATTORNEY CAPEHART: Okay.

ATTORNEY HARTNETT: Go ahead.

BY ATTORNEY CAPEHART:

Q. I've looked at some records and there are some notations and [redacted]. When we were talking with your mother she had said she did not know what had happened there. Can you tell me what had happened when that occurred?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. We've seen in some records a notation [redacted]. Your mother did not know what had happened on that occasion. She recalled that when this happened, but she didn't know what had actually occurred [redacted]. Do you remember that?

ATTORNEY HARTNETT: Objection to form. Go ahead.

THE WITNESS: I can't remember, but I'm [53] pretty sure it was --- I was scared of something that

was --- honestly I shouldn't have been scared of. It was nowhere near me. It was probably a spider or something. But just the phrase [redacted] it is like don't be scared of that, there's no reason to. It's just another use of don't be scared of that.

BY ATTORNEY CAPEHART:

Q. Okay. We were --- we were just wondering what had happened there because, as I recall, when this was being discussed yesterday, that your mother indicated you were very upset when you had [redacted]. Does that help you remember anything more?

ATTORNEY HARTNETT: Objection, form.

THE WITNESS: Not really.

BY ATTORNEY CAPEHART:

Q. Also, we seen a note in one of the medical records that was, again, discussed yesterday and your mother said we would need to ask you about it. [Redacted] [54] [redacted]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you restate the question?

BY ATTORNEY CAPEHART:

Q. Sure. We were looking at some records and there was some notation [redacted]. Your mother wasn't familiar with that and said we should ask you about it. So I'm asking you if you recall ever discussing that with one of your treaters?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't remember discussing that with anyone besides my mom really. But it was a long time ago, so I --- I can't remember if I did or not.

BY ATTORNEY CAPEHART:

Q. Okay. Do you know what that would relate to, that reference [redacted]

A. He probably got mad at me, like really mad in the situation, and he was probably threatening [redacted]

Q. Has that happened sometimes?

[55]

A. A long time ago. It doesn't happen anymore now.

Q. Did it happen on multiple occasions or just once?

A. It was --- well, it was a couple of times maybe in like the same three days or something like that, but after those three days it stopped.

Q. Did you talk with your mom about it when that happened?

A. Yes.

Q. Okay. Did she tell you that she was going to talk to your father for you?

ATTORNEY HARTNETT: Objection. Go ahead.

THE WITNESS: She --- I think she did. She talked to him, and that's why he stopped doing it.

BY ATTORNEY CAPEHART:

Q. [Redacted]?

A. Could you restate it?

Q. Sure, Do you have appointments from time to time to [Redacted]

[Redacted]

[Redacted]

[56]

ATTORNEY CAPEHART: We've got a fire drill going on. Hold on, everybody.

THE WITNESS: What happened?

MS. JACKSON: They have a fire alarm going off.

THE WITNESS: Oh.

VIDEOGRAPHER: Do you want to go off the record?

ATTORNEY HARTNETT: We're fine with that.

VIDEOGRAPHER: Going off the record. The current time reads 11:25 a.m.

OFF VIDEOTAPE

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

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ON VIDEOTAPE

VIDEOGRAPHER: Back back on the record. The current time reads 11:41 a.m.

ATTORNEY GREEN: All right. Thank you and I will just hop in for a minute. This is Roberta Green on behalf of WVSSAC. And I just wanted to note for the record the appearance of my co-counsel, Shannon Rogers, who's with me on behalf of WVSSAC. I just wanted to note that for the record and I'll hop off. [57] Thanks.

ATTORNEY CAPEHART: Okay.

Now that we are through our building emergency, if I could ask the court reporter to go back to the last line of actual testimony. I don't recall what point during that event we broke off the record, but if you could go back and

tell us where we were whenever loud noises started happening.

COURT REPORTER: The question, sure. Do you have any appointments from time to [redacted] Answer, yes. Question, okay. Who do you meet with? And then that's when the fire drill happened.

ATTORNEY CAPEHART: Thank you.

BY ATTORNEY CAPEHART:

Q. Becky, let's just pick up there. Who do you meet with?

A. I meet with [redacted]. His name is [redacted].

Q. Okay.

Do you know what office or group [redacted] is with?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the [58] question?

BY ATTORNEY CAPEHART:

Q. Sure. Is [redacted] or is [redacted] part of a [redacted]?

A. I don't know.

Q. Do you know the name --- I'm sorry. I cut you off. Go ahead.

A. I just go to him for [redacted]. That's ---.

Q. Okay.

How often do you meet with [redacted]

A. It just depends because sometimes maybe it's once a month, but it can be anytime. If we call him and we need to go, he usually has a spot open.

Q. Okay.

And just generally speaking, what kind of things do you discuss with [redacted]

A. [Redacted]

Q. Okay.

Whenever you meet with [redacted] do you go in alone or does your mother go in with you?

A. It depends. It usually starts with me and my mom in there, then she waits out in the lobby and we talk. And sometimes I go out and my mother talks to him [59] and then we get back --- we both go in the room at the end and then we say bye and then we leave.

Q. Okay.

And how do you like that process, going to talk to [redacted]

A. I love it because I can talk about [redacted]

Q. Does that help you to feel better?

A. Uh-huh (yes).

Q. Do you know --- excuse me, do you know whether you have had any [redacted]?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you rephrase that?

BY ATTORNEY CAPEHART:

Q. Yes. And let me back up and ask another question I had forgotten to ask earlier. Do you know what [redacted] profession is?

A. I don't know.

Q. Okay.

A. All I know is that he is a [redacted] That's what I know.

Q. Okay.

And do you know whether [redacted] is a [redacted] of some sort or just a [redacted]

[60]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I do not know.

BY ATTORNEY CAPEHART:

Q. Okay. Okay.

Now, if you could look at Exhibit 34. Do you have the document marked as Exhibit 34 in front of you? It says West Virginia Legislature at the top and then in the middle of the page there's a line that says House Bill 3293.

A. Yes, we have that.

Q. Okay. Great.

Have you ever seen this before?

A. I don't think so.

Q. Okay.

So if you --- this is just of kind of a cover page for what was House Bill 3293 that passed the legislature and was signed the Governor last year. This is the --- this is the bill, the law that your lawsuit is challenging.

Now, if you look --- start looking at page two you'll see there is a lot of text here. Have you seen any of this before? You don't have to read it all, just kind of glance over it.

And if you think you may have seen parts before, you can say so, but ---.

[61]

A. I don't think I've seen this before.

Q. Okay. Okay. All right.

Well, I'm not going to ask you to read the whole thing right now. I'm just going to ask you about a couple of parts of it.

Okay?

A. Uh-huh (yes).

Q. Because there's a lot to read here.

ATTORNEY HARTNETT: I'll just refer to our standing objection. Thank you.

ATTORNEY CAPEHART: Sure. Sure.

BY ATTORNEY CAPEHART:

Q. On what's marked at the bottom of the page as page two you'll see that there are kind of a column of numbers that run down the left-hand side of the page there. The top number on page two should be a ten?

A. Uh-huh (yes).

Q. Okay.

And I'll just refer to those lines to direct you to a couple of spots. Okay. And just so you know, that's a standard part of what a bill looks like so that whenever they're looking at legislation people can refer to a procedure or line. That way they can follow it more easy.

[62]



So the lines I'm going to direct you to are 25 and 26. This is a definition that is set forth in this bill and it is down in West Virginia Code. So just read that and let me know when you've read that definition in this bill.

A. I've read it.

Q. Okay.

Do you think that's a proper definition of biological sex?

ATTORNEY HARTNETT: Objection to terminology. Make that a standing objection.

THE WITNESS: I would not know that if I --- if that would be ---.

BY ATTORNEY CAPEHART:

Q. Okay.

Have you ever heard people use language like biological sex or biological female?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes, I've heard people use that.

BY ATTORNEY CAPEHART:

Q. Okay.

Has anyone ever explained what they mean when they have used that terminology around you?

[63]

A. I don't think so or I just can't remember.

Q. Okay.

This definition, at lines 25 and 26, does this, based on the way that you have heard people use the term in the past, is this about what you think they meant?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Okay.

So now that you've read that in this bill that's what that term means, look up at lines 21 and 22 and let me know when you've read those two lines.

A. Okay.

Q. Do you agree with that statement at lines 21 and 22?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't because I think if someone wants to play on the girls team, like me, they should be able to even though they are --- they're not following that requirement.

BY ATTORNEY CAPEHART:

Q. Okay.

Before I move on to ask some questions about cheerleading and track, I just want to talk about a [64] couple of other words that we were just touching on. But I just want to make sure that we understand each other or at least you understand me. You have heard people use the term biological female or the term biological male before.

Is that correct?

A. Yes.

Q. Okay.

And just so we're clear, if I use the term biological female or biological girl, I'm describing people who were

determined to be female at the time of birth. Okay? I'm not looking at the statute. I'm just saying like if I use that term, that's what I'm talking about. Just so that if I use a word and you're not sure what I mean, I'm trying to explain in advance so there's no confusion. Does that make sense?

A. Yes.

Q. Okay.

And also, if I say biological male or biological boy I mean someone who was determined to be male at the time of birth.

A. Yes.

Q. So if I use that --- if I use that kind of terminology that is what I'm talking about, people who [65] were determined to be that at the time of birth. Okay?

Q. When did you first get interested in sports?

A. I've always liked running. And I think running's a sport, so since I could walk and run.

Q. What kind of sports, in addition to running, have you been interested in?

A. Cheering was one. I was a little bit interested in volleyball, but not anymore.

Q. Why not?

A. I just never --- I just didn't --- I just lost liking of it.

Q. Whenever I say interested in --- let me rephrase. Whenever you say that you are interested in running, you were interested in cheer and been part of a team and for a short time you are interested in volleyball but aren't really interested anymore, do you mean interested in participating and playing those sports?

A. Yes.

Q. Okay. Are there other sports that you have been interested in from the perspective of being a viewer but maybe not a participant?

A. Could you repeat the question?

[66]

Q. Sure. Besides the three that you just talked about, running, cheer, volleyball, are there other sports that you have an interest in as a viewer, as a person that's in the stand watching it, or watching it on television, but you don't have an interest in playing or taking part?

A. I like watching football.

Q. Okay. Anything else?

A. That's about it.

Q. Does your mom watch football?

A. Yeah. We like the same team.

Q. What team?

A. The Cleveland Browns.

Q. Do you like any other football teams?

A. Not really, no.

Q. Do you just watch professional football or do you watch college, too?

A. Just professional.

Q. Now, have your parents encouraged you to be involved in sports?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I'd say so that they encouraged me.

[67]

BY ATTORNEY CAPEHART:

Q. Okay. Now that you've been on a couple of different kind of teams, girls cross-country and also cheer when you were younger, do you enjoy getting to compete as part of a team?

A. Yes, I do.

Q. If you were in a sport where you weren't on a team, that you were just an individual on a team, would you enjoy that also?

A. No, because that's not --- that's not on --- you're not on a team, you're not doing teamwork, that's just by yourself.

Q. So is the bigger appeal to you in sports being part of a team, being part of a group, working towards a common goal?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. You said you wouldn't really like being in an individual sport, maybe something like, I don't know, figure skating maybe, because you wouldn't be part of a team, you would be --- that you like being part of [68] a team?

A. Yes.

Q. So is that what draws you to some of the sports that you are interested in, the team aspect?

A. Yeah, the team aspect and I can make new friends.

Q. Do you consider yourself competitive whenever you're playing sports or when you're playing games with your friends?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I want to call myself competitive. I'm just a person that likes playing games. I'm not like, oh, I got to win. I just like playing them, doing sports.

BY ATTORNEY CAPEHART:

Q. Okay. Do you have some friends that are like that?

A. Yeah, I have a couple of friends.

Q. I think we all have a couple of friends that are like that. So in those sports that you're interested in, including football, do you think rules are really important in sports?

ATTORNEY HARTNETT: Objection to form.

[69]

THE WITNESS: Yes, I think rules are important because you wouldn't want someone having an unfair advantage, like cheating.

BY ATTORNEY CAPEHART:

Q. Right.

A. And like ---.

Q. Sorry. Go ahead.

A. Like in baseball, I don't know what it's called, but getting a better grip on the ball, that's cheating. That's not fair.

Q. So do you think rules are a big part of or an important part of making sure that sports are fair?

A. Yes.

ATTORNEY HARTNETT: Objection to form. Sorry, B. Just make sure you give me a chance to object, but you should then give your answer. So let's try that one again.

ATTORNEY CAPEHART: Court Reporter, can you repeat the last question?

THE WITNESS: Could you repeat the last question?

COURT REPORTER: Question, so do you think rules are a big part of or an important part of making sure that sports are fair?

[70]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I think they are a big part of making sports fair.

BY ATTORNEY CAPEHART:

Q. What does it mean for sports, for competition to be fair?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Well, sometimes it can mean losing -- maybe winning unfair and winning things because if people are cheating then they could get --- I don't know if there's a cash prize. So if they cheat, they're going to get that. That's not fair because they get something out of cheating.

BY ATTORNEY CAPEHART:

Q. So it sounds like that you're saying that if somebody breaks a rule like the one that you were talking about in baseball, and by breaking that rule that helps them to win or beat someone else, that that wouldn't be fair. Is that what you're ---?

ATTORNEY HARTNETT: Objection.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. I'm sorry. I think I lost part of your answer there.

[71]

A. Yes, that's what I'm saying.

Q. Who do you think should make up the rules for sports?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't know.

BY ATTORNEY CAPEHART:

Q. I'm going to ask you a couple of questions about your time on cheerleading. How many years were you on the cheer team?

A. I was on the cheer team for two years.

Q. Okay. And if I recall from what your mother had told us, it was part of the Bridgeport Youth --- is it Bridgeport Youth Football League? Is that what it was?

MS. JACKSON: Yes.

COURT REPORTER: I'm sorry. Ms. Jackson, did you say yes or was it the witness. I'm sorry.

MS. JACKSON: I said yes.

BY ATTORNEY CAPEHART:

Q. My understanding is that that's not affiliated with the schools in any way, that's an independent, what a lot of people would maybe call midget football league and that that league has cheerleading teams also. Is that right?

[72]

ATTORNEY HARTNETT: Objection to form.



THE WITNESS: Yes. Sorry.

BY ATTORNEY CAPEHART:

Q. Okay. I just want to make sure I understood that. That's how things were when my daughter did midget cheer --- midget league cheer, also. What team were you on like B, C D? Do you recall?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I was on Bridgeport Pee Wee Red.

BY ATTORNEY CAPEHART:

Q. Okay. And were the members of that team all within --- all the same age or within a year of each other?

A. They were within a year of each other.

Q. So was that third and fourth or fourth and fifth?

A. I think it was fourth and fifth.

Q. Did you enjoy being on the cheerleading team?

A. Yeah, it was really fun.

Q. Did you like cheering at sidelines at games more than competition cheer?

[73]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I did like cheering on sidelines better because I had stage fright and I feel whenever I was cheering on the sidelines most of the people were paying attention to the game, so I didn't have as much stage fright. But at competition, that was the main thing that everyone was focusing on.

BY ATTORNEY CAPEHART:

Q. When you would be part of the team and working on your competition cheer, you all did stunts. Is that correct?

A. Yes, that is correct.

Q. Did you get to be a flyer or were you a base?

A. I was a base.

Q. Did you enjoy that more than going up in the air?

A. Definitely, because I have a fear of heights.

Q. Understandable. So now that you're in Middle School you were on the cross-country track team this fall and you're also interested in running track. Is that correct?

A. Yes.

Q. Okay. I know I've seen in some reports and maybe in [74] your Declaration, too, you mentioned that there were other people in your family that had run. Is that the basis for your interest in being on cross-country and also doing track this spring?

A. Yes.

Q. Bridgeport Middle doesn't have coed teams, does it?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. Do you know what a coed team is? Have you heard that term before?

A. No.

Q. Okay. I realize I'm probably dating myself a little bit there. That term is not really used all that frequently maybe nowadays, but that just essentially means that

coed would be, you know, boys and girls all on the same team together. And I guess you don't. You just have a boys team and a girl teams. Right?

A. Yes.

ATTORNEY HARTNETT: Objection to form.

[75]

THE WITNESS: Sorry.

BY ATTORNEY CAPEHART:

Q. Now, in this --- for spring track you're going to try out for the girls team. Correct?

A. Yes.

Q. Now, that tryout and also the one for cross-country track, are those competitive tryouts where everybody has to run and be timed?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Kind of because when we did cross-country, all of us made it. But I was told that the year before, when I was in 5th grade, that they had to cut people because there was too many. So I think that they only cut people if there's not --- if there is too many.

BY ATTORNEY CAPEHART:

Q. Do you know how many there were on cross-country this fall?

A. I don't know.

Q. Okay. If there is some upper limit, though, your team didn't reach that limit in terms of participants?

A. I think it may have been exactly the limit or [76] less, but I don't know.

Q. You don't remember anyone that tried out not making the team, though?

A. Nope. Everyone made it if they didn't quit.

Q. Okay. Do you remember how many meets or events you went to this past fall?

A. I don't know for a fact, but it was around seven to eight.

Q. And were all of those competitive team events where they were tracking everyone's times with a team placing at the end?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes, there was.

BY ATTORNEY CAPEHART:

Q. Okay. How did you all do this fall?

A. We did very good.

Q. Great. Did you place at most of the events that the team went to?

ATTORNEY HARTNETT: Objection to form.

BY ATTORNEY CAPEHART:

Q. And by team I mean did the team place at the event that your team participated in?

[77]

A. Most of the time, yes. Some of them weren't, but we always got close.

Q. Did your team get first place at any of the events?

A. Yes.

Q. How did that feel to be part of a team that got first place at one of these events?

A. It felt awesome. It felt great.

Q. Okay. So just because I don't know a tremendous amount about cross-country or track and field, for cross-country do you understand how the scoring works or how the timing ends up with a team being first place or second place or last place?

A. I do not know.

Q. But you would like to win, right? You would like your team to win. Right?

A. Yes.

Q. What track sports do you want to run in this spring, track events I should say?

A. I'm thinking about doing long distance.

Q. And by long distance what does that mean in terms of the actual distance?

[78]

A. There is a mile, two miles, and I think there may be a three-mile one.

Q. So are you training to build up your stamina to those right now?

A. Not currently just because it is really cold out.

Q. That's fair. Just like I was asking you to help me understand a little bit about how cross-country does its scoring and placing, I think I know a little bit more about track and field. In events like the distance runs, the one, two or even --- one mile, two mile or even longer distances, there are individual places in each of those events. Correct?

A. Uh-huh (yes).

Q. So do the first, second, third place finishers get metals in those?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I'm not sure because this would be my first year doing track.

BY ATTORNEY CAPEHART:

Q. And do you know whether the outcome of those individual races are then factored into some overall team standing?

[79]

A. I do not know.

Q. Okay. Now, at all of these events that you have participated in this past fall with the girls track team and then the ones that you would like to be part of this spring for track and field, those are just girls teams against girls teams. Is that correct?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I do not know because, again, this is my first year.

BY ATTORNEY CAPEHART:

Q. Okay. Now, at the cross-country events you went to this past fall, when your team got first place, that was just competing against a girls team. Correct?

A. Yes.

Q. Okay. At those same events or meets are there also boys teams present?

A. Yes.

Q. Okay. But your team only competed against the girls [80] teams. Correct?

A. Yes.

Q. Would you have liked for your teams to have competed against boys teams and girls teams?

A. At a couple of meets they did. But when they do, they only tallied the girls points and the guys teams differently and then they did the teams' totals.

Q. Okay. Did anyone explain to you why they did that that way?

A. I don't know.

Q. Okay. Do you think that they may have done those tallies differently because someone thought that boys could run faster than girls?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't know. I don't know that.

BY ATTORNEY CAPEHART:

Q. Okay.

A. But whenever we started the --- a different --- like the guys would go five minutes before and then five minutes later the girls would go, so it was easier to [81] tally up all the points.

Q. Okay. Do you think that the boys can run faster than the girls?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I do not believe so because I also think that is a genetic thing, if you are fast or not.

BY ATTORNEY CAPEHART:

Q. Okay. From what I remember reading somewhere you're pretty good with math. Is that fair to say?

A. Yes.

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Sorry.

ATTORNEY HARTNETT: That is okay.

BY ATTORNEY CAPEHART:

Q. Do you know what statistics are?

A. I am familiar with the word, but I don't know what it means.

Q. Okay. Would you and your teammates sometimes compare times after meets?

[82]

A. Sometimes.

Q. Okay. And at the cross-country events, was the course that you would run a different length every time?

A. It was always around 2 miles to 2.3, so --- so not really.

Q. Okay. I was just curious because I have a number of friends that are athletes and they really seem to enjoy talking about statistics, you know, how fast they run or in baseball a batting average or in football a quarterback's completion percentage or something, that those are, it seems for folks in and around sports, ways that you can try to evaluate or to get a sense of something about a person or group of people. Have you heard and seen statistics talked about when you watch those football broadcasts with your mom?

ATTORNEY HARTNETT: Objection to the narrative and to the question form.

THE WITNESS: Could you repeat the question?



ATTORNEY CAPEHART: Sure.

BY ATTORNEY CAPEHART:

Q. Have you seen or heard statistics talked about [83] on those football broadcasts that you watch with your mom?

A. Sometimes, but I don't really pay attention to those because I mainly like watching the game.

Q. That's fair.

MS. JACKSON: Excuse me. She needs to use the restroom.

ATTORNEY CAPEHART: Absolutely. Take a break.

MS. JACKSON: Can you get through?

*(WHEREUPON, A SHORT BREAK WAS TAKEN.)*

BY ATTORNEY CAPEHART:

Q. All right. Well, let's see. When we left off I was just asking you about things about statistics. Have you ever looked up any statistical data about cross-country for [84] people your age?

A. No, I have not looked up the statistics for people my age.

Q. And I think I framed that question as for cross-country. Have you ever done that with track and field, for example, the one mile or the two mile?

A. No, I have not.

Q. If you were to see statistics that show that, on average, 11-year-old biological boys were 20 percent faster than 11-year-old biological females in the mile run, would that surprise you?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes, because I think biological --- it's all about genetics, if you're fast or not.

BY ATTORNEY CAPEHART:

Q. So if you're fast or not is about genetics?

A. I think it is, but it could be not.

Q. Okay. If that were true, that there is a statistic somewhere that shows that 11-year-old biological boys are 20 percent faster than biological girls of the same age, would it be fair to have the biological boys running in the mile race with biological girls?

[85]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Can you say the question again?

BY ATTORNEY CAPEHART:

Q. Sure. If there were statistics that did show that difference of 20 percent between biological boys at a certain age and biological girls at that same age, would it be fair to allow biological boys to run that same race as the biological girls?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: If they identify as a female, then I think, yes. But if not, then I don't think that it should.

BY ATTORNEY CAPEHART:

Q. Okay. So you said if they identify as a female, then they should be able to run with the biological girls?

A. Yes.

Q. Did I hear you right?

A. Yes.

Q. Okay. So then could any biological boy be on the girls team so long as they identify as female?

ATTORNEY HARTNETT: Objection to form.

[86]

THE WITNESS: I think so. Sorry.

ATTORNEY HARTNETT: Sorry.

BY ATTORNEY CAPEHART:

Q. And when you say they identify as female, just explain that to me so I make sure I understand it.

A. When people are transgender from male to female, like me, that's what I think is identifying as a female.

Q. Okay. Is it enough for someone in your mind to identify as female for them to just say that they believe they're female or do they need to do something more than that?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I think they need to have an appearance and there has to be a reason. Like --- well, not a reason, but they have to --- they have to not just say, oh, I identify as female, I should run. They should have already been transitioned. It can't just be out of nowhere. Like, oh, all of the sudden, now that I started, I just realize that I can do this, oh, I'm transgender. That's --- I don't think that --- I think maybe --- I don't know, a year into the transition that you should be able to.

BY ATTORNEY CAPEHART:

[87]

Q. Okay. So when you say a year into their transition do, you mean like just their social transition, the way they are presenting themselves?

A. Yes.

Q. Okay. For that kind of hypothetical person that you were describing there, if they had gone a year into their transition, as I think you've described it, then in your mind that's what they need to do so that they could be on the girls team?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Okay. Do they --- do they need to be doing something else like taking puberty blockers or something of that nature?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I think they should be on puberty blockers to do it because if they have hit puberty, then that's a different story because they hit puberty and that's not changeable.

BY ATTORNEY CAPEHART:

[88]

Q. Okay. When they hit puberty and that's not changeable, explain that to me a little if you can.

ATTORNEY HARTNETT: Objection to form. Go ahead.

THE WITNESS: If they've hit puberty, then they are maturing and they are going to get a deeper voice. A girl would get a bigger Adam's apple and then that's really it. And I think that gives them more of an unfair advantage. I could be wrong, but I think after they hit puberty, I don't know, I think something happens, but I'm not sure.

BY ATTORNEY CAPEHART:

Q. Do you think there is something else that happens besides the depth of voice and the Adam's apple?

A. I think they may get faster because their testosterone levels will rise.

Q. Okay. And do you think that's not an issue for someone that hasn't gone through puberty yet?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Sorry. Yes, because their testosterone levels, if they are on puberty blockers, won't be as high and they won't be --- it won't be high [89] and it won't give them any advantage.

BY ATTORNEY CAPEHART:

Q. If there was someone in that situation that wasn't on puberty blockers, do you think that would be unfair for that person to be on a girls team?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: As long as they haven't hit puberty, then I think it's fine. But if they have hit puberty, then I think they should maybe go on hormone blockers and then maybe then, because I --- I could be wrong, but I think their testosterone levels will drop if they go on hormone blockers after puberty.

BY ATTORNEY CAPEHART:

Q. Okay. Do you think that they also need to be getting treated for gender dysphoria?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't think that matters because if they don't have gender dysphoria, why should they be getting treated for it.

BY ATTORNEY CAPEHART:

Q. So if there was a person that went through that, a biological boy who had done all the things that you say needed to be done and they could be on the girls [90]

team, but at some point in the future that person decided they wanted to, I don't know, revert back to being on the boys team for sports, should that be allowed?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: If they want to, then yes, go ahead, because they will --- if they are --- if they still have the requirements to be on the girls team, then they will be on puberty blockers and then the testosterone levels will still be low. So --- but if they get off, then they'll just raise back, and they could still run on the boys team, but they can't run on the girls.

BY ATTORNEY CAPEHART:

Q. Okay. You've been talking about puberty blockers like a person that knows about them, which I think you do. What do you know about puberty blockers?

ATTORNEY HARTNETT: Objection to the preamble and to the form.

THE WITNESS: Okay. Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. What do you know about puberty blockers?

[91]

A. They stop hormone levels from rising and they have --- they have a chance for --- they have side effects, but if you are transgender they can help --- they can help with the process of a transition because it will stop you from

hitting puberty and you won't grow an Adam's apple, you won't grow facial hair and your voice won't get deeper.

Q. Okay. You're receiving puberty blocking medications now. Is that correct?

A. Yes, that's correct.

Q. Okay. Did you want to start that medication to delay or prevent puberty?

A. Yes, that is correct.

Q. Okay. We had talked some about your doctors' appointments before. You had some appointments before receiving the puberty blockers. Correct?

A. Yes, that is correct.

Q. Okay. Do you remember an appointment where you talked [92] with a doctor about getting puberty blocking meds?

A. Yes.

[Redacted]

[93]

[Redacted]

[94]

[Redacted]

[95]

[Redacted]

ATTORNEY CAPEHART: I think this is a good spot to take a break. The next part that I'm going to get into I think is going to take a little more time than we have. I see it's 12:41, so if it's all right with everyone, I suggest we go off the record and talk about when we come back.

ATTORNEY HARTNETT: That's fine with us.

[96]

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

BY ATTORNEY CAPEHART:

Q. Okay. Well, before I move onto something else, I just wanted to follow up on something that you had mentioned before the break, B. And I hope you had a good break. You had mentioned testosterone before. Where had you learned about what testosterone is?

A. The doctors.

Q. Okay. Like Dr. Montano, those people?

A. Yes.

[Redacted]

[97]

[Redacted]

BY ATTORNEY CAPEHART:

Q. Okay. You had mentioned before in relation to a biological boy running on a girls team and that they would need to, I think you had said --- I'm not trying to put words in your mouth, but I think you had said something along the lines that they would need to be taking some kind of medication relative to the testosterone if they were either going through puberty or had gone through puberty.

ATTORNEY HARTNETT: Objection to form.

BY ATTORNEY CAPEHART:

Q. Do you remember that when we were talking earlier?



A. Yes.

[98]

Q. Okay. Why did you mention testosterone relative to how a biological boy might be performing in running?

A. Because I think that --- that after --- whenever you half an increase of testosterone, that --- I think that increases your athletic ability, but I could be wrong there.

Q. Okay. Fair enough. Do you know that because of what the doctors had talked to you about?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I am pretty sure, yeah.

BY ATTORNEY CAPEHART:

Q. Okay. Have you had done any independent research yourself to learn more about testosterone?

A. I don't recall. I may have, but I don't remember.

Q. Okay. Do you recall reading the Complaint in this lawsuit?

A. I do not.

Q. Okay. If you could look at Exhibit 32 for just a [99] minute. Okay. It says Exhibit WV-32 at the bottom right corner and has a lot of other words, but in boldface in the upper right center are the words First Amended Complaint. Okay. This is as it says is the First Amended Complaint, means there was an original Complaint that had been amended once in its first Amended Complaint. Do you recall ever having seen this before now that you are getting a chance to look at it?

A. Yes, I think so.

Q. Okay. Do you remember reading over it yourself?

A. I don't think so.

Q. Okay. Do you remember anyone discussing with you what was in the Complaint?

A. I think I discussed it with my mom.

Q. But you don't know everything that's in here because you haven't read it yourself. Is that correct?

A. I don't.

ATTORNEY HARTNETT: Objection.

THE WITNESS: I don't remember if I have or haven't.

BY ATTORNEY CAPEHART:

[100]

Q. Okay. You don't remember if you have or have not. Okay. Now, I think we had talked before about the fact that your lawsuit is challenging the HB 3293. You may have remembered we had looked at that very briefly and I had directed you to a couple of parts of it and you had said you hadn't read the whole thing. And I will also represent to you that it also had some other definitions in there for biological male and female. Do you believe there is a difference between biological males and biological females?

ATTORNEY HARTNETT: Objection to form and the preamble.

THE WITNESS: I don't know.

BY ATTORNEY CAPEHART:

Q. Okay. You don't know if there is any difference between a biological boy and a biological girl?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't know. I don't know if there is a difference.

BY ATTORNEY CAPEHART:

Q. Okay.

[101]

Do you think there are physical differences between a biological boy and a biological girl?

ATTORNEY HARTNETT: Objection.

THE WITNESS: Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. Do you think there are physical differences between a biological boy and a biological girl?

A. Yes.

Q. Okay.

ATTORNEY HARTNETT: And I just have a standing objection in terminology, but I will not continue to make that objection.

ATTORNEY CAPEHART: Noted. Thank you.

BY ATTORNEY CAPEHART:

Q. What do you understand the physical differences are between a biological boy and a biological girl?

A. A biological boy has a penis and a biological girl has a vagina.

Q. Okay. Do you believe there are any other physical differences between a biological boy and a biological girl?

[102]

A. There --- yes, but that part could be with either one, because long hair could also be with a guy or like that's ---

like if a girl, a biological girl, would probably have long hair, but a guy could also have long hair. And then a guy could have --- a guy could have short hair and a girl could also have that. And a biological guy would probably want to look muscular, but a biological girl would probably --- could probably want to look like that.

Q. So apart from a superficial difference like hair length or how much someone works out and also the difference in genitalia, are you aware of any other differences?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Not that I can think of right now.

BY ATTORNEY CAPEHART:

Q. Okay. Okay. Can you all look at Exhibit 26? Do you have Exhibit 26?

A. Yes.

Q. This looks like it is an article from the Gazette Mail. If you flip to the second page of the exhibit, the fourth block of text up from the bottom it [103] reads, quote, I just want to run, I come from a family of runners, close quoted, P J said in a news release. Quote, I know how hurtful a law like this is to all kids like me who just want to play sports with their classmates, and I'm doing this for them. Trans kids deserve better, closed quote. B, do you remember talking to a reporter before this article got written?

A. Yes.

Q. Okay. And the quoted language that I was just reading there that's also in the exhibit, do you remember saying that?

A. Yes.

Q. Okay. So those are your words, no one was paraphrasing something you were trying to tell them then?

A. No.

Q. Okay. Is a trans kid an appropriate term to use?

ATTORNEY HARTNETT: Objection, form.

THE WITNESS: Could you repeat the question?

[104]

BY ATTORNEY CAPEHART:

Q. Sure. In the quote it says trans kids deserve better. I'm just curious, is trans kids a normal term that is used and is acceptable to use?

ATTORNEY HARTNETT: Objection, form.

THE WITNESS: Could you repeat the question one more time?

BY ATTORNEY CAPEHART:

Q. Sure. And I'm not trying to trick you. I'm just trying to understand because you used the term trans kids, and I think I've seen it in maybe another article, too, and I just thought I encountered it another experience. So I'm asking the question is that an acceptable term to use to refer to transgender boys or transgender girls?

ATTORNEY HARTNETT: Same objection.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Is it okay to call you a trans kid?

A. If you don't know that I don't know my name and you know I'm trans, then yes, that's acceptable. But if you

know my name and you're purposely calling me that, then not really, but it's still fine.

Q. Yeah. And I don't intend to. I was just [105] curious

---

A. Yes.

Q. --- from the nuances and the acceptable use of the term. So thank you. Excuse me. If you can look at Exhibit 27.

ATTORNEY HARTNETT: And just for the record and the witness's knowledge, B, you should feel free to review the full exhibit before you answer questions if you want to.

THE WITNESS: Okay.

MS. JACKSON: So that's the first page.

ATTORNEY CAPEHART: You all just let me know whenever you're ready to proceed. Okay?

ATTORNEY HARTNETT: I'm sorry. I think B is ready.

THE WITNESS: Yeah.

ATTORNEY CAPEHART: Okay. Thank you.

BY ATTORNEY CAPEHART:

Q. I'm going to try to make sure I direct you to the proper page. It looks like it's the last page of the text, which looks like it's about the fourth to the last page of the exhibit. At the top of the page the text begins with the word when Justice. Right there.

[106]

Have you all found that on your hard copy?

A. Yes.

Q. Okay. All right. So let's see, this first block here that reads when Justice signed the Bill banning transgender girls from sports teams, B was devastated she said. Then another quote, I felt horrible because I knew then I couldn't run with the other girls. Do you remember talking to the author of this piece before it came out?

A. Yes.

Q. Okay. And does that quote seem right? Do you remember saying that?

A. Yes.

Q. Okay. Now, I recall earlier you mentioned that you hadn't read the bill, the new law yourself, but here you said you couldn't run with the other girls after the Governor signed it. How did you know that since you hadn't read through the bill?

A. I was told by my mom.

Q. Okay. Do you remember when you and your mother had that discussion?

[107]

A. I don't remember.

Q. All right. Were you aware of this bill before your mom told you that it was now a law?

A. I was aware of it, but I didn't know that it was going to get signed.

Q. Okay. What did you know about it before your mom told you it was signed and was now a law?

A. That I wouldn't be able to run with the girls once it got signed.

Q. Okay. All right. If you move down to and look at the fourth block of text there on the page it says as hard as it

is to be a trans kid and a mother of a trans kid, suddenly thrust into the public eye in a conservative state, B and Jackson agree that the potential payoff makes it all worth it. You don't have a problem with the author using trans kid there, do you?

A. No.

Q. Okay. How hard has it been in Bridgeport and Lost Creek to be a trans kid, as the author says?

ATTORNEY HARTNETT: Objection to form.

[108]

THE WITNESS: Could you --- could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. This little bit of language here is talking about it being hard to be a trans kid and the mother of a trans kid, so my question is how hard has that been on you in Bridgeport and Lost Creek?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Well, a lot of the people don't support it and don't agree with it, so that's what makes it hard.

BY ATTORNEY CAPEHART:

Q. Okay. You had said that school had gone really well with your transition. Correct?

A. Uh-huh (yes).

Q. Okay. So are these people you're describing now, are these all people outside of school?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes.



BY ATTORNEY CAPEHART:

Q. Okay.

[109]

What kind of people are these?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Usually adults.

BY ATTORNEY CAPEHART:

Q. Okay. Are these people you know or strangers?

A. Strangers.

Q. Well, what have they done?

A. Just not --- just be mean in general.

Q. Well, how are they being mean?

A. They don't support it. Sometimes people call me names, just be mean.

Q. Okay. Does this happen often?

A. Not as much now, but it used to happen a lot.

Q. When you say used to happen a lot, do you mean back at the time that you transitioned or before that or after that?

A. Well ---.

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Well, at the time and a little bit after because I was so --- I was new to it and I didn't know how to handle people like being meaning about it.

[110]

BY ATTORNEY CAPEHART:

Q. Okay. Would people be mean to you when your parents were around?

A. They wouldn't do it like directly to my face usually. They would say it to my mom or my dad and then my parents would tell me. So it wasn't usually directly to me.

Q. So when they would say these things, you weren't in the presence of these people when they were saying them?

A. Most of the time, yes.

Q. Oh, okay. But then your mom and your dad would have people say things to them and then your mom and dad would tell you about what other people had said?

ATTORNEY HARTNETT: Objection to form.

BY ATTORNEY CAPEHART:

Q. Is that correct?

A. Yes, but sometimes they wouldn't tell me just I'm assuming to try not to make me sad.

Q. Have any other kids ever said the kind of things to you that your parents said adults had told them?

ATTORNEY HARTNETT: Objection to form.

[111]

THE WITNESS: No.

BY ATTORNEY CAPEHART:

Q. No? Do you and your family attend a church?

A. Not anymore.

Q. Okay. Did you before?

A. For a short period of time, yes.

Q. Okay. Did you ever have any issues or problems there?

A. No.

Q. So there weren't any adults at that church that were mean to you or that said mean things to your parents that you know of?

A. At that time I was not transitioned yet, so there was no comments like that.

Q. Okay. Do you remember when you had said your mom had explained to you because the bill was now signed you wouldn't be able to run, did she explain what part of the new law would stop you from running?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: No, she just told me that because of this I couldn't run.

BY ATTORNEY CAPEHART:

[112]

Q. Okay. And because you haven't read the bill yourself, you don't have any knowledge of what part of the bill prevents you from running. Is that correct?

A. Yes.

ATTORNEY HARTNETT: Objection to form.

BY ATTORNEY CAPEHART:

Q. Thank you. All right. Let's see Exhibit 28. I just was going to interject that you are free to read the entirety if you would like to, the 20 pages. It's a lot, but I have no problem telling you the only thing I'm going to ask you about is the portion on the last page, the part under the subtitle B's trials.

MS. JACKSON: Thank you.

ATTORNEY CAPEHART: You're welcome.

THE WITNESS: I'm ready.

BY ATTORNEY CAPEHART:

Q. Okay. Great. Do you remember talking to this author from ESPN?

A. I can't remember.

Q. It sounds like your tryouts were pretty challenging.

[113]

Is that true?

A. Yes.

Q. Okay. Do you recall expressing anything to this reporter that's quoted here or otherwise described?

ATTORNEY HARTNETT: Objection to the form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. Do you recall saying this part that's quoted here about your friends or discussing any of the rest of it with the reporter?

A. I don't remember, but I think I remember saying maybe some of this, but I can't remember. I can't remember.

Q. Okay. Okay. And it seems like you were understandably excited to have made the team. Is that right?

A. Yes.

Q. Okay. How many girls were on the team this past fall?

ATTORNEY HARTNETT: Objection. I'm [114] sorry.

THE WITNESS: I don't know.

BY ATTORNEY CAPEHART:

Q. Okay. And you were the only transgender girl on the team. Is that correct?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: As I knew of, there may have been people that haven't come yet, but of what I knew I was the only one.

BY ATTORNEY CAPEHART:

Q. So far as you know, you're the only transgender girl on the team. Is that correct?

A. Yes.

Q. Okay. Okay. Exhibit 29, which is much shorter. Okay. Take a look at that, however much you would like to, and then let me know whenever you'd like to proceed.

A. I'm done reading.

Q. Okay. Let's see. Just below kind of the mid point of the page, about the third block of real text it starts [115] off with a quote there and it says, quote, I just want to run and the State wants to stop me from running as part of a team at my school, end quote, said B, an 11-year0old Middle School student. Quote, I love running and being part of the team and the State of West Virginia should explain in court why they won't let me, end quote. Do you remember saying or writing that?

A. I remember saying that.

Q. Okay. Who did you say that to?

A. I can't remember.

Q. Okay. But those are all your words. Correct?

A. Uh-huh (yes).

Q. Okay.

A. Yes.

Q. In what ways --- strike that. When you say that the State of West Virginia should explain in court why they won't let you be part of the team, are you referring to HB-3293?

A. Yes.

Q. But as you said earlier, you're not sure what part of that prevents you from running, you just know [116] that it does because you have been told that. Correct?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Okay. Sorry for that. B, are you aware of or have you read anything that the State has filed with the Court in this case?

A. I think I've skimmed through a couple of things, but not really read them.

Q. Okay. Those couple of things that you think you have skimmed through, do you recall what those were?

A. One of them was the one thing we just read --- the thing that we went through just a little bit, I skimmed through that. And there was another one, but I don't remember which one it was.

Q. Okay. The thing that we went just went through, I apologize, we have gone through a few things.

A. Just now, the one just now I skimmed through, couple of paragraphs. I'm pretty sure at least.

Q. Do you mean Exhibit 29?

[117]

MS. JACKSON: This?

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Exhibit 29 is not anything that the State has written. I'm just explaining what this is. And my understanding is that this is a news release from Lambda Legal. So you think there may have been something else, though, that you looked at, you're just not really sure?

A. Yeah.

Q. Okay. Okay. Give me just a second to check a couple of things. Okay. There's a couple of things to just run through real quick and then I think I might be done. One, just following back up on the thought of why the State won't let you run, why do you think, to use your words from this press release, that the State won't let you run?

A. Could you repeat the question?

Q. Sure. In the release here there is, as you said, your language saying that you want the State to explain in court why they won't let you, referring back to being part of a team and running. Why do you --- why do you think that is?

ATTORNEY HARTNETT: Objection. Form.

[118]

THE WITNESS: Because I don't think there is a good enough reason for me to not be able to run.

BY ATTORNEY CAPEHART:

Q. Okay. When you say there's not a good enough reason, has someone spoken to you or explained some reason why they think that the State wouldn't let you run?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

ATTORNEY CAPEHART: Court Reporter, can read that question back for us?

COURT REPORTER: When you say there is not a good enough reason, has someone --- has someone --- I'm sorry. When you say there's not a good enough reason, has someone spoken to you or explained some reason why they think that the State wouldn't let you run?

ATTORNEY HARTNETT: Objection.

THE WITNESS: No one has explained the reason, but that's why I think there's not a good enough reason for me to not run.

BY ATTORNEY CAPEHART:

Q. So you have not had any conversations with [119] anyone who could explain what reasons the State may have presented as to why they passed this bill?

ATTORNEY HARTNETT: I would just object to the extent this would entail any conversations with your lawyers, B , and you should not testify about those conversations. If there are conversations other than ones with your lawyer, you can testify about that.

THE WITNESS: What was --- can you repeat the question?

BY ATTORNEY CAPEHART:

Q. Sure. And to pick up on Kathleen's comment, I'm not trying to get you to divulge any confidential



communications that you had with your lawyers, but I'm just trying to understand your comment where you said that there is not a good enough reason and that no one has explained a reason why the State passed this bill. So I'm asking you what kind of conversations have you had, if any, with anyone other than your lawyers about the reason why this bill may have been passed?

A. I haven't had any conversations with any of my lawyers.

Q. Okay.

Have you talked with your mom about why this law may have been passed?

[120]

A. I don't think I have, no.

Q. And you already said you have not looked at any of the State's filings or documents that it has put in before the Court in this case?

ATTORNEY HARTNETT: Objection, MT.

THE WITNESS: I don't think so.

BY ATTORNEY CAPEHART:

Q. Okay.

You don't recall whether you have seen those, but you don't believe so, is that what you said previously?

ATTORNEY HARTNETT: Objection, MT.

THE WITNESS: Yes.

BY ATTORNEY CAPEHART:

Q. Okay.

Real briefly, look back at Exhibit 31, which is the Declaration that you looked at when we started. Just let me know when you have it.

A. We have the Declaration.

Q. Okay.

Look at page three, if you would. Got it?

A. Uh-huh (yes), yes.

Q. Okay.

There at paragraph number 13 it says, I do not [121] want to run with the boys and I should not have to run with the boys. What's wrong with running with the boys?

A. I'm not a boy. I'm a girl. I should be able to run with the girls.

Q. Okay.

Are there any competitive concerns if you did run with the boys?

ATTORNEY HARTNETT: Objection. Form.

THE WITNESS: No. I just think I'm a girl and I shouldn't have to run with the boys. I should be able to run with the girls because I am a girl.

BY ATTORNEY CAPEHART:

Q. Okay.

One other --- one other quick question for you. Do you know that under the law you could run with the boys if you wanted to.

Right?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: That I could if I wanted to, but that's not --- I'm not running with the boys because I am a girl.

BY ATTORNEY CAPEHART:

Q. Okay

[122]

I just wanted to make sure that someone had apprised you that the law does not prevent that, that new law. Fair enough. And I believe that's everything I have for you right now. Thank you very much for your patience.

ATTORNEY CAPEHART: And whoever the next person in line wants to take over the questioning, go right ahead.

ATTORNEY HARNETT: And I know we haven't gone for an hour yet, but I just wanted to check to see, B, do you need a bathroom break before we do more questions?

THE WITNESS: I'm good.

ATTORNEY ROGERS: I think I'm next if I'm understanding the order that was established earlier this week.

Is that right?

ATTORNEY HARTNETT: I believe Roberta went next.

ATTORNEY ROGERS: All right.

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# EXAMINATION

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BY ATTORNEY ROGERS:

[123]

Q. Hi, B. My name is Shannon Rogers. I am one of the attorneys that represents the West Virginia Secondary School Activities Commission, which is sometimes referred to as the WVSSAC. And so when I'm saying WVSSAC that's what I'm referring to.

Does that make sense?

A. Yes.

Q. Okay.

Had you ever had heard of the WVSSAC before?

A. I don't think so.

Q. Okay.

Do you know if you have ever spoken to anybody who is with the WVSSAC?

A. I don't know.

Q. You don't know? Okay.

Do you know if anybody --- well, strike that. So you don't think you've ever communicated or you just don't remember?

A. I don't think I've ever communicated.

ATTORNEY ROGERS: Okay.

I don't have any other questions. Thank you, B.

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EXAMINATION [124]

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BY ATTORNEY DENIKER:

Q. Hi, B. My name is Susan Deniker. I'm an attorney who works at a law firm called Steptoe and Johnson, and I represent the Harrison Board of Education and the Superintendant Dora Stutler. Thank you for your time today. I know it has been a long day and I know it's hard to sit in front of a computer screen, so thank you. You've done a really great job.

I'm going to ask you a few questions about your experience in school and in cross-country. If I ask you anything that doesn't make sense or that you don't understand, please let me know. You've done a really great job with that today, but will you let me know if I ask you something that you don't understand?

A. Yes.

Q. Very good.

And then also, if you need to take a break at any time, just let me know and we'll be glad to take a break.

Okay?

A. Okay.

Q. So yesterday I got to ask some questions of your mom and she told me that you went to elementary school [125] at Norwood Elementary.

Is that correct?

A. Yes.

Q. And did you go to Norwood Elementary School from kindergarten through the fifth grade?

A. Yes.

Q. How did you like Norwood?

A. It was a nice school. I really enjoyed it.

Q. Did you have a good experience there?

A. Yeah.

Q. Was Mrs. Stutler your principal for a period of the time that you were at Norwood Elementary School?

A. Yes.

Q. Did you know her then?

A. Like know her --- could you repeat the question?

Q. Sure. No. It probably wasn't a very good question. Did you sometimes have interactions with Mrs. Stutler when she was your principal?

A. Yes.

Q. And how was that? Was she nice with you when you dealt with her?

A. Yes.

Q. Did you think she was a good principal?

A. Yes.

[126]

Q. Who was the principal after Mrs. Stutler?

A. Mrs. Shields.

Q. And did you like Mrs. Shields?

A. Yeah.

Q. Was she nice to you when you were at school?

A. Yes.

Q. Now, I know you said earlier that you came out in the fourth grade.

Is that right?

A. I came out in the summer of third grade, but in school it was in the fourth grade.

Q. Okay.

And something else I should have said to you at the beginning is that I want to use terms that you're comfortable with. And so if I don't use the right terms, you correct me.

Okay?

A. Okay.

Q. So when you started school in the fourth grade it is my understanding then you came to school presenting as a girl, as a female.

Is that correct?

A. Yes.

Q. And did you have any discussions with your [127] teachers or the principal or anyone else at Norwood about making that change?

A. Yes.

Q. Tell me about those communications that you would have had.

A. I think it was the day before school started we went to the school to establish where --- everything about what the teacher should be calling me, where my bathroom would be and everything like that.

Q. Were you part of that meeting, B?

A. Yes.

Q. Do you recall who else was in that meeting?

A. There was Mrs. Louder, it was the principal. I don't know if it at the time it was Mrs. Stutler or Mrs. Shields and someone else. I can't remember their name.

Q. Was the school counselor maybe part of that meeting?

A. I think so.

Q. Was Mrs. Louder your teacher that year?

A. Yes.

Q. And was your mom also in that meeting?

A. Yes.

Q. Anyone else that you remember?

A. Not really, no.

[128]

Q. Were you happy with what came out of that meeting?

A. Yes.

Q. You were comfortable with the agreements that was reached with regard to the name that would be used and the bathroom facilities and any other accommodations that would be made for you?

ATTORNEY HARTNETT: Objection.

THE WITNESS: Yes.

BY ATTORNEY DENIKER:

Q. And then how did fourth grade go? Was it a good -- was it a good year for you?

A. Yeah.

Q. Did you feel that the teachers and the principal and the other employees of the school were supportive of you?



A. Yes, very.

Q. Good. And did you feel that they treated you kindly and fairly?

A. Yes.

Q. And it sounds like from your earlier testimony that you also had a good experience with the students in the school.

Is that correct?

[129]

A. Yes.

Q. Tell me about your fifth grade year at Norwood Elementary School. Did you have a good experience that year?

A. Yes. There was brand new teachers and my teacher was Ms. Watson. She was a very nice teacher.

Q. And do you feel that everyone at the school was supportive of you?

A. Yes.

Q. Did you feel that everybody treated you in a fair and kind manner?

A. Yes.

Q. And so you had a good school year in fifth grade as well?

A. Yes.

Q. Do you recall having any other meetings in fourth or fifth grade to discuss your transitioning to being --- to presenting as a girl at school?

A. Not that I can remember. Beginning of fourth grade was the only one I think.

Q. And then it's my understanding that this year you started at Bridgeport Middle School.

Is that right?

A. Yes.

[130]

Q. And are you in the sixth grade this year, B?

A. Yes.

Q. Do you remember when you were in Norwood Elementary School having a meeting and filling out a document that was called a Gender Support Plan?

A. Yes, I remember that.

Q. And did you participate in the meeting where that plan was discussed?

A. Yes.

Q. And did you think that that was a good meeting?

A. Yes.

Q. Were you happy with the outcome of what was agreed upon at that meeting?

A. Yes.

Q. And then you had another one of those meetings with school officials before you started at the Middle School.

Is that right?

A. Yes.

Q. And I think that that meeting happened in May of 2021, which would have been the end of your fifth grade year.

Is that --- does that sound right?

A. Yes.

[131]

Q. And were you a part of that meeting?

A. Yes.

Q. Do you remember who else was a part of that meeting?

A. We had my new principal, Mr. Mazza, the counselor there, Mrs. Shields and my mom.

Q. And were you comfortable with what was discussed and agreed upon at that meeting?

A. Yes.

Q. And how has sixth grade been so far?

A. It's been good.

Q. Do you like Mr. Mazza?

A. Yes.

Q. He is your principal this year. Is that right?

A. Yes.

Q. Do you feel like Mr. Mazza is supportive of you?

A. Yes, very.

Q. Good. And do you think that he treats you in a kind and fair manner?

A. Yes.

Q. How are your classes this year? Do you like them?

A. Yeah, I like my classes. I have really nice [132] teachers.

Q. I think I saw that you are a straight A student. Maybe I saw that in something that your mom wrote.

Is that right?

A. Yes.

Q. Congratulations. Good for you. Do you feel that your teachers are fair and supportive of you?

A. Yes.

Q. And are you comfortable with the arrangements that the school has made for you this year in terms of addressing how you want to present at school as being a girl?

A. Yes.

Q. I know that we have discussed today sports and your participation in sports, and I heard you say that you love running.

Is that right?

A. Yes.

Q. And I understand that you tried out for the girls cross-country team.

Is that correct?

A. Yes.

Q. So I want to talk to you a little bit about that process. The cross-country team, did they do some [133] training and conditioning over the summer before the year started?

A. Yes. There was a week of conditioning before the season started.

Q. And did that happen over the summer?

A. Yes.

Q. Did you participate in that conditioning?

A. Yes.

Q. And how was that experience? Was that a positive experience for you?

A. Yes.

Q. And then tryouts I think were in August for cross-country.

Is that right?

A. Yes.

Q. And were you permitted to try out for the girls cross-country team?

A. Could you ---?

Q. Let me rephrase that. Were you allowed to try out for the girls cross-country team?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes.

BY ATTORNEY DENIKER:

Q. And was that the team you wanted to try out for?

[134]

A. Yes.

Q. And did you make the team?

A. Yes.

Q. And I think you said this year they didn't have any cuts.

Is that right?

A. Yes.

Q. Who were your coaches for cross-country this year?

A. I had Ms. Schoonmaker, Ms. --- Coach Flesher and Coach McBrayer.

Q. And did they coach both the girls and the boys cross-country teams?

A. Yes.

Q. How was your season?

A. It was good.

Q. Did you like cross-country?

A. Yes.

Q. Did you believe that your coaches treated you fairly and kindly this season?

A. Yes.

Q. Did you feel that they were supportive of you?

A. Yes.

Q. So you think it's fun to run up hills and [135] through water and mud, B?

A. Yes.

Q. Because that's what cross-country is about, isn't it?

A. Yes.

Q. It's a hard sport I think. Do you think it's hard?

A. It depends if you've done it before and how much you run normally.

Q. Do you think you would like to do it again?

A. Yes.

Q. And I heard you talk a little bit about track. Are there other --- is track something that you're interested in doing?

A. Yes.

Q. And I heard you said you might want to be --- do the distance running in track.

Is that right?

A. Yes.

Q. You're a tough girl. Cross-country and distance running and track, those are the hard once, aren't they?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: It just depends if you've ran before or whatever you've done.

[136]

BY ATTORNEY DENIKER:

Q. I think that you're right. I think it depends how good of shape you're in. Are you planning to condition in the off season?

A. If it's not freezing, then yes.

Q. I understand. We were talking about what a cold day it is here in West Virginia, isn't it?

A. Yes.

Q. B, has anybody in the school system ever told you that Harrison County Schools wouldn't let you participate on a girls sports team for any reason?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: After a bill was passed, not --- I don't think there was because when the bill was passed, I already went trying out and then we --then the whatever it was called where I could do --where I could play in the sports team from the Judge came out.

BY ATTORNEY DENIKER:

Q. And I just want to make clear, did any of your coaches ever tell you that you couldn't run on the girls team?

A. No.

Q. Did Mr. Mazza ever tell you that you couldn't [137] run on the girls team?

A. No.

Q. Did any of your teachers tell you that you couldn't run on the girls team?

A. No.

Q. And did Mrs. Stutler ever tell you that you couldn't run on the girls team?

A. There was not a cross-country back then, so I couldn't run whenever she was my principal, so ---.

Q. And that was when you were in elementary school. Is that right?

A. Yes.

Q. And that's a good point that you brought up,



B . There aren't any school sports in elementary school in Harrison County, are there?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: No, you're very limited to them and most of them aren't even in the school. You have to do them outside of school.

BY ATTORNEY DENIKER:

Q. Did you have any school-sponsored sports at Norwood Elementary School?

A. I don't know. I don't --- yeah, I don't know.

Q. Okay.

[138]

Did you try out or participate in any sports that were run by the school while you were at Norwood?

A. I --- no.

Q. And so let me go back and ask you about Mrs. Stutler. So it's kind of funny. You had Mrs. Stutler as your principal at Norwood for a little bit.

Is that right?

A. Yes.

Q. And do you know where she went after she left Norwood?

A. The Board of Education.

Q. She did. She went to the Central Board Office. And did you know that she's now the Superintendant of Schools?

A. I did not know that. I just knew she went to the Board of Education.

Q. Well, she's actually your school superintendant now. And have you had any communications with her since she became superintendant?

A. No.

Q. Well, now you know who your superintendant is. So if you see her at school you can call her Superintendent Stutler now.

B, let me check my notes and see if I have [139] any other questions. I think I'm just about done.

B, did you have any conversations with anybody that works for the Harrison County Board of Education, teachers, principals, anybody like that, coaches, regarding this House Bill 3293?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY DENIKER:

Q. Sure. Did you talk with anybody who works for the Harrison County Board of Education or is somehow connected with the Board of Education about House Bill 3293?

A. I think I did. I think I may have. I'm not sure. I can't remember her name. It started with an S, I know that.

Q. Do you know what that --- what the woman you're referring to, do you know what her job was?

A. I do not know.

Q. Was it a teacher or a principal?

A. I don't know that. I just --- she was at one of our meetings, and I think we may have talked a little bit about that.

Q. And was that one of your Gender Support Plan [140] meetings?

A. Yes.

Q. Okay.

And was that the one before you were going into Middle School?

A. I think. I can't remember. I just --- I can't remember, but I think she either talked about that or the Gender Support Plan.

Q. Okay.

Do you remember what she said about House Bill 3293?

A. I do not. Because she may have not talked about it. She --- because she was there at one of our meetings, so she could have not, but I think she did.

Q. But you don't remember what was said?

A. I don't.

Q. Okay.

Do you remember any conversations with anybody at school or anybody affiliated with the school about House Bill 3293?

ATTORNEY HARTNETT: Objection, form.

THE WITNESS: Not that I can think of off the top of my head?

BY ATTORNEY DENIKER:

[141]

Q. And B , I should have clarified. Do you know what I'm talking about when I say House Bill 3293?

A. Yeah, HB-3293. Yes.

Q. Okay.

I just wanted to make sure that you knew what I was talking about. I thought that you did.

B, if you had any concerns about how you were being treated at school, would you feel comfortable going to talk to Mr. Mazza about that?

A. Yes. If I was being treated bad, then I would talk to Mr. Mazza.

Q. Would you also feel comfortable going to some of your teachers about that?

A. Yes.

Q. But do you feel that overall all of the teachers and administrators, including your principals at Bridgeport Middle School, have been supportive of your status as a transgender student?

A. Could you repeat the question?

Q. Sure. And I apologize, it was a long one. Do you believe that the teachers and administrators, and that would include the principals and the other employees at Bridgeport Middle School, have been supportive of your transgender status?

[142]

A. Yes, I think they have been supportive.

Q. When you were on the cross-country team did you believe your teammates were supportive of you?

A. Yes.

Q. And how about in school, have you had any issues with other students or problems with students related to your transgender status?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: No. No.

ATTORNEY DENIKER: B, those are all the questions I have for you now. Thanks so much for your time today.

ATTORNEY HARTNETT: We can take a break. I think this might be a good time to take a break and then we can come back for questions.

VIDEOGRAPHER: Okay. Going off the record. The current time reads 2:28 p.m.

OFF VIDEOTAPE

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

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ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 2:42 p.m.

[143]

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EXAMINATION

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BY ATTORNEY HAMMOND:

Q. Hi, B. My name is Kristen Hammond. And I'm an attorney with the law firm of Bailey and Wyant. And I represent the West Virginia State Board of Education and the State Superintendant Clayton Burch. And I just have I think a few questions for you today. Do you know what the State Board of Education is?

A. I don't know.

Q. Okay.

And do you know or have you ever heard of the West Virginia State Superintendant Clayton Burch?

A. No.

Q. Okay.

So I guess since you do not know them, do you have any memory or any recall of maybe talking to anybody at the State level or at the Board of Education level regarding this lawsuit or regarding the House Bill or your sports? How about we limit it to that?

A. I don't remember if I have or not.

Q. Okay.

So you just don't recall. Could you possibly [144] have talked to somebody?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you repeat the question?

BY ATTORNEY HAMMOND:

Q. Yes. I just want to see --- you say you don't recall talking to anybody. Do you think that it's a possibility that you did talk to somebody or you don't believe that you've talked to anybody?

A. I don't believe I've talked to anybody.

ATTORNEY HAMMOND: Okay. Thank you for your time. I just had a couple of questions, and that's all I have for you today. Thank you.

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EXAMINATION

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BY ATTORNEY DUCAR:

Q. Good afternoon, B. I'm Timothy Ducar. I represent the Intervenor in this case. I wanted to ask you a question about Exhibit 29. Do you have that available?

MS. JACKSON: Give me a second to find it.

ATTORNEY DUCAR: Yes, that's it. Can you [145] scroll down just four paragraphs? Thank you.

BY ATTORNEY DUCAR:

Q. B, you had testified earlier that paragraph that starts with I just want to run, that you had --- that's a quote from you.

Correct?

A. Yes.

Q. I just wanted to know, is that a quote that you wrote on paper and provided to somebody or wrote on a computer and provided to somebody or did you actually say that with your --- verbally?

A. I said that.

Q. Verbally?

A. Yeah, I said that verbally.

Q. Thank you. When did you decide you liked running?

A. I've always liked running. It's from when I could walk, I liked running.

ATTORNEY DUCAR: We're done with this exhibit, Mr. Court Reporter. Thank you.

BY ATTORNEY DUCAR:

Q. When did you decide you wanted to try out for the girls cross-country team?

A. I've always wanted to do cross-country, so when [146] I had the chance I decided I wanted to.

Q. And did you know about it because your brothers ran?

A. Yes.

Q. Did your mom encourage you to try out for the girls team?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes. Yes, she encouraged me.

BY ATTORNEY DUCAR:

Q. And these try-outs were last summer. Correct?

A. Yes.

Q. Going into sixth grade?

A. Yes.

Q. Did your dad encourage you to try out for the girls team?

A. Yes.

Q. Earlier you testified that you did well in cross-country. Did you have any rankings?

ATTORNEY HARTNETT: Object to the form.

THE WITNESS: I --- could you rephrase the question?

BY ATTORNEY DUCAR:

[147]



Q. Do you have any idea how well you did on your team as an individual?

A. I don't know.

Q. Do they keep track of individual times and ---?

A. I think they put it on a website.

Q. Is that something you have ever seen?

A. My mom looks at it, but I don't.

Q. Do you have any indication whether or not you were one of the better runners or not one of the better runners on the team?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't know. I think I was good.

BY ATTORNEY DUCAR:

Q. Do you want to run cross-country again next year?

A. Yes.

Q. Track tryouts are coming up in the spring. Correct?

A. Yes.

Q. And you intend to try out for track?

A. Yes.

Q. Do you want to compete in any other sports besides track and cross-country?

[148]

A. Not really.

Q. Why not?

A. I don't find any other sport really interesting besides running.

Q. You said trusting?

A. Interesting.

Q. What does that mean?

A. What is interesting?

Q. Oh, interesting. I misheard you. Thank you. And I think I misheard you on something else, so I'm going to re-ask the question. Do you like to compete?

ATTORNEY HARTNETT: Objection to the form.

THE WITNESS: I'm not a really competitive person. I just play a sport because I think it's fun.

BY ATTORNEY DUCAR:

Q. Do you consider yourself a good athlete?

A. Yes.

Q. What makes you a good athlete?

A. I'm good at running, good at the sports I do.

Q. Do you try hard to win?

A. Yes. Well --- yes.

Q. Have you talked to anybody else about playing [149] other sports other than cross-country and track?

A. I've talked to my mom about playing other sports.

Q. What sports have you talked to her about?

A. Volleyball and maybe basketball.

Q. And describe for me what you guys talked about as far as volleyball and basketball?

A. We talked about trying new sports.

Q. When did you two talk about those subjects?

A. I can't remember.

Q. Was it in the last six months or ---?

A. I don't --- I can't remember.

Q. Did you bring up the idea of playing volleyball to her?

A. Yes.

Q. And what did she say?

A. That's a good idea.

Q. Did she say that about basketball as well?

A. I think she may have brought up basketball, but I can't remember. It may have been me or her.

Q. Did you feel like she was encouraging you to play volleyball?

A. She liked the idea. So I wouldn't say encouraged, but she thought it was a good idea.

[150]

Q. Did she think playing basketball was a good idea?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I think so, yes.

BY ATTORNEY DUCAR:

Q. And as you sit here right now, you don't have any plans to go out for a volleyball or a basketball team.

Correct?

A. No, not right now. No.

Q. Do you foresee yourself running on the cross country team or on the track team later in high school?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Yes, yes.

BY ATTORNEY DUCAR:

Q. Do you see yourself running on the cross-country team or track team if you ever go to college on a college team?

ATTORNEY HARTNETT: Same objection. Objection to form.

THE WITNESS: Maybe, but I haven't thought that far ahead.

BY ATTORNEY DUCAR:

[151]

Q. Sure. When was the first time you remember thinking that you wanted to be a girl?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I can't remember.

BY ATTORNEY DUCAR:

Q. Do you remember the first time you talked to somebody about the fact that you wanted to become a girl?

ATTORNEY HARTNETT: Objection.

THE WITNESS: I also can't --- I don't remember.

BY ATTORNEY DUCAR:

Q. There's a statement in the record that indicates you feel like a girl. What does feeling like a girl mean?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I just know that I want to be a girl and I feel like a girl inside.

BY ATTORNEY DUCAR:

Q. You picked out the name B for yourself.

Correct?

A. Yes.

Q. When did you do that?

A. Whenever I transitioned.

[152]

Q. Going into fourth grade?

A. Yes.

Q. How did you pick that name?

A. I've always liked it.

Q. Me, too. I have a daughter named B. Did anyone else help you pick that name?

A. I think my friends liked that name, too.

Q. When did you start wearing girl's clothing at home?

A. I mean, I've always wanted my mom's clothes, so I really started dressing like that maybe at home, third grade, the year of third grade.

Q. Did you ask your parents if you could do it or did you just do it?

A. I just did it.

Q. What was their reaction?

A. Positive.

Q. When did you first ask your parents to refer to you as she or her?

A. When I transitioned.

Q. Going into fourth grade?

A. Yes.

Q. When did you start presenting as a girl in other ways at home? I guess that would be makeup, other ways [153] besides clothing.

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you restate the question, please?

BY ATTORNEY DUCAR:

Q. Yeah. I'll withdraw that question. When did you start presenting as a girl at home?

A. It started when I was really young.

ATTORNEY HARTNETT: Objection.

THE WITNESS: But I fully started wearing clothes on my own, not wearing my mother's, around the third-grade year.

BY ATTORNEY DUCAR:

Q. Do you wear jewelry?

A. Not a lot. I used to wear earrings but not anymore.

Q. Do you wear makeup?

A. No.

Q. Are there other ways you presented at home as a girl besides dressing as a girl?

A. Well, I always wanted girly --- a girly room and girly items.

Q. And you started wearing girls clothing in fourth [154] grade.

Correct?

A. Yes.

Q. Do you recall the first time you saw a doctor or a therapist about your desire to be a girl?

A. I can't remember.

Q. How did you first learn about puberty blocking treatment?

A. Could you repeat the question, please?

Q. How did you first learn about puberty blocking treatment?

A. My mom. My mom told me about it whenever I transitioned.

Q. And is that something that you wanted to do?

A. Yes.

Q. At some point you wanted to start hormone therapy?

A. Yes.

Q. Do you know what that means?

A. Getting female hormones.

Q. B, do you ever feel anxious?

ATTORNEY HARTNETT: Objection to form.

ATTORNEY DUCAR: Let me restate that. That's fair.

[155]

BY ATTORNEY DUCAR:

Q. Does the fact that you are transitioning make you feel anxious?

A. No.

Q. Does the fact that you're part of this lawsuit make you feel anxious?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: No.

BY ATTORNEY DUCAR:

Q. Do you know what the word anxious means?

A. Nervous.

Q. Do you know what gender dysphoria is?

A. Yes.

[Redacted]

ATTORNEY DUCAR: Thank you, B. I have no further questions for you today.

ATTORNEY CAPEHART: We have no further questions at this time. We're just going to note as we have in the last two depositions the possibility of having to revisit something. If for some reason some [156] medical records would could to light, although I understand that's unlikely, we're still noting that, but you would object to that?

ATTORNEY HARTNETT: Yes, we object, but we appreciate you making the record you want to make.  
ATTORNEY CAPEHART: Thank you.

ATTORNEY HARTNETT: I'm sorry. Just on that point, though, I mean, is there any specific item that you lack today that you need to make a record?

ATTORNEY CAPEHART: I think our concern has been the possibility of new records that might be produced following the depositions.

ATTORNEY HARTNETT: Okay. Thank you.  
ATTORNEY CAPEHART: Thank you.



ATTORNEY HARTNETT: I mean, is anyone else going to have any further questioning? Sorry. Just for the witness's awareness, we're confirming whether or not there will be additional questioning from any Defendant.

ATTORNEY ROGERS: I don't have any further questions.

ATTORNEY DENIKER: I have no further questions. Thank you again for your time today, B.

ATTORNEY HAMMOND: I have no further [157] questions. Thank you.

ATTORNEY DUCAR: I have nothing further. Thank you.

ATTORNEY HARTNETT: And we also have no questions for the witness today.

VIDEOGRAPHER: Okay. If there are no further questions, that concludes today's deposition. And the current time reads 3:01 p.m.

COURT REPORTER: Is it reading and signing for your client?

ATTORNEY HARTNETT: Yes. I'm sorry. I meant to say that on the record.

\* \* \* \* \*

VIDEOTAPED VIDEOCONFERENCE  
DEPOSITION

CONCLUDED AT 3:01 P.M.

\* \* \* \* \*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST  
VIRGINIA  
CHARLESTON DIVISION**

\* \* \* \* \*

B.P.J., by her next friend and  
Mother, HEATHER JACKSON,

Plaintiff

vs.

Case No.  
2:21-CV-00316

WEST VIRGINIA STATE BOARD OF  
EDUCATION, HARRISON COUNTY  
BOARD OF EDUCATION, WEST  
VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION, W.  
CLAYTON BURCH in his official  
Capacity as State Superintendent,  
DORA STUTLER in her official  
Capacity as Harrison County  
Superintendent, PATRICK MORRISEY  
In his official capacity as  
Attorney General, and THE STATE  
OF WEST VIRGINIA,

Defendants

**VIDEOTAPED  
VIDEOCONFERENCE**

DEPOSITION  
OF  
HEATHER JACKSON  
January 19, 2022

\*\*\*

[14]

HEATHER JACKSON,

CALLED AS A WITNESS IN THE FOLLOWING  
PROCEEDING, AND HAVING FIRST BEEN DULY  
SWORN, TESTIFIED AND SAID AS FOLLOWS:

[Page 15]

COURT REPORTER: Thank you.

EXAMINATION

BY ATTORNEY TRYON:

Q. Hello, Ms. Jackson, my name is David Tryon. I'm an attorney from the State of West Virginia. Thank you for taking your time to --- for this deposition today.

Can you please state your name for the record?

A. Heather Jackson.

Q. And do you prefer that I call you Mrs. Jackson or Ms. Jackson or something else?

A. Ms. Jackson is fine.

Q. Okay.

So first of all, can you tell me if you are represented by counsel today?

A. I'm represented by counsel, yes.

Q. And can you tell me who your attorneys are?

A. The names or their groups?

Q. Either one.

A. Well, ACLU and the Cooley law, Lambda Legal.

Q. Okay.

And do you have any formal engagement letter or retainer letter with any of those attorneys?

[16]

A. I don't understand the question.

Q. Sure. At the time that you retained those attorneys or they became your attorneys, did you have a written document that you signed with them saying you are my attorneys?

A. Yes.

Q. Okay.

And how long ago was that signed?

A. I don't know the date.

Q. Was it before or after this lawsuit was filed?

A. Before.

Q. Was it before or after the Law House Bill 3293 was passed?

A. After.

Q. And who else is on that besides you? Is your child BPJ on that?

A. BPJ.

Q. And is your husband Wesley on that?

A. I believe so.

Q. Okay. Have you ever been deposed before?

A. No.

Q. Have you ever been sued before?

A. No.

[17]

Q. Have you received some guidance on how a deposition works?

A. I've been told how it works.

Q. Okay. Great.

Well, I'm just going to go through some of the rules. And you may have heard them before, but we'll go through anyways. So first of all, the Federal Rules of Civil Procedure apply here. And just so you know how this works with objections, the specific rule involved, which is Rule 30(c)(2) says an objection at the time of the examination, whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition or to any other aspect of the deposition must be noted on the record but the examination still proceeds. The testimony is taken subject to any objection. An objection must be stated concisely in a non-argumentative and non-suggestive manner. That's the rule.

So in other words, if your counsel objects to any of my questions or any of the other lawyers' questions, they can object, they can state the reason why, but they can't --- but you still need to answer the question unless they specifically instruct you to not answer it.

[18]

Do you understand that?

A. Yes.

Q. Okay. And so in the context of this deposition, the deposition is a little odd, which is where we ask you

questions about information that you might have about this lawsuit that you filed on behalf of BPJ, and so you will just answer those questions as far as to the best of your ability.

Okay?

A. Okay.

Q. And if you don't understand my question and would like me to clarify it, please ask me to clarify it and I will do my best to do so.

Okay?

A. Okay.

Q. Also, I would like you to answer orally as you have been doing rather than nodding or shaking your head.

Okay?

A. Okay.

Q. And also, if you need a break during this deposition, let me know. This is not designed to be an endurance contest, so let us know if you need to take a [19] break.

I want to ask you first, during your husband's --- your understanding is that your husband --- his deposition was just taken.

Right?

A. Correct.

Q. Were you able to listen into it or watch it in any fashion?

A. No.

Q. After his deposition, did he tell you about it?

A. No.

Q. And during the course of his deposition or after, did anybody send you texts or emails telling you about it?

A. No.

So before we get actually started with any questions, I just want to let you know that we, as counsel, are not here to try and cause you any heartburn or to judge you or anyone in your family. These are situations which are, you know, obviously a little different than some of us have experienced and they're sometimes challenging, but in this situation your --- BPJ has followed this lawsuit through you to challenge the State's law, and so we have an obligation on behalf [20] of the State to defend that law. And so, as a result, we have an obligation to then ask you questions about your rationale, about the facts that are involved with this. And so that's the background for this. I just want to tell you that's why we're asking these questions of you. Does that sound fair so far?

ATTORNEY BLOCK: Objection to the extent that you're asking her to agree with your legal interpretation of what the law requires you to do. You can answer it.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. In preparation for your deposition today did you look at any documents?

A. I have documents, yes.

Q. Have you looked at those as you prepared for this deposition today?

A. A while back.

Q. Okay. In the past week have you looked at any in anticipation of this deposition?

A. No.

Q. Have you had ample time to discuss this --- to prepare for this deposition in consultation with your [21] attorneys?

A. Yes.

Q. In connection with preparing for this deposition, did you have any discussions with either BPJ or with your husband?

A. Can you repeat that, please?

Q. Yes. In preparation for this deposition, did you talk to either your husband or BPJ?

A. No.

And just so you know, the reason I'm using the initials BPJ is twofold. First of all, because it is the name of the Plaintiff in the deposition --- excuse me, in the Complaint that was filed. And also, because whenever there's a minor involved, we typically in court documents and court proceedings use the initials of the minor. And so I'm not suggesting that you need to use those initials. You can refer to BPJ in any manner that you feel comfortable, but I want you to understand why I'm using those initials.

Okay?

A. Yes.

Q. First of all, let me ask you about the law itself. HB 3293, are you familiar with that law?

A. Yes.

[22]

Q. Have you read it?

A. Full on, no.



Q. Okay. But certain parts you've read?

A. Just to get the extent of the knowledge that it would not allow my daughter to participate in girls sports.

Q. Okay. And what's your basis for that understanding?

A. The law, as I've read it, from what I've read.

Q. And from what you can remember, what about the law would prevent your --- prevent BPJ from participating in girls sports?

A. Because she is a transgender female, she wouldn't be permitted to play with the female sports teams.

Q. Okay. You've read part of the law you said but not all. Is that right?

A. Correct.

Q. Are you aware of any place in that law where it uses the terms transgender?

ATTORNEY BLOCK: Objection to the extent [23] that you're asking her about the text of the document that she doesn't have in front of her. I would like --- I request you provide her the document unless you're testing her memory.

ATTORNEY TRYON: My question stands. Can the court reporter please read back my question?

COURT REPORTER: Are you aware of any place in that law where it --- where it uses the term transgender?

THE WITNESS: I don't know.

BY ATTORNEY TYRON:

Q. Well, let's take a look at that.

ATTORNEY TRYON: I'll have the court reporter pull up Exhibit 34, please.

BY ATTORNEY TRYON:

Q. So I would like to briefly go through this so you can see the extent of it. So this is the first page of House Bill 3293. And this is the second page. And I will just go through it quickly. And if you want me to go back and show you any particular page, I'm happy to do that.

Okay.

This is the next page. That's the final page [24] of the text and then there's a blank page for some reason and then there is the last page, which has signatures --- signature lines for various parties. So let me go back up to the beginning. And what I'd like to ask you is can you tell me what parts of it you have read prior to today, starting at page one?

ATTORNEY BLOCK: Objection. Can you give the witness a chance to read the entire document before answering your question as to parts of it?

BY ATTORNEY TRYON:

Q. Sure. You can tell me when you're ready to move to the next page.

A. Okay. Next page.

Q. Okay.

Going down on this page. That is the remainder of that page. Go ahead.

A. Okay.

Q. This is the top of the second page of the text?

A. Okay.

Q. All right.

That is the bottom half of the first page of the text?

A. Okay.

Q. And this is the top of the next page of the [25] text?

A. Okay.

Q. And scrolling down to the last half of the full text of the --- on that page of the text.

A. Okay.

Q. Would you agree with me that the term or the word transgender does not appear anywhere in this bill?

A. It does not.

Q. And can you tell me what portions of this bill that you believe prevents BPJ from participating in girl sports?

A. The references to biological sex being male at birth.

Q. So you are referring to line 25 and 26 on the --- what is marked as page two of the bill?

A. Can you go up to the first page?

Q. Well, the first page --- yes, this is the first page.

A. Okay. There where it is talking about defining biological sex as female and male.

Q. Okay. You're looking at line four on the first page?

A. Yeah.

[26]

Q. On the left side there's lines?

A. I see --- I see the line numbers, okay. Yes.

Q. Okay.

Anything else in here that you saw? Tell me if you want me to scroll down or anything.

A. Just the references to the biological sex of female and male.

Q. Okay.

So you're saying the reference to biological sex of female and male as referenced throughout the bill?

A. Correct.

Q. So under the terminology of this bill would you agree that BPJ has the biological sex of male?

A. Biological sex as male, correct.

Q. Just to be clear we are communicating, so the biological sex of BPJ is male.

Right?

ATTORNEY BLOCK: Objection to the extent --- I'm sorry.

THE WITNESS: She was born a male.

BY ATTORNEY TYRON:

Q. Okay. And specific to this bill, under this bill BPJ [27] is defined --- would be defined as a biological male. Right?

A. Correct.

Q. These are not trick questions. I'm just trying to establish a baseline for us to communicate. But if you think they are trick questions, you just tell me and we'll try to clarify the questions.

So let me scroll down and --- so what parts of this had you, in fact, read?

A. Parts of the first page and then the parts where it says that if the --- it's like down on the third page, I believe.

Q. I'll scroll down and you tell me when to stop.

A. Maybe it's not on the third page. Where it talks about if there's ---.

Q. Well, this is page two right here of the bill.

A. Okay. Line 48.

Q. Line 48. So line 48 says any student aggrieved by a violation of this section may bring an action against a County Board of Education or state institution of higher education alleged to be responsible for the alleged violation. Is that what you're referring to?

A. Yes.

Q. Do you believe that's the provision under which [28] your lawsuit has been filed?

ATTORNEY BLOCK: Objection, misstates her testimony.

ATTORNEY TRYON: I'm asking the question.

THE WITNESS: I believe that my child is harmed by this bill, which is why we are filing this.

BY ATTORNEY TYRON:

Q. Okay.

In what way is your child harmed by this bill?

A. She cannot participate on female sports.

Q. And how is that harmful? To use your words, how is that a harm to BPJ?

A. She is being denied the opportunity to participate.

Q. The opportunity to participate in what?

A. In female sports.

Q. Under this bill would BPJ be permitted to participate in male sports?

A. She wouldn't participate in male sports.

Q. Okay.

But that's not my question. My question is under this bill would BPJ be permitted to participate in male sports?

ATTORNEY BLOCK: Objection. Calls for a [29] legal conclusion.

BY ATTORNEY TYRON:

Q. Go ahead.

A. She could participate in male sports.

Q. And --- okay.

I'm now looking at page one as marked at the bottom of the bill. In line one it says the legislature hereby finds and then it lists a number of findings by the legislature. Prior to today have you read those findings?

A. No.

Q. Starting on line two, on page one it says there are inherent differences between biological males and biological females and that these differences are cause for celebration as determined by the Supreme Court of the United States in the United States versus Virginia, 1996. Do you agree with that statement?

ATTORNEY BLOCK: Objection to vagueness of the terms.

THE WITNESS: I don't understand a lot of the lawyer --- the legalese.

BY ATTORNEY TRYON:

Q. What part of that sentence do you not understand?

[30]

A. The inherent differences. I mean, there's are differences yes, but it's not telling me what the inherent difference are.

Q. Very good. So do you agree that there are inherent differences between biological males and biological females?

ATTORNEY BLOCK: Objection again to the vagueness of the terms biological males and biological females.

ATTORNEY TRYON: Counsel, I would just appreciate if you just state objection, vagueness, something along those lines, rather than your extended objection.

BY ATTORNEY TYRON:

Q. So ma'am, I'll ask you one more time. Do you agree with the statement there are inherent differences between biological males and biological females?

A. Do you mean physical differences?

Q. I'm reading the bill. I don't mean anything. I'm asking if you agree with that statement that there are inherent differences between biological males and biological females?

A. I don't know what it means by inherent differences, if it's talking about physical differences.

[31]

Q. Do you know what the word inherent means?

A. Apparently not.

Q. Do you know what the word differences mean?

A. Yes.

Q. Okay. Do you believe that there are differences between biological males and biological females?

A. There are physical differences, correct.

Q. Do you believe there are other differences between biological males and biological females other than physical differences?

ATTORNEY BLOCK: Objection, vagueness.

THE WITNESS: I'm not a physician here. I'm just --- I mean, there's differences between males and females.

BY ATTORNEY TRYON:

Q. Correct. And you are suing to have this law overturned, so I'm asking --- I want to understand specifically what parts of the law you agree with and what parts you disagree with because that's very important in a lawsuit where you're challenging the constitutionality of a law. And that's why I'm asking what you understand the differences are between biological males and biological females?

**[Page 32]**

ATTORNEY BLOCK: Objection. Argumentative, vague.

THE WITNESS: There are differences between biological males and biological females.

BY ATTORNEY TRYON:

Q. What's your understanding of what those differences are?



A. Well, males have penises and females have vaginas and ovaries.

Q. Are there any other differences?

A. Those are what I would consider biological markers or what my child was judged at at birth. She was born with a penis, so therefore she was judged as male.

Q. Are there any other differences between biological males and biological females that you are aware of?

A. No.

ATTORNEY BLOCK: Objection. Objection, vagueness.

BY ATTORNEY TRYON:

Q. The next part of that statement says and these --- that these differences are cause for celebration. Do you agree that the differences between biological [33] males and biological females are cause for celebration?

ATTORNEY BLOCK: Objection, vagueness.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. The next statement at line five says these inherent differences are not a valid justification for sex-based classifications that make overbroad generalizations or perpetuate the legal, social and economic inferiority of either sex.

Do you agree with that sentence?

ATTORNEY BLOCK: Objection, legal conclusion.

THE WITNESS: There's a lot of legal jargon in that sentence.

BY ATTORNEY TRYON:

Q. Do you want me to read it again?

A. No, I can read it. I just don't necessarily understand the whole sentence.

Q. Well, let's break it down. It says these inherent differences are not valid justification for sex-based classification that makes overbroad generalizations.

Do you agree with that much?

ATTORNEY BLOCK: Objection, legal [34] conclusion.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. The next part says or perpetuates the legal, social and economic inferiority of either sex.

Do you agree with that?

ATTORNEY BLOCK: Objection, legal conclusion.

THE WITNESS: Perpetuate or perpetuate the legal, social? Can you explain that to me?

BY ATTORNEY TRYON:

Q. My understanding of the term perpetuate is that a -- to promote or conclude or to move forward the legal, social and economic inferiority of either sex. In other words, this statement, as I read it, is saying that these inherent differences are not valid participation for legal, social and economic inferiority of either sex.

A. Okay.

Q. Do you agree with that?

A. Okay. Yeah.

ATTORNEY BLOCK: Objection, legal conclusion.

BY ATTORNEY TRYON:

[35]

Q. You can answer, but take your time.

A. From what I understand that sentence to mean, yes, but I don't know that I fully understand all the legal jargon in that sentence.

Q. Okay. Fair enough.

The next sentence at line seven says, rather these inherent differences are a valid justification for sex-based classifications when they realistically reflect the fact that the sexes are not similarly situated in certain circumstances as recognized by the Supreme Court. But forgetting about whether or not the Supreme Court recognized it, do you agree with that statement?

ATTORNEY BLOCK: Objection, objection. That doesn't read the complete sentence. It calls for a legal conclusion.

THE WITNESS: I don't feel that it's a valid justification for sex-based classifications, no.

BY ATTORNEY TRYON:

Q. Under any circumstances whatsoever?

ATTORNEY BLOCK: Objection, calls for a legal conclusion.

THE WITNESS: There are valid justifications for sex-based classifications? I'm [36] unable to imagine all possible situations.

BY ATTORNEY TRYON:

Q. Can you imagine any situation where a sex-based classification is a valid justification?

A. No.

ATTORNEY BLOCK: Objection, calls for a legal conclusion.

BY ATTORNEY TRYON:

Q. So for example, you think that men should always be allowed to use women's bathrooms at any time, no matter what?

ATTORNEY BLOCK: Objection. Argumentative.

THE WITNESS: Can you repeat the question?

BY ATTORNEY TRYON:

Q. Do you believe that any man should be allowed to use any female bathroom at any time for any reason?

ATTORNEY BLOCK: Same objection.

THE WITNESS: I have no problem with people using the restrooms that they want to use.

BY ATTORNEY TRYON:

Q. Okay. Do you believe that it's appropriate to [37] require ---?

A. Can you repeat that?

Q. Yes. I'm thinking. I'm sorry.

A. Okay. I didn't know if it cut out or ---.

Q. No. Your last answer surprised me a little bit, so --- and do you believe that in your child's school that any boy should be allowed to enter a girls' locker room or shower at any time for any reason?

ATTORNEY BLOCK: Objection. Calls for speculation.

THE WITNESS: If there is a bathroom emergency and there's a --- somebody needs to use the restroom, they should be able to use the restroom.

BY ATTORNEY TRYON:

Q. So if there's a bathroom --- bathroom emergency, as you classified it, then a boy should be allowed to go into a girl's bathroom, if necessary.

Is that your testimony?

A. No, I wouldn't say that's accurate. I have no problem with people using whichever restroom they want to use.

Q. How about locker rooms? You have no problems with a boy in high school going in naked into a girls' [38] shower with naked girls?

ATTORNEY BLOCK: Objection, that calls for speculation.

THE WITNESS: That is a bit extreme.

BY ATTORNEY TRYON:

Q. That is my question, though. Do you have --- do you think that's --- there's a justification to prohibit that?

A. I would think that that should be prohibited, yes, if they're walking in there naked.

Q. Okay.

So at least in one situation there's a valid justification for sex-based classifications. Right?

ATTORNEY BLOCK: Objection, calls for a legal conclusion.

BY ATTORNEY TRYON:

Q. I'm not asking you, by the way, on any of these questions for a legal conclusion. I'm asking for your

viewpoint as a Plaintiff or representing as the parent of the Plaintiff on whose behalf you filed this lawsuit. I'm asking for your opinion on this law on all these questions.

ATTORNEY TRYON: So you don't need to [39] keep saying calls for a legal conclusion. I'm not asking for a legal conclusion.

ATTORNEY BLOCK: You're citing case law that's quoted in the bill.

BY ATTORNEY TRYON:

Q. So I will ask you again ---.

ATTORNEY TRYON: Well, could the court reporter please read back my question?

COURT REPORTER: Okay. So you at least in one situation there is a valid justification for sex-based classification. Right?

THE WITNESS: I also don't think that they should walk around naked in the hallway either.

ATTORNEY TRYON: Court Reporter?

THE WITNESS: So I don't understand.

ATTORNEY TRYON: Court Reporter, could you please read my question one more time, please?

COURT REPORTER: Okay. So you're --- at least in one situation there is a valid justification for a sex-based classification. Right?

ATTORNEY BLOCK: Objection, asked and answered.

BY ATTORNEY TRYON:

Q. It's a simple yes or no.

[40]

ATTORNEY BLOCK: Objection, asked and answered.

THE WITNESS: I don't know how to answer this because I'm picturing the kid walking around naked in the school at this point.

BY ATTORNEY TRYON:

Q. Forget --- don't --- don't picture that. You had said that you believe it's --- as I understand your testimony, is that there is valid justifications for sex-based classification to prohibit a male to --- in from walking into a girls' shower naked when there's other naked girls in there?

ATTORNEY BLOCK: Objection. Are you finished with the question? I didn't mean to cut you off.

THE WITNESS: Yes, I don't think that a male should walk around naked in a female locker room.

BY ATTORNEY TRYON:

Q. So a law or rule saying that would be reasonable. Right?

A. The school ---?

ATTORNEY BLOCK: Objection, calls for a legal conclusion.

[41]

THE WITNESS: Schools have rules for that, yes.

BY ATTORNEY TRYON:

Q. And that would be a validly justified rule. Right?

ATTORNEY BLOCK: Objection, legal conclusion.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. Okay. Do you think there might be other valid justifications for sex-based classifications ---

A. I don't know.

Q. --- to reflect the fact that the sexes are not similarly situated in certain circumstances? Is that a possibility?

ATTORNEY BLOCK: Objection. Calls for legal conclusion, misstates prior testimony.

THE WITNESS: I don't know. I don't know of all possible situations.

BY ATTORNEY TRYON:

Q. Neither do I but I'm asking if you think there might be other situations?

ATTORNEY BLOCK: Objection asked and [42] answered.

THE WITNESS: I don't know. You probably have to be on a case by case basis. I'm not sure of all possible situations.

BY ATTORNEY TRYON:

Q. Okay, let's move on, line 12 says in the context of sports involving competitive skill or contact biological males and biological females are not in fact similarly situated. Do you agree with that statement?

ATTORNEY BLOCK: Objection, vague, calls for a legal conclusion.

THE WITNESS: I don't agree with that.

BY ATTORNEY TRYON:

Q. Do you believe that in the context biological males and biological females are always similarly situated?



ATTORNEY BLOCK: Objection, vague, calls for legal conclusion?

THE WITNESS: I believe they are similarly situated.

BY ATTORNEY TRYON:

Q. Under all circumstances?

A. As far as my knowledge goes, yes.

Q. Okay.

[43]

So if we are talking about a biological male who is 18 as compared to a biological female who is 18 you believe that they are both similarly situated?

ATTORNEY BLOCK: Objection, mischaracterizes testimony. Vague. Calls for legal conclusions.

THE WITNESS: In regard to competitive skill?

BY ATTORNEY TRYON:

Q. Correct.

A. Then they are similarly situated.

Q. So do you --- is it your position that there was no difference between boys and girls playing high school sports?

ATTORNEY BLOCK: Objection. Mischaracterizes the previous testimony.

ATTORNEY TRYON: I'm not mischaracterizing her testimony I'm asking her a new question, counsel.

THE WITNESS: I believe ---.

ATTORNEY BLOCK: Same objection.

THE WITNESS: I believe a girl can run as fast as a boy can run.

BY ATTORNEY TRYON:

[44]

Q. So you believe that a --- in a mile run you believe that an 18-year-old girl would be able to run just as fast as a boy?

ATTORNEY BLOCK: Objection calls for speculation.

THE WITNESS: Yes, I do.

BY ATTORNEY TRYON:

Q. Do you have any statistics to back that up?

A. No, I do not.

Q. Have you ever looked at any statistics?

A. No, I do not.

Q. What is the basis for your belief of what you just expressed?

A. With proper training they both have adequate training they can both run.

Q. So do you believe that in high school sports the differentiation between --- strike that.

Do you believe that in both middle school and high school that there is no difference between males and females in sports?

ATTORNEY BLOCK: Objection mischaracterizes testimony. Argumentative?

THE WITNESS: I believe the girls are as capable as the boys.

[45]

BY ATTORNEY TRYON:

Q. So there is no difference between them in either middle school or high school in sports?

A. Agreed.

Q. Is that your testimony?

ATTORNEY BLOCK: Objection vague.

THE WITNESS: I think the males and the females can do just as well.

BY ATTORNEY TRYON:

Q. So do you believe that there should be no difference --- there should be no male teams and female teams but they should all be together in elementary, middle school and high school?

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: I believe that she should be able to participate on the team that they identify with.

BY ATTORNEY TRYON:

Q. Well right now, there are different teams. There is a boys team and a girls team in many sports, do you believe that there is any reason at all that there should be a differentiation between boys and girls designation of sports?

A. No, I think ---.

[46]

ATTORNEY BLOCK: Objection.

THE WITNESS: I think if a girl wants to wrestle, the girl should be allowed to wrestle.

BY ATTORNEY TRYON:

Q. And if a boy wants to run on a girls team --- well let me back up.

So do you think there is any reason at all that there should be a boys teams and a girls team in any sports?

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: I think that they should be able to participate on the team that they identify with.

BY ATTORNEY TRYON:

Q. Okay.

But that is not my question that is a totally different question. The question is are you saying that there should not be a differentiation at all in the middle school or high school sports between men --- between boys and girls?

ATTORNEY BLOCK: Objection. Vague.

THE WITNESS: I don't know the answer to that.

BY ATTORNEY TRYON:

Q. Well you said there is no justification for any [47] differentiation between biological males and biological females and I'm trying to understand how that applies to the context of sports?

ATTORNEY BLOCK: Objection, misstates prior testimony, argumentative.

ATTORNEY TRYON: You're right I did make a mistake there, I apologize.

BY ATTORNEY TRYON:

Q. In the context ever sports involving competitive sports or contact you told me that biological males and biological females are similarly situated and there is no

reason for them to have different designations of sports. Is that consistent with your testimony?

A. I believe they are similarly situated.

Q. And so there is no reason to have a boys team, right?

ATTORNEY BLOCK: Objection, vague, argumentative.

THE WITNESS: I don't know what the reason would be to have a boys team.

BY ATTORNEY TRYON:

Q. So all teams should just be coed, right?

ATTORNEY BLOCK: Objection, vague, argumentative?

[48]

THE WITNESS: I don't know the answer to that.

BY ATTORNEY TRYON:

Q. Okay.

So since there is no difference between biological males and females on sports teams than why is it that BPJ can't or won't run on what's designated as the boys cross-country team?

ATTORNEY BLOCK: Objection misstates prior testimony, vague, compound question, argumentative?

THE WITNESS: Because she is a girl.

BY ATTORNEY TRYON:

Q. Okay.

But you just told me there is no difference between boys and girls. So why shouldn't BPJ run on the boys teams if there is no difference between boys and girls?

ATTORNEY BLOCK: Objection, misstates prior testimony, argumentative?

THE WITNESS: The fact is that there are boys and girls teams and she should be able to run on the girls team because she is a girl.

BY ATTORNEY TRYON:

[49]

Q. So in this lawsuit are you asking that the Court abolish boys teams because there is no difference?

ATTORNEY BLOCK: Objection. Calls for a legal conclusion, vague, misstates prior testimony.

THE WITNESS: Can you repeat the question?

ATTORNEY TRYON: The court reporter please repeat the question?

COURT REPORTER: So in this lawsuit are you asking that the court abolish boys' teams because there is no difference?

THE WITNESS: No, that is not what.

ATTORNEY BLOCK: My objection stands.

THE WITNESS: No, that is not what I'm saying.

BY ATTORNEY TRYON:

Q. So I will ask a new question so I'm not misstating your prior testimony. Do you believe there is a justification to have a boys cross-country team?

ATTORNEY BLOCK: Objection, legal conclusion.

THE WITNESS: I don't know if there is a justification to that.

BY ATTORNEY TRYON:

[50]

Q. Okay.

So help me out here because you told me there is no difference between males and females. What would be the justification for having a different boys teams and girls team in track?

ATTORNEY BLOCK: Objection, misstates her prior testimony. Vague, argumentative.

THE WITNESS: I just know that there are girls teams and boys teams in track.

BY ATTORNEY TRYON:

Q. But you don't agree there's justification for it.

Is that correct?

ATTORNEY BLOCK: Objection misstates prior testimony?

THE WITNESS: I don't know what the justification is.

BY ATTORNEY TRYON:

Q. You don't believe there's a justification, do you?

ATTORNEY BLOCK: Objection, asked and answered misstates prior testimony?

THE WITNESS: I just know that there is male teams and there is female teams in school and in [51] professional sports.

BY ATTORNEY TRYON:

Q. You mean professional sports, do you believe there is a justification for that?

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: I think a girl should be allowed to play football.

BY ATTORNEY TRYON:

Q. How do you think a girl would fare in professional football?

A. I don't know.

Q. Do you watch professional football?

A. I do.

Q. And have you ever seen --- are you aware of any females that compete with males in the professional football?

A. Not in the NFL.

Q. Any other football league?

A. I don't watch any other football league.

Q. Let's go back to line 12 on the second page of the exhibit. It says in the context of sports involving competitive skill or contact biological place and biological females are not in fact similarly situated. Do you agree with that --- I'm sorry we already asked [52] that my apologies. The next sentence is biological males would displace females to a substantial extent if permitted to be on teams designated for biological females as recognized in the court case. Do you believe that is a correct statement?

A. I don't.

ATTORNEY BLOCK: Objection, calls for a legal conclusion, vague.

THE WITNESS: I don't agree with that statement.

BY ATTORNEY TRYON:



Q. If the boys track team were to suddenly be consolidated with the girls track team do you think that the biological boys would displace the female, the biological females or not?

A. I don't know.

ATTORNEY BLOCK: Objection. Vague, calls for speculation.

BY ATTORNEY TRYON:

Q. You don't know?

A. I wouldn't know it would be completely a guess on my point.

Q. So it is possible that there is a difference then?

[53]

ATTORNEY BLOCK: Same objections.

THE WITNESS: There is possible there is not a difference is what I'm saying.

BY ATTORNEY TRYON:

Q. And it's possible that there is a difference?

A. Not a difference.

Q. I'm sorry?

A. I'm saying that they would not displace females.

Q. You are absolutely certain they would not, is that what you are saying?

ATTORNEY BLOCK: Objection, misstates prior testimony, vague, calls for speculation.

THE WITNESS: It's just my opinion.

BY ATTORNEY TRYON:

Q. Okay. And your opinion --- is your opinion based on any facts?

A. No, it is my opinion.

Q. Is your opinion based on any facts?

ATTORNEY BLOCK: Objection, asked and answered.

THE WITNESS: I don't know of a case where a biological male has displaced females.

ATTORNEY TRYON: Could you read my [54] question again please, Court Reporter?

COURT REPORTER: Is your opinion based on any facts? Do you want the question before that?

ATTORNEY TRYON: Yes. I might be helpful. Maybe the answer before that and the question.

COURT REPORTER: Okay. And is your opinion based on any facts. And, no, sir, it it my opinion. Question, is your opinion based on any facts?

ATTORNEY BLOCK: Same objections, asked and answered.

THE WITNESS: It's my opinion.

BY ATTORNEY TRYON:

Q. So you're not aware of any --- have you read any books, articles, analysis that would support your opinion?

A. No.

Q. There is a statement on line 17 that says, gender identity is separate and distinct from biological sex to the extent that an individual's biological sex is not determinative or indicative of the individual's gender identity. Do you agree with that statement?

A. I don't understand.

ATTORNEY BLOCK: Objection, calls for a medical opinion.

[55]

THE WITNESS: I don't understand that statement.

BY ATTORNEY TRYON:

Q. Great. Let's break it down. Gender identity is separate and distinct from biological sex. Do you agree with that?

ATTORNEY BLOCK: Objection, vague, calls for medical opinion.

BY ATTORNEY TRYON:

Q. I'm not asking for your medical opinion, ma'am, I'm just asking if you agree with that statement, gender identity is separate and distinct from biological sex?

A. Yes.

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: Yes, it's separate.

BY ATTORNEY TRYON:

Q. And on line 19 in the bill it says, classification is based on gender identity, serve no legitimate relationship to the State of West Virginia's interest in promoting equal athletic opportunities for female sex. Do you agree with that statement?

A. I don't ---.

ATTORNEY BLOCK: Objection, calls for a legal conclusion, vague.

[56]

THE WITNESS: I don't understand that sentence.

BY ATTORNEY TRYON:

Q. Okay.

Well and I'm not asking for a legal conclusion I'm just asking if you agree with the statement because we're not asking --- because you're not a lawyer and you can't make a legal conclusion so let's break it down. Classifications based on gender identity serve no legitimate relation slip to the State of West Virginia's interest in promoting equal athletic opportunities for the female sex. What about that do you not understand?

ATTORNEY BLOCK: Same objections.

THE WITNESS: I don't than stand the whole sentence. I don't understand the sentence.

BY ATTORNEY TRYON:

Q. On line 25 it says biological sex means that the individuals physical form as a male or female based solely on the individual's reproductive biology and genetics at birth. Is that a reasonable definition of biological sex in your mind?

ATTORNEY BLOCK: Objection, vague, calls for a medical opinion.

THE WITNESS: Biological sex means that [57] they were born with a penis or a vagina, yes.

BY ATTORNEY TRYON:

Q. Okay.

And number two says, biological sex means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth. I'm not are asking for a medical opinion, I'm asking if that is a reasonable biological definition of sex?

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: Biological sex means an individual's physical form is male or female based solely on individual's reproductive biology. So it's saying that the biological sex is based on whether they have a penis or a vagina, then yes.

BY ATTORNEY TRYON:

Q. Okay.

And the rest of that sentence says and genetics. Do you understand what genetics are?

A. To a certain extent genetics are your DNA.

Q. Okay.

Do you understand what the different genetic differences between males and --- biological males and biological females?

[58]

A. Chromosomes.

ATTORNEY BLOCK: Objection vague calls for medical opinion.

BY ATTORNEY TRYON:

Q. And do you know what those chromosomes are? And I know you're not a doctor so if you don't know that is okay?

ATTORNEY BLOCK: Same objections.

THE WITNESS: The X and Y chromosomes.

BY ATTORNEY TRYON:

Q. Do you know which pertains to which?

A. No.

Q. That's okay.

And the next one of course says, female means an individual whose biological sex is --- sex determined at birth is female as used in this section, women or girls are first biological females. Is that a reasonable definition in your mind?

ATTORNEY BLOCK: Objection, vague, calls for legal conclusion, calls for medical conclusion?

THE WITNESS: In regards to this document females means individual whose biological sex determined at birth is female and in regards to this document?

BY ATTORNEY TRYON:

[59]

Q. Yes.

A. If that is what they are referring to in this document?

Q. Yes.

A. Because my daughter is a female but her biological sex determined at birth was not female.

Q. Okay.

And how do you define female so it would include BPJ as a female?

ATTORNEY BLOCK: Objection, calls for a medical opinion.

BY ATTORNEY TRYON:

Q. I'm not asking for medical opinion I'm asking what you would use as a definition?

A. She identifies as female.

Q. Okay.

So the definition you would use for female is and I'm just going to write this down because I want to make sure that I understand this, female means anyone who identifies --- who self identifies as female?

ATTORNEY BLOCK: Objection. Mischaracterizes her testimony.

ATTORNEY TRYON: I didn't ask the question yet.

[60]

BY ATTORNEY TRYON:

Q. Is that how you would define female?

ATTORNEY BLOCK: Objection, mischaracterizes her testimony, vague, calls for medical opinion.

THE WITNESS: Female means as individual whose biological sex determined as birth as female or someone who identifies as female.

BY ATTORNEY TRYON:

Q. Okay.

So anyone --- under your definition anyone at all that identifies as female would be a female. Is that right?

ATTORNEY BLOCK: Objection, mischaracterizes her testimony, calls for medical opinion, vague.

BY ATTORNEY TRYON:

Q. Okay.

Let me explain it all over again because I'm not asking you for a medical opinion, a legal opinion and I'm not mischaracterizing your testimony. I'm asking you if you believe that the term female means anyone who self identifies as female?

ATTORNEY BLOCK: Vague.

[61] THE WITNESS: If there is an individual that identifies as female then they are a female.

BY ATTORNEY TRYON:

Q. Okay.

And for someone to identify as a female do they just need to say I identify as a female?

ATTORNEY BLOCK: Objection, vague, calls for medical opinion.

THE WITNESS: If a person identifies as female they're female.

BY ATTORNEY TRYON:

Q. And they simply need to say I identify as a female, no other prerequisites, no other --- nothing they have to do, just say I identify as a female and in your mind that would make them --- under your definition that would be a female person?

ATTORNEY BLOCK: Objection, mischaracterizes her testimony, vague.

THE WITNESS: What prerequisites?

BY ATTORNEY TRYON:

Q. Are there any other requirements in your mind under your definition? Your definition as I understand it is female means anyone who identifies as a female?

A. Or someone who is born as a female and [62] identifies as female.

Q. Or born as a female?

A. And identifies as female.



Q. And by the same token how would you define male?

ATTORNEY BLOCK: Objection, vague, calls for a medical opinion.

BY ATTORNEY TRYON:

Q. Are you a doctor?

A. No.

Q. So I'm obviously not asking for medical opinion, I'm just asking you for your opinion as the --- representing the Plaintiff in this case as a parent of the Plaintiff. So how would you define male?

ATTORNEY BLOCK: Objection.

THE WITNESS: A male who biological sex determined at birth is a male and they identify as a male.

BY ATTORNEY TRYON:

Q. It has to be both or either one?

ATTORNEY BLOCK: Objection, compound vague?

THE WITNESS: They can be born a male and identify as a male. They have to identify as a male.

BY ATTORNEY TRYON:

[63]

Q. Okay.

So if you just identify as a male whatever you are born at under your definition would you be a male?

ATTORNEY BLOCK: Objection, mischaracterizes testimony, vague?

THE WITNESS: You could be born with female genitalia and identify as a male.

BY ATTORNEY TRYON:

Q. Okay.

So tell me if you agree within this definition, male means anyone who identifies as a male or who is born with male genitalia and identifies as a male?

ATTORNEY BLOCK: Objection, vague, calls for a medical opinion.

THE WITNESS: In my opinion that would be a male.

BY ATTORNEY TRYON:

Q. Very good. Great. I just wanted to make sure we had our definitional information.

Let me then ask you if someone identifies as a male today and therefore as a male would they --- that person then be able to identify as a female tomorrow and thereby be a female tomorrow?

ATTORNEY BLOCK: Objection, vague, calls [64] for a medical opinion, calls for speculation.

THE WITNESS: If they truly --- if they identify as a female is that what you are saying?

BY ATTORNEY TRYON:

Q. If they start out today identifying as a male and tomorrow they change and identify as a female, would they then be a female tomorrow?

ATTORNEY BLOCK: Objection, vague, calls for medical opinion, calls for speculation.

THE WITNESS: Then they would be transgender and female. Is that what you are saying?

BY ATTORNEY TRYON:

Q. I'm not saying anything about transgender. I don't -- we haven't discussed that term. I just want to know if

someone says today I am male and then tomorrow says I identify as female, under your definition that person would then be female.

Correct, tomorrow?

ATTORNEY BLOCK: Objection, vague, mischaracterizes testimony, calls for speculation, calls for medical opinion.

THE WITNESS: If they identify as female then they are female.

BY ATTORNEY TRYON:

[65]

Q. Okay.

So today they identify as a male, tomorrow they identify as female, then on the third day could they then turn around and identify as a male and then be a male?

ATTORNEY BLOCK: Objection, vague, calls for medical opinion, calls for speculation.

ATTORNEY TRYON: Okay.

Josh, this is ridiculous. I'm not calling for medical opinion and you keep on saying that. It's ridiculous, it's not an appropriate objection here. And it is very obvious I'm not asking for medical opinion. So I would appreciate that you stop doing that because I think you are interfering with this deposition.

ATTORNEY BLOCK: It's a totally valid --- it's a totally valid objection. You're asking medical terms of, it's a completely valid objection.

ATTORNEY TRYON: And I will give you a standing ongoing objection as to all of those objections as to my questions.

ATTORNEY BLOCK: If you want to preface your question saying you're not calling for a medical opinion, that's fine. But as long as --- I'm entitled [66] to object.

ATTORNEY TRYON: I'm never asking you for a medical opinion and if I do I will be very clear that I'm asking for medical opinion.

BY ATTORNEY TRYON:

Q. Now if I can go back to my question please. So Ms. Jackson, again, I want to ask you if a person identifies as male today, female tomorrow and then male the following day does that person's identity --- is that person shifting from male to female to male and then on the third day as male again?

A. They're ---.

ATTORNEY BLOCK: Objection, calls for speculation. Vague. Calls for medical opinion.

BY ATTORNEY TRYON:

Q. Okay. Did you answer my question, ma'am?

A. They are --- they identify --- they are the sex they identify with.

Q. On any given day; is that your testimony?

A. Yes.

Q. Thank you. So in the context of sports do you believe that a person should be able to switch back and forth between boys and girls teams on a daily or weekly [67] basis?

ATTORNEY BLOCK: Objection, mischaracterizes testimony, vague.

THE WITNESS: I believe they should be able to participate on the team that they identify with.

BY ATTORNEY TRYON:

Q. On any given day; is that right?

ATTORNEY BLOCK: Objection, mischaracterizes testimony, vague.

THE WITNESS: Yes, if they identify as female then they need to run on the female team. If they identify as male then they need to run on the male team.

BY ATTORNEY TRYON:

Q. And they can go back and forth on a weekly basis, right?

A. Whatever they identify as.

Q. On any given --- in any given week, right?

ATTORNEY BLOCK: Objection, asked and answered.

THE WITNESS: Yep.

BY ATTORNEY TRYON:

Q. You have already stated your full name, can you give us your current address and phone number. And [68] before you give me your phone number I just want it to be clear that the only time in which we would use your phone number as opposed to going to your counsel to reach you if for some reason your client (sic) could not reach you or you were no longer represented by counsel. So on that basis could you give me your current address and phone number?

A. **[REDACTED ADDRESS]**, Lost Creek, West Virginia 26385.

Q. And your phone number?

A. **[REDACTED PHONE NUMBER]**.

Q. And is that a landline or is that a cell number?

A. That is a landline.

Q. Not many people still have landlines. I do.

A. Yes, we have to out where we live.

Q. I see. And did you get a high school diploma?

A. A high school diploma, yes.

Q. Where?

A. Seneca East High School.

Q. Where is that?

A. In Ohio.

Q. What part of Ohio? What city?

A. Attica.

Q. Where's Attica?

[69]

A. Let's see more towards Toledo.

Q. Okay. And after high school did you get any further education?

A. Yes.

Q. Can you please tell me what that was?

A. I got an associate of arts degree from the University of Findlay in Findlay, Ohio.

Q. And when was that?

A. 1996.

Q. Anymore education after that?

A. I went to the Nuclear Medicine Institute after that, recertified in Nuclear Medicine Technology.

Q. Is there a degree or certificate that you get from that?

A. It's a certificate.

Q. And when was that?

A. That would have been in 1996 as well.

Q. Any other post-high school education?

A. No.

Q. When did you graduate from high school?

A. 1986.

Q. What did you do between 1986 and 1996?

A. I worked for a rehabilitation center.

[70]

Q. Doing what?

A. Bookkeeping.

Q. Were you there for --- how long were you there?

A. I don't remember.

Q. What was the next job that you had after that rehabilitation center?

A. I went back to school after I got laid off.

Q. Is that when you went to University of Findlay?

A. Yes, first I went to Community College. It would have been Terra Community College. And then I went to the University of Findlay and received my degree.

Q. Great. Where is Terra Community College?

A. In Toledo.

Q. Okay. Did you get any certificates or anything there?

A. No, I just transferred to the University of Findlay.

Q. Do you remember when you started at Terra Community College?

A. No, I don't.

Q. Do you remember when you started at the University of Findlay?

A. No, I don't.

[71]

Q. How long did it take you to get your associate's degree at University of Findlay?

A. Two years. And I had to go to the Nuclear Medicine Institute in order to practice nuclear medicine technology.

Q. So took you two years to get your associate's degree and you started somewhere around 1994?

A. Roughly.

Q. Okay. So it looks like you worked as --- what was it called, rehabilitation ---?

A. It was the Betty Jane Rehabilitation Center.

Q. Okay. So it looks like that you worked there for about eight years, is that fair?

A. Sounds right.

Q. Okay. Tell me what nuclear medical --- excuse me, nuclear technologist does?

A. Injects radioactive material into patients in order to determine a malady.

Q. What is an abnormality?



A. It can be anything depending on a heart issue, we could be looking for a bone issue, we could be [72] looking for a gallbladder issue, we could be looking for a stomach issue.

Q. Okay. So after you got that certification in 1996 what did you do then?

A. I practiced nuclear medicine technology.

Q. Where was the first place you did that?

A. That would have been in Florida.

Q. Do you remember the name of the place you worked for?

A. Let's see, if I heard it I would know it but I don't remember it off the top of my head.

Q. Okay. Fair enough. That was starting in 1996 though?

A. Yes.

Q. And then how long were you there?

A. I don't know because I went there to private imaging facility and worked.

Q. I'm sorry, can you repeat that I didn't understand?

A. I don't know how long I was there. I left there and went to a private imaging facility.

Q. What was the name of that?

A. RPA.

[73]

Q. RPA. And what did you do there?

A. Nuclear medicine technology.

Q. Okay. Do you remember when you started there?

A. No, I don't.

Q. Do you remember when you left there?

A. I left there in 2001.

Q. And then what did you do?

A. I'm sorry I moved to Georgia.

Q. And that was in about 2001?

A. Yes.

Q. And what did you do in Georgia?

A. Nuclear medicine technology at Kennestone Hospital.

Q. Can you spell that, please?

A. K-E-N-N-E-S-T-O-N-E. It's a well star facility.

Q. Excuse me one second. All right. I guess I've been talking too much today I needed a cough drop. Sorry. And how long were you there in Georgia?

A. Until 2005.

Q. And where did you go from there?

A. West Virginia.

Q. And what did you do in West Virginia in 2005?

A. Positron emission technology.

[74]

Q. Where was that located?

A. First I worked at a mobile unit for Alliance Imaging.

Q. Where was that centered?

A. They're centered out of Charleston, but I was assigned to North Central West Virginia and the western panhandle and the Eastern panhandle in Maryland.

Q. And then you said initially in the mobile unit and then what?

A. Then I took a stationary position with the United Hospital Center.

Q. And where is that?

A. In Bridgeport, West Virginia.

Q. And then after that what?

A. I'm still there.

Q. Okay.

And at your house at [REDACTED ADDRESS] who lives there with you?

A. My spouse and two of my three children.

Q. You're married, right?

A. Correct.

Q. And when did you get married?

A. We got married in --- oh I'm bad at anniversaries, 2000, 2001.

[75]

Q. If I recall your husband told us that your anniversary is coming up in the next several days?

A. It is and I never remember it.

Q. Well, I didn't write down the date but it is coming up so you might want to ---.

A. I'll have to look at the certificate.

ATTORNEY BLOCK: David, we have a 5:30 stop and it is 5:24 so I just want to --- I don't want you to start on a line of questioning that you have to stop short in the middle of.

ATTORNEY TRYON: Right. And yeah, I'm just going to finish up with this background and then we will suspend this until tomorrow.

BY ATTORNEY TRYON:

Q. So is this your only marriage?

A. Correct.

Q. And you have no other children other than the three that you mentioned?

A. Correct.

ATTORNEY TRYON: Okay. Well now would be a good time to pause until tomorrow and reconvene at 10:00 a.m. if everyone's okay with that.

ATTORNEY BLOCK: That is good with [76] Plaintiff's Counsel.

THE WITNESS: That's fine.

VIDEOGRAPHER: Then if that is it for today we are going off the record at 5:25 p.m.

ATTORNEY TRYON: Thank you.

\* \* \* \* \*

**VIDEOTAPED DEPOSITION CONCLUDED AT  
5:25 P.M.**

\* \* \* \* \*

[77]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
WEST VIRGINIA  
CHARLESTON DIVISION**

B.P.J., by her next friend and  
Mother, HEATHER JACKSON,

Plaintiff

vs. Case No. 2:21-CV-00316

WEST VIRGINIA STATE BOARD OF  
EDUCATION, HARRISON COUNTY  
BOARD OF EDUCATION, WEST  
VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION, W.  
CLAYTON BURCH in his official  
Capacity as State Superintendent,  
DORA STUTLER in her official  
Capacity as Harrison County  
Superintendent, PATRICK MORRISEY  
In his official capacity as  
Attorney General, and THE STATE  
OF WEST VIRGINIA,

Defendants

\* \* \* \* \*

**VIDEOTAPED VIDEOCONFERENCE  
DEPOSITION  
OF  
HEATHER JACKSON**

January 20, 2022

\*\*\*

[92]

**HEATHER DENISE JACKSON, CALLED AS A  
WITNESS IN THE FOLLOWING PROCEEDING,  
AND HAVING BEEN PREVIOUSLY DULY SWORN,  
TESTIFIED AND SAID AS FOLLOWS:**

**CONTINUED EXAMINATION**

[93]

BY ATTORNEY TRYON:

Q. Ms. Jackson, thank you for joining us again today. And I apologize for the delay here. We were trying to accomplish some things amongst the lawyers to streamline the process today, and sorry to keep you waiting for so long.

First of all, I just want to tell you that --- two things. First of all, you're still under oath. So everything you say today, you're still under oath just as yesterday.

Okay?

A. Yes.

Q. And then we also had some discussions off the record about how we're going to handle --- excuse me, certain objections. And some of them we have agreed to standing depositions --- excuse me, standing objections. And we will need to --- I'm sorry. I'm seeing another message. I'm distracted. So we will just explain that to you in a moment, but one of the other counsel suggested that we all ought to identify ourselves for the record since we do have some different people today than yesterday. So just for the record, I'm David Tryon, representing the State of West Virginia.

[94]

ATTORNEY BLOCK: I'm Joshua Block, representing the Plaintiff and the witness. And after I finish introducing myself, I'll have co-counsel from Cooley followed by co-counsel from Lambda Legal followed by co-counsel from ACLU of Virginia identify themselves.

ATTORNEY HARTNETT: Good morning. This is Kathleen Hartnett from Cooley for Plaintiff and the witness.

ATTORNEY BARR: Good morning. This is Andrew Barr from Cooley for Plaintiff and the witness.

ATTORNEY VEROFF: Good morning. This is Julie Veroff from Cooley for BPJ and the witness.

ATTORNEY HELSTROM: Good morning. This is Zoe Helstrom from Cooley for Plaintiff and the witness.

ATTORNEY SWAMINATHAN: Good morning. This is Sruti Swaminathan for Plaintiff and the witness from Lambda Legal.

ATTORNEY TRYON: Roberta?

ATTORNEY GREEN: Yes, Roberta Green, West Virginia Secondary School Activities Commission.

ATTORNEY DENIKER: Good morning, everyone. This is Susan Deniker, Counsel for Defendants Harrison County Board of Education and Harrison County [95] Board of Education Superintendent Dora Stutler.

ATTORNEY DUCAR: Good morning. Timothy Ducar on behalf of Intervenor, Lainey Armistead.

ATTORNEY HOLCOMB: Good morning. Christiana Holcomb on behalf of Intervenor.

ATTORNEY CSUTOROS: Good morning. Rachel Csutoros on behalf of Intervenor.

ATTORNEY BROWN: Joshua Brown on behalf of the Intervenor.

ATTORNEY MORGAN: Kelly Morgan and Kristen Hammond on behalf of the West Virginia Board of Education and Superintendent Burch.

ATTORNEY STARK: Hi. I'm Loree Stark. I'm with the American Civil Liberties Union of West Virginia, and I'm here on behalf of Plaintiff.

ATTORNEY CAPEHART: Curtis Capehart on behalf of the State of West Virginia.

BY ATTORNEY TRYON:

Q. Okay. Ms. Jackson, I'll come back to you now. So we've have placed a number --- one of the things that we wanted to do is put some hard copies in your office there to facilitate going through the documents more quickly. So when I refer to a document you will be able [96] to pick it up and look at it in hard copy. I will also probably be putting it up on the screen as well.



ATTORNEY TRYON:

But before we actually get started with any questions, Josh, do you want to state what --- you're going to use certain abbreviations?

ATTORNEY BLOCK:

Sure. We put on the record that there will be certain objections where I use an abbreviation for it. So if I make an objection that you don't understand, that's because we stipulated that we will use an abbreviation for that objection.

ATTORNEY TRYON:

Okay.

BY ATTORNEY TRYON:

Q. So let's get started. First of all, do you have any questions from yesterday, Ms. Jackson, or anything you need to correct from what your testimony was yesterday?

A. Not off the top of my head, no.

Q. Okay. After your deposition yesterday, did you talk to your husband or anyone else about your deposition?

A. No.

Q. Did you talk to your husband about his deposition?

[97]

A. No.

Q. Okay. So I want to start off talking about BPJ and when BPJ was born. These are things that seem obvious to me, but I just want to make sure I understand. When BPJ was born, BPJ had male body parts. Right?

A. Correct.

Q. And still has those male body parts. Right?

A. Correct.

Q. And when BPJ was born you considered BPJ as a male. Is that true?

A. Yes.

Q. And at that time did you refer to BPJ as your son?

A. Yes.

Q. And did that change at some point?

A. Yes.

Q. And at some point did --- what changed?

A. She started presenting female characteristics around the age of three.

Q. And at some point you started to refer to BPJ as [98] your daughter?

A. Yes.

Q. When was that?

A. I don't know of an exact date.

Q. Okay. So you said at about three years old BPJ started presenting with --- I'm sorry, how did you say it?

A. Female characteristics, mannerisms, those type of things.

Q. And at that point did you start referring to BPJ as your daughter or was it later?

A. It was probably around the age of four.

Q. Does BPJ understand or recognize that BPJ was born as a biological male?

ATTORNEY BLOCK: Objection to terminology, and I will make that a standing objection.

THE WITNESS: She was born as a male with a penis.

BY ATTORNEY TRYON:

Q. And my question, though, is does --- sorry, does BPJ currently recognize that BPJ was born as a biological male?

ATTORNEY BLOCK: Objection. Calls for [99] speculation.

THE WITNESS: Yes, she knows she was born as a male.

BY ATTORNEY TRYON:

Q. Does it cause BPJ distress for someone to refer to BPJ as a biological male?

A. Yes.

Q. Can you describe that for me a little bit, that stress?

A. She gets upset, she cries, she gets angry.

Q. And when did that start?

A. That started at an early age, around three or four.

Q. So at about three or four you said that BPJ started to present as a female.

Did I get that right?

A. Yes.

Q. Can you tell me what specifically that means to present as a female?

A. From an early age she didn't want to wear male clothes. She wanted to wear my clothes as dresses. When she was learning how to go to the bathroom, to urinate,

she didn't want to stand to urinate. She wanted to sit down to urinate. She didn't understand [100] why she had a penis and I didn't.

Q. Anything else?

A. She requested at an early age for, I think it was a birthday present, her own makeup kit.

Q. Anything else?

A. When she would pose for pictures, she would pose with her leg tucked in more of a feminine stance.

Q. I'm afraid I don't understand that.

A. Put your hand on your hip, put your hip out a little bit and cock your leg.

Q. So when you're standing?

A. Yeah, like when she is standing for a photo.

Q. Anything else?

A. Those are what comes to me off the top of my head.

Q. And those were all done at age three or did we condense that timeframe?

A. Like three to four.

Q. Three to four. And when BPJ asked why BPJ had a penis, what was your explanation?

A. Because she was born a boy and boys have penises.

Q. And what was BPJ's reaction?

A. That that wasn't right.

[101]

Q. Can you expound on that?

A. She didn't, at that point, identify as a male, so she told me I was incorrect.

Q. That you were incorrect that --- that what?

A. That she was a male because she had a penis.

Q. And so I'm just trying to understand. So BPJ was saying that BPJ was a female in spite of having a penis or that BPJ did not have a penis or what? I honestly don't understand?

ATTORNEY BLOCK: Objection, compound.

THE WITNESS: She's saying that she has a penis, but she's not a male.

BY ATTORNEY TRYON:

Q. That's what BPJ said at three years old?

A. Well, she didn't have quite that language. It was more like I'm a girl.

Q. She did know the word penis at the time?

A. Yes. We've always used correct terms for genitalia.

Q. And forgive me if this is insensitive, but I'm just trying to understand. Why did --- how did she no that you had one and you didn't?

A. Because she would follow me into the bathroom.

Q. Okay.

[102]

Did she --- did BPJ recognize that her brothers were males?

A. She recognized that we referred to them as males.

Q. Did BPJ ever ask what the difference was between BPJ and your other sons?

A. No.

Q. Let me ask you to look at Exhibit 30.

ATTORNEY TRYON: And I will ask the court reporter to pull that up as well. I lost some video feed for her, for the witness. There she is.

VIDEOGRAPHER: You have her pinned?

ATTORNEY TRYON: No. There we go. Okay. I pinned Josh. How do I unpin Josh?

VIDEOGRAPHER: The same way you pinned him.

ATTORNEY TRYON: Okay. Now I got it. Sorry for the delay.

BY ATTORNEY TRYON:

Q. Ms. Jackson, have you seen this document before?

A. Yes.

Q. Have you reviewed it before today?

A. When I originally --- when I originally declared it.

[103]

Q. And on the last page, that's your signature.

Is that right?

A. I don't have that page.

Q. Okay. I take it back. So page six is the signature page. Do you have that?

A. I have to page five.

Q. Okay.

I just saw you scroll past it. Right there?

Q. Yeah. So you see that?

A. Yes.

Q. Is that your signature?

A. It is.

Q. And it was signed on 5/25/2021?

A. Yes.

Q. So who prepared this document?

A. Well, the lawyers would have written it up and I reviewed it. They --- I told them what I told them and they typed it.

Q. Okay. And is your --- at the time you said this is true and accurate. Do you still believe the entire thing is true and accurate to the best of your knowledge and belief?

[104]

A. Yes.

Q. Great. Let me ask you, first of all, paragraph four is I'm fiercely protective of BPJ. What do you mean by that?

A. Just as any parent would be fiercely protective of their child.

Q. Then you say, as her mother, I want to see her be able to achieve all her dreams. Can you tell me what her dreams are at this point?

A. Well, in regards to this, she wanted to be able to run on the cross-country team, and that is what she had dreamed of.

Q. Was that all you were referring to at the time you signed this Declaration?

A. Well, I want to see her do well in life. I mean, if she tells me she wants to go to college, I want to see her

achieve that. At the age of 11 they don't have a whole lot of dreams.

Q. When you signed this, did BPJ express any other dreams that she had --- that he or she had?

A. Not that comes to mind.

Q. Okay.

And then the next --- in paragraph six it says BPJ from a very young age that she didn't want her boy [105] parts. Was there anything else about that statement other than what you've already told me?

A. No, that's very accurate.

Q. Before that it says BPJ is also transgender. What does that word, transgender, mean to you, as you signed this?

A. She was designated at birth as a male, but she is a female.

Q. And hopefully I'm not repeating from yesterday, but when you say she is a female that is --- can you tell me why she is a female?

A. She identifies as a female.

Q. And just so I'm clear, that's why you say that BPJ is transgender?

A. Correct, she is a female.

Q. Okay.

Next you say she never wanted to be naked for bathing because she was deeply uncomfortable with and did not want to see certain parts of her body. So how did she bathe?



A. She bathed, but we would keep a wet washcloth over her genitals.

Q. What would happen when she saw her genitals?

A. She would be deeply upset.

[106]

Q. Can you explain that to me a little bit? I don't mean to pry, but what did that mean, that BPJ would be upset?

A. She wouldn't like seeing it. She would be upset, she would be frustrated, visibly frustrated.

Q. Did she yell, cry, scream, say don't look at me? What happened?

ATTORNEY BLOCK: Objection. Compound.

THE WITNESS: She would be deeply upset in the form of she would say I don't want that.

BY ATTORNEY TRYON:

Q. Did she just say that or did she yell, raise her voice?

A. She would be very stern.

Q. When BPJ first was reacting this way, as you described it, did you insist that BPJ was, in fact, a male or did you just accept her statement that she was a female?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: When she told me she was a female, I accepted her statement as true.

BY ATTORNEY TRYON:

Q. From the very first time or did it take some time to accept that?

[107]

A. No, from the first time that she told me she was a girl I believed that she believed she was a girl.

Q. And then --- but if I remember your earlier testimony, I think you said that it was a little while before you started referring to BPJ as your daughter.

Is that right?

ATTORNEY BLOCK: Objection, MT.

BY ATTORNEY TRYON:

Q. Did you answer?

A. Correct.

Q. So let me see if I understand it. You initially --- you right away accepted her belief that she was a female, but didn't actually refer to BPJ as your daughter until some time later?

A. It took me a while to learn the terminology.

Q. How long did it take you to learn the terminology?

A. I don't know the answer to that, but for three years --- for three years I'd been calling her my son so it took a while.

Q. And what terminology is that?

A. To refer to her as a female.

Q. And where did you learn the terminology, as you've said it?

[108]

A. To refer to her as a female?

Q. Yes.

A. She told me that she is a female.

Q. Okay.

Well, then I guess I'm misunderstanding, because you said it took you a while to learn the terminology. What do you mean by that?

A. For three years I had been calling her my son, so I had to learn to call her my daughter.

Q. I get it. You didn't like --- I thought you meant you had to go read some books or something. You're not saying that?

A. No. I know what a daughter is.

Q. Okay. Understood.

And paragraph seven says, as a child BPJ also presented differently from my other children, both of who are boys. Do either one of your other --- let me rephrase that. The boys that you --- you have two other children who are sons.

Right?

A. Correct.

Q. Are either one of them transgender?

A. No, they are not.

Q. And you --- in paragraph seven you say whenever [109] BPJ was provided with the opportunity to pick out her clothes or toys, she always went straight for the girly items. Can you tell me what those girly items --- what that means?

A. She would want to shop in the girls sections of the stores. She wanted dresses and lacy tutus, sparkly clothes. She wanted the girls clothes.

Q. Anything else?

A. Same thing with shoes. She wanted the girls shoes.

Q. What toys are you referring to as girly items?

A. Toys would be her dolls that she would have growing up.

Q. What kind of dolls?

A. Plush.

Q. So like girl dolls or animal dolls? I'm not sure I understand.

A. Girl dolls that are plush.

Q. And paragraph eight is when BPJ told us that she was a girl and wants to be dressed as a girl, I was not surprised because I spend so much time with her, can you expound on that?

A. Well, when I'm not at work, I'm with her.

Q. So how much time do you spend with her?

[110]

A. I am with her other than nine hours a day.

Q. Paragraph nine ---.

ATTORNEY TRYON: Can I ask the court reporter to take control and scroll down? Thank you.

BY ATTORNEY TRYON:

Q. Because BPJ and I have such an open communicative relationship we have --- would have conversations about how she was feeling. Can you tell me about those conversations?

A. Conversations in regards to how she is feeling regarding she didn't want her penis, that she identified as a female.

Q. And then the next sentence, the last part says more, she was able to clearly communicate that she knew she was a girl. What do you mean by more clearly indicates?

A. As she learned language skills as she grew up.

Q. So what language skills --- and what language changed for her to communicate that?

A. As her vocabulary increased.

Q. So for example, what additional words was she using?

A. She would use the word vagina when she learned that term. She would use the term breasts when she [111] learned that term. She learned the term brassiere.

Q. When BPJ first informed you that BPJ was a girl, did you --- did this cause you any concern or stress or anxiety?

A. I worried about any sort of --- I don't know what the word is I'm looking for --- discrimination she might receive.

Q. Did you at that time --- at that time had you heard of the term transgender?

A. Yes.

Q. And in what context had you already heard the term transgender?

A. I'm sorry. Could you repeat that?

Q. Sure. In what context had you heard the term transgender?

A. Just in referring to people as transgender.

Q. Had you known anybody that was transgender before BPJ told you that BPJ was a girl?

A. I did not.

Q. Were you surprised when BPJ announced that BPJ was a girl?

A. No.

Q. Why is that?

A. She had been presenting as a girl.

[112]

Q. I see. So you expected BPJ at some point to tell you that BPJ was a girl?

A. Yes.

ATTORNEY BLOCK: Objection, MT.

BY ATTORNEY TRYON:

Q. Back in --- at the end you say you knew this was not a phase for her and that there was something different happening. How did you know it was not a phase?

A. It never went away. It just became more intense. I had already raised two sons and realized that she was a girl. She was being raised as a daughter. She was telling me that she was a girl.

Q. At what point did you conclude that it was not a phase?

A. I don't know a date for that.

Q. Well, was it before --- I presume it was after BPJ announced that BPJ was a girl.

Is that right?

A. Yes, but I don't know the date of that either.

Q. But you believe it was approximately at age three?

A. Three to four.

Q. At some point did BPJ say that BPJ wanted [113] breasts?

A. Yes.

Q. Do you remember when that was?

A. I don't remember the date.

Q. Was it in the past two years or do you recall at all?

A. I don't recall.

Q. And why did BPJ want breasts?

A. Because girls have breasts.

Q. Does BPJ understand at that time --- let me start that over. At that time, when BPJ said that BPJ wanted breasts, did BPJ understand the purpose of breasts?

ATTORNEY BLOCK: Objection, calls for speculation.

THE WITNESS: I don't know that she knew the purpose of breasts, no.

BY ATTORNEY TRYON:

Q. Have you ever informed BPJ or had BPJ somehow learned the purpose of breasts?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: She knows she was breastfed as a child, so she knows that milk comes out of them.

BY ATTORNEY TRYON:

[114]

Q. Had you ever had any discussions with BPJ about the purpose of breasts?

A. No.

Q. Do you know if BPJ expects that once --- if BPJ has an operation to give --- to put breasts in place, does BPJ expect the ability to lactate?

ATTORNEY BLOCK: Objection. Objection to form and calls for speculation.

THE WITNESS: Yeah, we've never had that discussion.

BY ATTORNEY TRYON:

Q. So you don't know?

A. I would presume that she knows that it doesn't work that way because she knows she can't have children. She can't give birth.

Q. Okay.

And how do you know that?

A. Because we've talked about that.

Q. Tell me about that conversation.

A. That she doesn't have a uterus and that's what you carry a baby in, is a uterus.

Q. Do you recall when you had that discussion?

A. I don't know the date.

Q. Was it within the past year?

[115]

A. I don't know when it was.

Q. Was it before or after this lawsuit was filed?

A. I don't know the answer to that.

Q. Did that cause distress to BPJ to know that BPJ would not be able to have children?



A. No.

Q. Does BPJ --- let me rephrase that. Has BPJ told you that BPJ wants a vagina?

A. Yes.

Q. Do you remember when that was?

A. I do not know the date.

Q. And do you know why BPJ wants to have a vagina?

A. Because she's a girl.

Q. And for BPJ that's an indicator that BPJ is a girl?

A. She wants to be a girl. She is a girl. She wants the genitalia to match.

Q. Well, I want to ask this question again. It's important for me to understand the situation. Has BPJ thought about this in the context of sexual relations?

A. No.

ATTORNEY BLOCK: Objection to form and calls for speculation.

BY ATTORNEY TRYON:

[116]

Q. And how do you know that BPJ has not ---?

A. We have not talked about sexual relations. She's 11.

Q. Fair enough.

ATTORNEY TRYON: Paragraph ten, if the court reporter can put the document back up on the screen.

BY ATTORNEY TRYON:

Q. By the time BPJ was in the third grade she had chosen her name and was living as herself at home. What name did she choose?

A. She chose the name B.

Q. Do you know why she chose the name B?

A. She said she liked the name.

Q. Did she talk to you about it before choosing the name?

A. Nope. She told me that that was the name she was picking.

Q. So paragraph ten says third grade. How old was BPJ at that time?

A. I don't know how old someone is in the third grade.

Q. I'm asking how old BPJ was at the time that BPJ went into the third grade.

[117]

A. I don't know off the top of my head how old you are when you enter into third grade.

Q. Do you know how old BPJ was when BPJ entered kindergarten?

A. She was five.

Q. So then in the third grade, would that make BPJ eight?

A. Roughly.

Q. So between third grade and eighth grade in the public she presented outwardly as a male?

ATTORNEY BLOCK: Objection.

ATTORNEY TRYON: I don't think I said that right. Let me try that again. Apologize.

BY ATTORNEY TRYON:

Q. Between the age of three and eight do I understand correctly that she presented to the general public as a male?

A. At school.

Q. Okay.

And what about outside school?

A. It would depend on the function. If it was around family, she presented as a female and wore female clothes. If it was a function she didn't feel comfortable in, like a funeral, she would present as she [118] would in school.

Q. As a boy?

A. She would wear male clothes.

Q. And thank you for that clarification. So --- and then so she would dress as a boy at school and then would she come home and change?

A. Immediately.

Q. And did BPJ --- when you say BPJ was around family, do you mean just your immediate family or extended family?

A. Extended family.

Q. And who would that extended family be just so I understand your term?

A. Aunts, uncles, grandparents.

Q. Did anyone express a surprise at the beginning that BPJ was now dressing as a boy (sic)?

A. Not to me they didn't.

Q. So to this day, no one outside your immediate family has --- let me rephrase it. To this day, no one in your extended family has ever said why is BPJ presenting as a --- or dressed as a boy when BPJ is a girl? No, let me start that all over again.

Let me see if I understand this. When BPJ was between the ages of three and eight when BPJ was around [119] extended family BPJ would dress as a girl.

Is that right?

A. Correct.

Q. Okay.

I got a little confused. And during all that time none of your extended family ever said to you or anyone else that you were able to hear why is BPJ wearing girl's clothing when BPJ is a boy?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Are you asking if they expressed it to me?

BY ATTORNEY TRYON:

Q. Either to you or someone you heard them say it to?

A. Well, when she was first introduced in female clothes they asked why, and I said she is a girl.

Q. And what was their reaction?

A. Oh.

Q. That was it?

A. That is it.

Q. Okay.

When BPJ would go to school dressed as a boy prior to the third grade, did that cause BPJ any distress?

[120]

A. She didn't like dressing as a boy, but she was worried about being made fun of at school if she dressed like a girl.

Q. Can you repeat your answer there?

A. She didn't like dressing as a boy at school.

Q. But she --?

A. But she did because she was afraid that she would be made fun of if she dressed as a girl at school.

Q. Thank you.

When BPJ started wearing a dress at school did BPJ get made fun of?

A. No.

Q. Now, when you say when BPJ came home BPJ would change into girl's clothing, does that mean always a dress or something else?

A. Oh, it could be leggings, it could be her pajamas, not necessarily always a dress.

Q. That's what I'm wondering, because girls many times wear pants. So does BPJ now that BPJ is identifying as a girl wear jeans or pants to school?

A. She does not wear jeans.

Q. Other pants?

A. She wears leggings.

Q. Why not jeans?

[121]

A. She doesn't like jeans.

Q. I want to shift gears a little bit here. So BPJ had a different birth name than B.

Correct?

A. Correct.

Q. And does it disturb you to see or hear BPJ's birth name?

A. Disturb? I don't understand what you mean by disturb.

Q. Does it cause you any anxiety to see BPJ's birth name, for example, on the Birth Certificate or other places where it's been written down?

A. Oh, it just seems foreign to me because she's been B for so long.

Q. Does it cause distress for BPJ to see BPJ's birth name?

A. Yes, it does.

Q. Can you describe that? And forgive me if you've already told me this yesterday, and I may have forgotten, but does it --- tell me about what that distress is.

A. She gets angry and upset and doesn't understand why her dead name is on there.

Q. Where did you learn the term dead name?

[122]

A. From B.

Q. How did B learn the term dead name?

ATTORNEY BLOCK: Speculation.

THE WITNESS: I don't know.

BY ATTORNEY TRYON:

Q. When did B start using term dead name?

ATTORNEY BLOCK: Objection.

THE WITNESS: I don't know the name.

BY ATTORNEY TRYON:

Q. Was it before or after the lawsuit was filed?

A. Before.

Q. More than a year before that?

A. I don't know.

Q. Can you give me any kind of approximation at all when BPJ started using the term dead name?

A. No, I cannot.

Q. Well, do you know if BPJ initially heard that from lawyers?

ATTORNEY BLOCK: Objection, calls for speculation.

THE WITNESS: I don't know where she heard it from.

BY ATTORNEY TRYON:

Q. When is the first time you heard it? From B [123] I think you said, is that right or not?

A. B told me the name --- the term dead name.

ATTORNEY TRYON: Let's go off the record for just a moment.

VIDEOGRAPHER: Going off the record. The current time reads 12:01 p.m.

OFF VIDEOTAPE

ATTORNEY TRYON: So I'm about to get into a different line of questioning. I want to be respectful about everybody's thoughts about lunch. I'm happy to keep on going for another half-hour or hour, but I just want to make sure that --- I want to be respectful with other people's feelings on that. Well, hearing no objection, I'm going to keep going unless somebody speaks up, including you, ma'am. If you --- you're the star here. You and the court reporter are the most important people here, so if you feel the need to take a break ---.

THE WITNESS: I'm okay.

ATTORNEY TRYON: Okay.

ATTORNEY DUCAR: Can we take five minutes?

ATTORNEY TRYON: Yes.

ATTORNEY DUCAR: Thank you.

[124]

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

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ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 12:09 p.m.

BY ATTORNEY TRYON:

Q. Okay.

Ms. Jackson, I want to talk to you now about some issues about sports. Now, this may overlap a little bit from your testimony from yesterday. It's a problem --- well, not too much. But to the extent that it does, you know, I will try and ask questions that are consistent with our



questions and answers from yesterday. But if you feel like I'm somehow misrepresenting your testimony or anything from yesterday, please let me know and I will try and be respectful of your prior testimony.

Okay?

A. Yes, sir.

Q. So when did BPJ first get interested in sports?

A. She was in elementary school.

Q. Do you remember which grade?

A. Fourth.

[125]

Q. And what was the sport she became interested in?

A. Cheerleading.

Q. What was her interest?

A. She liked to cheer.

Q. Since I haven't been a cheerleader, can you tell me what that means that she liked to cheer?

A. So she would go to the games, hers would have been football, and you cheer for your team. You learn the routines and you learn the cheers.

Q. And I believe you told me at that time she was identifying as a female.

Is that right?

A. Correct.

Q. And the team that she was watching, was that a school team or some other type of team?

A. Bridgeport Youth Football League.

COURT REPORTER: I'm sorry, what football league did you say, ma'am.

THE WITNESS: Bridgeport Youth.

BY ATTORNEY TRYON:

Q. Is that a school-sponsored team?

A. It is not sponsored by the school, it's sponsored by the counties.

Q. And is there a sponsor for the cheer team or was [126] there at the time?

A. All inclusive with the football team, if that's --- I'm guessing. I think that's what you're asking.

Q. Yes. That answers my question.

Were there any boys on that cheer team?

A. There were not.

Q. Did you attend those games with BPJ?

A. Yes.

Q. How often did you go to those games?

A. Every time they had one.

Q. Was that just because you were interested in those football games or did one of your other children play in the football game?

A. One year I had a son who played on the football team. Another year I did not have a son that played on the football team.

Q. And you went anyway?

A. Absolutely.

Q. Is that because you like football or is it because BPJ liked football? Why was that?

A. I like football.

Q. And did BPJ express any interest in playing on the football team?

A. No.

[127]

Q. But BPJ was interested in the cheer team, as I recall from some things that I read, at that time just interested but was not part of the team.

Is that right?

A. Correct.

Q. And as I recall from something I read, BPJ then, before getting on the team, learned some of the cheers.

Is that right?

A. Correct.

Q. And was it the very next year when BPJ joined the cheer team or not?

A. Yes.

Q. So in the fifth grade BPJ was on the cheer team?

A. Correct.

Q. Were there tryouts for the cheer team?

A. There were not tryouts.

Q. So just anybody who wanted to be on the cheer team could be on the cheer team?

A. Yes. You had to present the proper documentation. You had to fill out the forms and give a Birth Certificate and a physical.

Q. Was that cheer team open for both boys and girls?

A. I don't know the answer to that.

[128]

Q. Did they ask you when you presented your documentation or when BPJ applied in some fashion if BPJ was a boy or a girl?

A. They did not ask me.

Q. Forgive me. I can't find it in my notes. At fourth grade was BPJ already dressing as a female at school?

A. Yes.

Q. Did your husband go to any of those football games with you and BPJ?

A. Yes. Like which year, though?

Q. The first year before BPJ was on the cheer team?

A. Yes.

Q. And what about the year once BPJ was on the cheer team?

A. When work permitted he would go.

Q. Did you encourage BPJ to sign up for the cheer team?

A. She told me she wanted to sign up for the cheer team.

Q. And then did you encourage her to do so or just say whatever you want to do or something like that?

A. I said if she wants to cheer ---.

ATTORNEY BLOCK: Objection to form.

[129]

THE WITNESS: I said said if she wanted to cheer ---  
I said if she wanted to cheer, she could cheer.

BY ATTORNEY TRYON:

Q. It required your parent consent I presume.

Is that right?

A. Correct.

Q. Would that be just either your consent or your husband's or both?

A. Either/or.

Q. At that time in the third grade did BPJ express any interest in any other sports?

A. There are no other sports available to her.

Q. Why?

A. They didn't offer anything at her school.

Q. You mean in that grade?

A. Yeah.

Q. And then after that did BPJ want to be involved in any other sports?

A. After that when?

ATTORNEY BLOCK: Objection, vague.

ATTORNEY TRYON: Thank you for the clarification.

BY ATTORNEY TRYON:

[130]

Q. After the fourth grade did --- either in or after the fourth grade did BPJ become interested in any other sports?

A. She wanted to run, but there was no running sport available to her at her age.

Q. Okay.

About what grade or age was that when BPJ was interested?

A. In the --- let's see, that would have been the fifth grade.

Q. The fifth grade?

A. The fifth grade, she's interested in running.

Q. So going into the fifth grade or while she was in the fifth grade?

A. I'm not sure of the date.

Q. Okay.

But initially there was no track team --- I'm sorry, you said cross-country.

Right?

A. Right. Correct.

Q. So at that point there was no cross-country available for BPJ because of BPJ's age?

A. Correct.

Q. Were there other track sports that BPJ was [131] interested in?

A. Just running.

Q. Right. So running encompasses --- and I'm no expert on track, but I thought that track included cross-country and other running events.

Is that right or wrong?

A. Track can do running and other field events.

Q. So was it just cross-country that BPJ was interested in or other running events?

A. That's what we were focusing on at the time because that's what she knew.

Q. Why did she know --- when you say that you are talking about cross-country?

A. Cross-country, yes.

Q. And why was that what she knew?

A. Because her --- her siblings ran cross-country.

Q. So was BPJ interested in any kind of cross-country or specific cross-country events?

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: Yeah, I don't understand the question. Cross-country is cross-country.

BY ATTORNEY TRYON:

Q. Okay.

So some places have --- I don't know this. I [132] will ask this. As far as I know, there is boys cross-country and girls cross-country. And I presume there may also be coed cross-country teams.

Do you know about that?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: The only one that was available was in the sixth grade, and it was a boys cross-country and a girls cross-country.

BY ATTORNEY TRYON:

Q. And as I understand it, BPJ prefers to try out for the girls cross-country team.

Right?

A. Yes, because she's a girl.

Q. Okay.

I just want to establish first that is what she wanted, she wanted to try out for the girls cross-country team.

Right?

A. Yes.

Q. And did she ever say I don't want to try out for the boys cross-country team?

A. Correct.

Q. And she said that because I'm a girl, I want to be on the girls cross-country team or words to that [133] effect?

A. She said she wanted to run with the girls on the girls cross-country team.

Q. Did she have any friends who were girls that were on the team already?

A. She knew of some people that were not in her grade that were in cross-country that were friends with her brother.

Q. And those were girls or boys?

A. Girls.

Q. Did she know any boys that were on the boys cross-country team?

A. Her siblings.

Q. Great. Anybody else of her age group?

A. Not that I know of.

Q. From what I've read, I gather that the tryouts for the girls cross-country team are competitive.

Is that your understanding?

A. Correct.



Q. And then once you get on the cross-country team, are the races themselves competitive?

A. Correct.

Q. And did BPJ want to be competitive or just only participate and she didn't care if she won?

[134]

A. Oh no, she --- she was competitive.

Q. So she wanted to win?

A. Yeah.

Q. And did she work hard at it?

A. She trained every day.

Q. And how did she do?

A. She ran cross-country.

Q. Okay.

How did she do compared to others?

A. She never finished first. She never finished second.

Q. She wanted to finish first or second, though, I take it?

A. Every kid wants to.

Q. I'm sorry?

A. Every kid wants to finish first.

Q. Including her, right?

A. Yes.

Q. Do the boys and girls cross-country teams ever compete against each other?

A. There are races where they call them one and done, where everybody runs together. And there are races where they are separated out. It just depends on the format of the host school.

[135]

Q. So the ones --- they call them won and done.

Is that right?

A. Yes.

Q. That means everybody runs together, all the boys and all the girls?

A. Correct.

Q. Have you ever observed any of those?

A. I believe there was one last year.

Q. Did you go do that?

A. Yeah.

Q. And did BPJ participate in that?

A. Yes.

Q. How did BPJ do?

A. She didn't finish last.

Q. Okay.

Did BPJ finish ahead of any of the boys?

A. Yes.

Q. And did --- how many boys was she faster than?

A. I don't know the answer to that.

Q. Do you know how many kids were in that particular race?

A. No, I don't.

Q. Do you remember what the name of that event was?

A. No, I don't.

[136]

Q. Do you remember where it was or what school it was at?

A. No, I don't.

Q. Okay.

When BPJ --- let me back up. BPJ, she made the team obviously.

Right?

A. Correct.

Q. Were any of the other people who tried out for it, did they not get on the team?

A. I don't know the answer to that. I don't know --- I'm not privy to that information, as to who tried out and who made it.

Q. Well, I'm going to ask you this question. I think based on our discussions yesterday I think I know the answer, but I'm going to ask it anyway just to make sure I understand, but do you think that boys on the boys cross-country team should be allowed to compete against the girls on the girls cross-country team?

A. If they identify as female? Is that what you're asking, if they identify as female?

Q. Well, let's start with that. If they identify as female, should they be allowed to compete against the girls on the girls cross-country team?

[137]

A. Anybody who identifies as female should be able to run on the girls cross-country team.

Q. And as to boys who do not identify as girls, should they be allowed to run on the girls cross-country?

A. It is not permitted at the school that she's at.

Q. And do you have an opinion if they should be allowed to?

A. If there's a boys team, that they're running on the boys team if they don't identify as female.

Q. So you don't think they should be allowed to run on the girls team unless they identify as a girl.

Is that right?

A. I believe that anybody who identifies as female should be able to run on the female's cross-country team or track team or ---.

Q. Right. But my question is if a boy, not identifying as a girl, just wants to compete against the girls on the cross-country team for girls, do you think that should be allowed or not?

A. Is there a boys team available?

Q. Yes.

A. Then I would think they would run on the boys team.

[138]

Q. What if they just want --- what if they just wanted to run on the girls team instead without identifying as a girl, do you think that person should be allowed to?

A. I don't know that I understand the question.

Q. Okay.

We'll move on.

ATTORNEY TRYON: Let me just take a break here and determine if I can skip some of my questions here to speed things up. Give me just a moment.

VIDEOGRAPHER: Do we want to go off the record or just stay on?

ATTORNEY BLOCK: Let's go off the record.

ATTORNEY TRYON: Just a minute. I will be right back. Just a minute.

ATTORNEY BLOCK: So we're off the record.

VIDEOGRAPHER: Yeah, we're off the record at 12:29 p.m.

OFF VIDEOTAPE

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

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ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record.

[139]

The current time reads 12:33 p.m.

ATTORNEY TRYON: Thank you.

BY ATTORNEY TRYON:

Q. Just to clarify one thing that we were discussing and you used term identify as a female. Can you tell me what you understand that means, to identify as a female?

A. Choose to live your life as a female because you are a female.

Q. So we were talking about boys and girls cross-country teams and other running events. And yesterday we talked about if you were aware of any statistics on how fast boys and girls can run. I want to ask you would it surprise you to know that there are statistics that show on average 11-year-old biological boys are about 20 percent faster than 11-yearold biological girls in the one-mile run.

ATTORNEY BLOCK: Objection to form and terminology. And I will make the terminology a standing objection.

THE WITNESS: I don't know that I'm surprised. I don't know that I'm not surprised.

BY ATTORNEY TRYON:

Q. In the context of cross-country, does BPJ take [140] showers or change clothing at school?

A. She changes into her uniform at school.

Q. Does she use the locker room to do that?

A. She uses a private bathroom by the counselor's office to do that.

Q. Who may use that private bathroom?

A. I don't know who beside her uses that bathroom.

Q. Is it just a unisex bathroom or what?

A. Again, I don't know who all uses it to be boys or girls or both. I don't know.

Q. Have you been in it?

A. I've seen it.

Q. Okay.

And so can you describe it for me? Does it just have one toilet in there and a sink or more than that?

A. Yes, just one.

Q. So one person can go in there, shut the door, lock it and use the facilities.

Is that right?

A. Correct.

Q. And is BPJ satisfied with that arrangement?

A. She doesn't mind it. She would rather use the female facilities, but she doesn't mind it. She says it [141] has the good toilet paper.

Q. Well, that's a good reason to use it. Is there a reason that BPJ does not use the female facilities?

A. She was told at the school that that was the bathroom that she is supposed to use.

Q. Have you objected to that arrangement?

A. I have not.

ATTORNEY TRYON: Okay.

It's 12:37. I would propose to change topics and move forward unless you people want to take lunch now. If I keep going forward, I would probably on this next topic go until past 1:00. So we can either go for another half hour or so or we can take a break now. Whatever you prefer. Ma'am, what is your preference?

THE WITNESS: I'm fine to go another half hour.

ATTORNEY TRYON: And Josh, are you okay with that.

ATTORNEY BLOCK: I prefer to keep going, yes.

ATTORNEY TRYON: Very good.

BY ATTORNEY TRYON:

Q. When you first --- let me back up and ask a different question. Are you familiar with the term [142] gender dysphoria?

A. Yes.

Q. When did you first become aware of that term?

A. When my daughter was diagnosed with gender dysphoria.

Q. So when BPJ was approximately three or four and said I am a girl, you were not aware of that term.

Is that correct?

A. No. When she first told me that she was a girl, I was not aware of that.

Q. And how did your husband react when BPJ said that BPJ was a girl, not a boy?

A. How did he react to me?

Q. To the announcement, whether it came from you or from BPJ?

A. Concerned.

Q. Did he learn about it at approximately the same time that you did?

A. Yeah.

Q. When you say concerned, can you explain that a little better?

A. Concerned about any sort of discrimination that she may have later in life.

Q. Was he at all distressed to learn that the child [143] who he believed to be his son was now claiming to be a daughter?



ATTORNEY BLOCK: Objection to the form and argumentative.

THE WITNESS: I don't know if he was upset.

ATTORNEY TRYON: Can you look at Exhibit 17 with me, please?

BY ATTORNEY TRYON:

Q. Let me know when you have that in front of you.

A. I do.

Q. This is fairly a short document so take a look through there and let me know when you are able to familiarize yourself with it.

ATTORNEY TRYON: If counsel would like us to scroll through that, let me know and we'll have the court reporter do that.

ATTORNEY BLOCK: I'm fine without the scrolling.

BY ATTORNEY TRYON:

Q. Have you seen this document before?

A. Yes.

Q. When did you first see this?

A. When we filled it out.

[144]

Q. Is this your handwriting?

A. No, that's not my handwriting.

Q. Do you know whose handwriting that is?

A. The person that filled it out.

Q. Okay.

Is that somebody at the school?

A. Yes.

Q. And just for the record, this a Gender Support Plan dated 8/23/19. So were you in the meeting where this was filled out?

A. Yes.

Q. And there was some sort of meeting?

A. Yes, it was individuals in a room with paper.

Q. And on the last page it shows what appears to be a signature of B. Would that be BPJ?

A. Yes.

Q. And at the time that this was filled out on August 23, 2019, you reviewed it at that time?

A. Was I what at that time?

Q. Did you --- did you fill --- I'm sorry, did you review it at that time?

A. Yes, yes.

Q. And did BPJ review it at that time?

A. She didn't review the document. She was in the [145] meeting.

Q. Is there a reason that she did not review it?

A. No reason.

Q. In the first paragraph, under where it says parent/guardian involvement ---

A. Correct.

Q. --- the language there says mom very supportive, dad has struggled but coming around, seeking outside help through church and paternal side of families help/support?

ATTORNEY BLOCK: Objection. You misread the document.

ATTORNEY TRYON: Oh, I'm sorry. What did I miss.

ATTORNEY BLOCK: Paternal instead of parental.

BY ATTORNEY TRYON:

Q. Ma'am, can you help me out here? To me it looks like it says paternal?

ATTORNEY BLOCK: Yeah. I think you said parental unless I misheard.

ATTORNEY TRYON: Oh, okay.

BY ATTORNEY TRYON:

Q. So my question then is when it says dad [146] struggled, what's that referring to?

A. He was concerned, but on page three it says parents are supportive.

Q. I understand. We can get to page three in a minute, but when it says dad had struggled, does that mean that he was uncomfortable with what I'll characterize as the changing of BPJ's gender?

A. He was ---.

ATTORNEY BLOCK: Objection to form.

THE WITNESS: He was worried about any sort of discrimination.

BY ATTORNEY TRYON:

Q. And then but coming around, what does but coming around mean?

A. I don't know.

Q. Well, you gave the information --- let me strike that.

Who gave the information to the person filling this out?

A. I don't know if she paraphrased or what, but it doesn't look like it's a quote.

Q. Who gave the information to the person filling this out?

A. She would have been questioning me.

[147]

Q. Not BPJ?

A. BPJ was in the meeting, but I don't believe she was questioned directly in regards to that.

Q. The next part says seeking outside help through church. What outside help was dad seeking through church?

A. Talking to the minister.

Q. About what?

A. Trying to reconcile religion and his daughter.

Q. And what reconciliation was that?

A. I don't know. I wasn't privy to those conversations.

Q. Did you tell the person filling out this form that dad was seeking outside help through the church?

A. Yes.

Q. Which church is that, by the way?

A. He goes to a different church than me.

Q. Do you know what denomination?

A. It's the --- it's the Church of God, whatever denomination that is.

Q. And you don't go to that church?

A. I don't go to that church.

Q. But he told you that he was seeking help from the church?

[148]

ATTORNEY BLOCK: Objection. Objection marital communication, privileged.

BY ATTORNEY TRYON:

Q. Well, don't tell me the exact --- just tell me in general if that was the purpose of seeking help.

A. He was trying to reconcile religion versus his daughter.

Q. Do you know what that religion believes with respect to this issue?

A. No, I don't go to that church.

Q. And then it says and paternal side of family's help/support. Can you explain what you meant when you conveyed that information ---?

A. They are also members of that church.

Q. Down further at the bottom of that page it says B is comfortable with others knowing her gender identity and transition. Can you explain to me what was --- well, let me back up. Does that accurately represent what you told the person filling out this form?

A. Yes.

Q. Can you explain to me a little more about what that means that she's --- that B is comfortable with others knowing her gender identity and transition?

[149]

A. Just that --- it's just that. She is comfortable with others knowing. She'll talk to you about it if you want to.

Q. So she's comfortable talking about the transition from being a boy to a girl?

ATTORNEY BLOCK: Objection to terminology. I'll make that a standing objection.

THE WITNESS: She's comfortable with explaining her transgender identity.

BY ATTORNEY TRYON:

Q. Does that include explaining that I was once a boy and now I'm a girl, however --- you know, I'm not trying to put it in --- those words in anybody's mouth. That's the concept I'm trying to understand.

A. I've never witnessed a conversation where that was said.

Q. Okay. Then how do you know what BPJ was comfortable with?

A. Because I've witnessed her talking to people about her transgender identity.

Q. Great. And so what have you observed her saying?

A. That she is transgender and that she is living [150] life as a female.

Q. Anything beyond that?

A. I would have to have a specific question.

Q. Anything else you can remember right now?

A. No.

Q. On the next page ---.

ATTORNEY TRYON: And Counsel, if you need me to bring up the page, please say so. Oh, great, it's being brought up. Okay.

BY ATTORNEY TRYON:

Q. Gender will be male, do you see that part down almost at the bottom?

A. Oh, yeah, I see that.

Q. But B will be in parentheses next to birth name. So why would the gender be male?

A. I think it has to do with the WEVAS System.

Q. Can you explain that?

A. No, I don't understand WEVAS at all.

Q. Okay.

When this was filled out, you can see on that page, for example, what name and gender marker are listed on the student's identity documents, and there is what we call a redaction, a black mark.

A. Okay.

[151]

Q. That covers up some information. Would that information have been BPJ's birth name?

A. Yes.

Q. So remind me, did BPJ read this document before she --- before BPJ signed it?

A. She was in the meeting, but she didn't read it line for line, no.

Q. Okay.

But did sign it?

A. Yes. We were to sign it that we were present.

Q. On the page marked at the lower right-hand corner BPJ 010, I think it's the fourth page --- yeah, it says page four at the top. See at the bottom it says received training, that part there?

A. Oh, okay.

Q. It says Norwood staff received training on tolerance and cultural diversity and LGBTQ --- I think that's plus IA on 8/21.

Do you see that?

A. Yes, I do see that.

Q. Do you know what that's referring to?

A. No, I don't.

Q. Have you ever been provided with any further information on what tolerance or cultural diversity or [152] similar training that is given to the staff?

A. No.

Q. Next it says and provided protocol and multiple resources --- multiple resource sources. Was that meaning that you were provided with that information or that was information that was provided to the Norwood staff?

A. To the Norwood staff.

Q. Were you provided any resource sources at the time that this was filled out?

A. No.

Q. Going back up to the first page where we talk about your husband seeking outside help through the church, did his views or feelings change in any way after seeking that --- after getting help through the church?



A. He has reconciled his religion with his transgender daughter.

Q. Did he explain to you how?

A. No.

Q. Let me ask you to look at Exhibit 11C. In fact, ma'am, if you could grab 11A, B, C and E. And I apologize let me look at 11D first, D as in David. So take a look at this, and I'll ask you a few questions [153] about it.

A. Go ahead.

Q. Okay.

And for the record, Exhibit 11D, at the top is --- has the name of Andrew James Spurr, M.D., and it says progress notes and it says encounter date, December 16, 2020. Do you see that at the top, ma'am?

A. Yes.

Q. I want to make sure we are looking at the same thing together. And it says history obtained from mother --- well, let me back up. First of all, have you ever seen this document before?

A. No.

Q. Do you remember --- it says on here, history obtained from mother. B was not present for this tele-medicine visit.

Do you see that?

A. Yes.

Q. Do you remember this --- that you had --- were involved in this tele-medicine visit, as it says?

A. Yes.

Q. And I want to direct you to the next paragraph that says B is very happy with stopping puberty. Is that something that you reported to the doctor?

[154]

A. Yes.

Q. And it was directed to the doctor not, someone else?

A. To Andrew James Spurr.

Q. Right. How did you come to speak with Andrew James Spurr? How did you find him as a doctor?

A. He was on --- he was just on that call as a resident. I don't know how he got assigned to us. It's the one and only time he was ever assigned to us. I don't know if Dr. Montano was out or what.

Q. So Dr. Spurr is in Dr. Montano's office?

A. I would presume so, yes.

Q. It says she, referring to B, wants to know when she can start hormone therapy. Were you told anything in response to that?

A. I was not told anything in response to that.

Q. Next it says wants to get breasts and get rid of her penis. You reported that to the doctor?

A. Correct.

Q. And did he have any response to that?

A. No.

Q. You next said she is experiencing dysphoria --- strike that.

The document says she is experiencing dysphoria [155] with leg growth hair. Did you use that terminology with the doctor?

ATTORNEY BLOCK: Objection, misread the text.

BY ATTORNEY TRYON:

Q. Let me try again, she is experiencing dysphoria [redacted]. Did you use the term dysphoria when speaking to the doctor?

A. He used the term dysphoria.

Q. And what terminology did you use when you spoke to the doctor?

[Redacted]

[Redacted]

A. Correct. And did you, in fact, tell the doctor that?

[Redacted]

A. Yes.

Q. And when --- so this is --- the encounter date is December 16, 2020. [Redacted]

A. I don't know the date that he said it. The date --- the encounter date is just the date of the [156] appointment.

[Redacted]

A. I'm guessing yes.

Q. And he said that to BPJ?

A. Correct.

Q. Why did he say that?

A. I don't know.

Q. Did you observe it?

A. I observed the aftereffects.

Q. So you didn't actually hear him say that?

A. No, she came and reported it to me.

Q. She being BPJ?

A. Correct.

Q. What did BPJ say about it?

A. She was crying and was upset.

**[Redacted]**

A. According to her.

Q. What did that mean to BPJ?

ATTORNEY BLOCK: Objection. Calls for speculation.

THE WITNESS: I just know that it upset her, that she was crying and was upset.

BY ATTORNEY TRYON:

**[157]**

**[Redacted]**

A. I don't know what they were doing outside. I know they were outside because she came inside.

Q. Has your husband ever said that to BPJ before that, to your knowledge?

A. To my knowledge, no.

Q. Did BPJ say he said this to me before, or this is the first time, or any other discussion about it?

A. No other discussion about it.

Q. This just seems odd to me, so maybe I'll just ask the question. **[Redacted]**

A. Yeah.

Q. Why would that be reported?

A. [Redacted]. My guess is he didn't read the case file.

Q. Okay. Okay.

[Redacted]. Who's that transgender psychologist?

A. There was one locally, but he left after --- [158] during the COVID session and I never did get to see him.

Q. Who was that?

A. I don't know what his name was.

Q. And has --- have you ever found a transgender psychologist?

A. We have found a psychologist that specializes in transgender care.

Q. Who is that?

A. Doctor Matthew Bunner.

Q. When is the first time that you saw Doctor Matthew Bunner?

A. I don't know. It would be in the medical records, but I don't know the date off the top of my head.

Q. All right.

Well, then we will find it in the medical records in a bit. Was there a reason that B was not present for this tele-medicine visit?

A. I was out of town. My dad died.

Q. Sorry about that, by the way.

So prior to this appointment you had not --- let me rephrase that. Prior to this appointment --- or this

encounter on December 16, 2020, BPJ had not yet met with a psychiatrist or a psychologist.

[159]

Is that right?

A. Yeah, correct.

Q. And is Doctor Matthew Bunner, is he a psychiatrist or psychologist?

A. I'm not sure of his credentials.

Q. Prior to this data, [Redacted]. Do you believe that to be accurate date, more or less?

A. That's accurate.

Q. Do you know what a [redacted] is?

A. Yes, it's a hormone blocker.

Q. Can you describe for the record how that's implanted?

A. The skin is separated from the tissue below it and it's slid in underneath the skin and secured with a suture.

Q. And where on the body?

A. Where is hers?

Q. Yes.

[Redacted]

Q. Well, I don't know where [redacted], but it gives me a good idea. Thank you.

And then how long is that supposed to last? Do [60] you need to replace it at some point?

A. It will have to be replaced at some point.

Q. Do you know how long?

A. It depends on her labs.

Q. Were you given a general time period for whether it's a year, two years, six months?

**[Redacted]**

Q. So from what I understand from what you told me, then **[redacted]** before BPJ met with a psychologist or psychiatrist.

Is that right?

A. Correct.

Q. Is there a reason you didn't wait to talk to a psychologist or psychiatrist before doing this --- taking this action?

A. We couldn't get in anywhere because of COVID.

Q. Is that the only reason?

A. Yes.

Q. Did you feel it was important to actually have BPJ meet with a psychiatrist or psychologist before taking this action?

ATTORNEY BLOCK: Objection to form.

**[Redacted]**

[161]

**[Redacted]**

BY ATTORNEY TRYON:

Q. Are you familiar with the Tanner stages?

A. With what? I'm sorry.

Q. The Tanner stages, T-A-N-N-E-R?

A. I'm not sure.

Q. Can you look at Exhibit 11A, please?

A. 11A. Oh, yeah.

Q. Okay.

Take a look at that document and let me know when you're ready. I just have a question or two.

A. Okay.

Q. All right. **[Redacted]**. She has been followed up for gender dysphoria with desire to start hormone blockers, **[redacted]**. Does that refresh your recollection what the Tanner stage one means?

A. Yes.

Q. What's your understanding of that?

A. They take --- it almost looks like a beaded necklace, but it's different size representation of **[162]** testicular formation and they compare it to her testes in order to see what stage they are.

Q. What's the purpose of that?

A. To measure the testes.

Q. And is --- why do that?

A. Because it's a sign of puberty.

Q. And is there a particular Tanner stage that you need to be at in order to get the hormone blocker?

A. I do not know the answer to that. I'm not sure which stage you must be at.

Q. Is that indicative --- do they use that in some fashion to determine when you insert a --- or start using the hormone blockers?

A. They use it as a sign for puberty.



Q. And does puberty have something to do with when you --- well, let me just ask it this way. As I understand it, before --- the doctors do not want to use hormone blockers until you start into puberty Tanner Stage 2?

A. Okay.

Q. Do you have any information on --- do you believe that is accurate or not?

A. I don't know.

Q. Okay.

[163]

When you --- let me rephrase that. Did both you and BPJ meet with the doctor, a doctor to discuss the pros and cons or any side effects of using hormone blockers?

A. Yes.

Q. So would that have been just you or would BPJ have been involved as well?

A. B would have been involved as well.

Q. How about your husband?

A. He was working. I would have to relay the information after I got back from the doctor.

Q. And did you relay that information to him?

A. Yes.

Q. Was he okay with using hormone blockers?

A. We read like the package insert information.

Q. Okay.

A. To look at the possible side effects.

Q. And what were the possible side effects, according to that insert?

A. Some of them off the top of my head was decreased size in testes, osteoporosis.

Q. Were you concerned about the side effects?

A. The benefit outweighed the risk.

Q. And what was the risk? Those side effects?

[164]

A. The risk would be the side effects.

Q. And what was the benefit?

A. The benefit would be help with her transition.

Q. Explain what you mean by transition.

A. To live her life authentically, to stop the male hormones.

Q. What would the male hormones do as you understand it?

A. Male hormones would cause her penis size to increase, her testicle size to increase, body hair to start forming, Adam's apple would start forming, her voice would change.

Q. And those are all things that you wanted to avoid happening?

A. She wanted to avoid happening.

Q. How about you, did you care one way or the other?

A. I wanted her to live her most authentic life.

Q. What did you mean by that, her most authentic life?

A. I wanted her to be able to live as a female, as she wished to live.

Q. Why does that make it her authentic life?

A. Because she's a girl.

[165]

Q. Okay. So I'm done with this exhibit.

ATTORNEY TRYON: I'm finished with Exhibits 11A, B, C and D, so we can put those aside. It's 1:15. This would be a convenient place to stop if we want to for lunch. Would you like to do that, ma'am, or do you want to keep going?

THE WITNESS: I need a break to use the restroom.

ATTORNEY TRYON: Would you like to take a half an hour for lunch?

THE WITNESS: Sure.

ATTORNEY TRYON: Okay.

Everybody else is good with that?

ATTORNEY DENIKER: That's fine.

ATTORNEY BLOCK: See you at 1:45.

VIDEOGRAPHER: Going off the record. The current time is 1:15 p.m.

OFF VIDEOTAPE

---

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

---

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record.

[166]

The current time reads 1:47 p.m.

BY ATTORNEY TRYON:

Q. Let's go to Exhibit 14, if you wouldn't mind, ma'am. This Exhibit 14 is a group of medical records. Take your

time and look through there and let me know when you're finished and then we'll come back to the first couple of pages for some questions.

---

(WHEREUPON, WITNESS REVIEWS DOCUMENT.)

---

THE WITNESS: I've read the first page.

BY ATTORNEY TRYON:

Q. Are you finished?

A. Yes.

Q. Great. Let me go back and first ask you a question on page two of the document on the bottom that says page three?

A. Okay.

Q. **[Redacted]**. Before I ask you a question about that let me just back up. So this appears to be from an office visit with a Jean Someshwar.

[167]

Is that right?

A. Yes. That's about as good as I can pronounce it.

Q. Were you in attendance at this meeting?

A. Yes.

Q. Was BPJ in attendance?

A. Yes.

Q. So then going back to my question, what I just read on the second page, where it's marked as page three on the bottom. **[Redacted]**. Do you --- did you or BPJ say something that triggered this note?

A. BPJ.

Q. And what did BPJ say that you believe triggered this note?

A. Well, it's in quotes, so I'm saying that she said that.

**[Redacted]**

A. Yeah.

Q. What does that mean?

A. I'm going to guess when they are in fights or spats.

**[Redacted]**

A. Probably have to ask Becky that one.

Q. Did she expound at all during this meeting?

A. Not according to the notes.

Q. I'm asking you from your memory?

A. I don't remember.

**[Redacted]**

A. Yes.

Q. I'm sorry?

A. Yes.

Q. And what does that mean?

A. To me?

Q. Yes.

A. To me I would say that you would use it to lash out at somebody. I don't know.

**[Redacted]**

A. **[Redacted]**. I don't know.

Q. Did you observe anything like this?

A. No.

[Redacted]

[169]

A. Not to me.

Q. Are you aware of BPJ saying this to anyone else?

A. No.

Q. Back on page one, starting --- let's go back up on the screen. Let's see. Okay, that's right. [Redacted]. How did you locate Dr. Montano in Pittsburgh?

A. Doctor Montano came to me through recommendations from friends.

Q. Excuse me, what friends?

A. Friends that we know, one of which has a transgender male child.

Q. And who is that?

A. I only know her first name.

Q. Which is?

A. Carolyn.

Q. Does Carolyn live --- well, where does Carolyn live?

A. Clarksburg.

Q. Just for the record, how far is Clarksburg from where you live?

[170]

A. Oh, maybe 30 minutes.

Q. And how do you know Carolyn?

A. I met her through the PFLAG Group in Morgantown.

Q. So what does PFLAG stand for?

A. I don't know.

Q. What is the PFLAG Group?

A. The group that I attend is a group of parents who have transitioning children.

Q. Did BPJ attend meetings with a different PFLAG group?

A. No.

Q. At the bottom of this page, towards the bottom, if you could scroll down. Okay. Right there. It says family was going to PFLAG meetings. But due to COVID, meetings had been virtual B misses seeing her PFLAG friends in person. So was B going to the same meetings as you?

A. Yes.

Q. You indicated that the group you went to was for parents?

A. Parents with children who were transitioning. So the parents would meet and the children would play.

Q. So the children would play like what?

A. On the playground.

[171]

Q. Okay.

And they are both boys and girls?

A. Yes.

Q. That's kind of a weird question, given the context, so I'm not quite sure. Would it include --- I guess it would be trans boys and trans girls. Is that the proper way to say that?

A. It includes just gender boys and girls and transgender boys and girls.

Q. Very good. So in these meetings what did the parents talk about?

A. The issues that we might have in the community, like in our churches or in finding daycare or in support groups.

Q. And you said something that I didn't understand. You said parents with children that are transitioning, which suggests they are in the process of making a transition. Is that what that means?

A. Yes.

Q. And so what is that process of transitioning?

A. Well, with every parent and child, that's --- that's up to them.

Q. Can you explain in broad terms what that transitioning process is?

[172]

A. Identifying as your gender identity and living authentically.

Q. So simply, stating that you are a different gender than your birth gender. Is that all that's required for that transitioning process?

A. That's how it can start.

Q. Okay. So that's how it starts, but what happens after that?



A. Like I said, with every parent and child it's going to be different. With their cases, it may be different than my case.

Q. And with your case then, tell me about that.

A. Okay. Well, she presented around age three or four wearing my clothes, wearing my shirts as dresses, not wanting to sit to urinate.

Q. So that's part of the transitioning process?

A. I'm sorry?

Q. You're saying that's part of the transitioning process?

A. That was part of B transitioning process.

Q. Thank you for that clarification.

Let's see. Back up a little. **[Redacted]**

**[173]**

**[Redacted]**

Do you see that?

A. I'm looking.

Q. It's about the middle of that paragraph.

A. Okay. I see it.

Q. I can point it out on the screen, but you found it.

A. Yeah, I found it.

Q. So tell me about the process for a legal name change to the extent that you know about it.

A. Well, it involves a lot of documents with legalese on it that's very difficult for me to weave my way through. But for the name change process, we have to fill out a

form, several forms. They have to be notarized, filed with the Circuit Court, then it goes before a Judge, as I understand it.

Q. And what have you done in that --- you or BPJ have done in that process?

A. We've gotten forms. We've gotten them notarized. Wes has got to get his notarized, which he is supposed to be getting done today. And then we go up to the Courthouse to submit it with \$200.

[174]

Q. Do you know of anything else beyond that?

A. That's all I know so far.

Q. So why have you waited until now to do that?

A. Because it's been very hard for me to understand and try to figure out what the documents are saying. The first time I filled them out I filled them out incorrectly.

Q. How did you find out you filled them out incorrectly?

A. I took them up to the Circuit Court and they said you did it wrong.

Q. Okay. And when was that?

A. A couple of weeks ago.

Q. So why did you wait until a few weeks ago to start the name change?

A. I'm been overwhelmed by the forms.

Q. When did you first get the forms?

A. I've had the forms for probably six months.

Q. Okay. So just to help me out, I'm not trying to insult you or anything, but I'm just trying to understand because

you --- because BPJ changed BPJ's name to B several years ago.

[175]

Right?

A. Correct.

Q. And so why didn't you and/or B move forward at that time?

A. We were deciding on middle names.

Q. Have you decided on any middle name?

A. Yes, we have.

Q. What is that?

A. It will be Maranlynn.

Q. So you spent the past several years just working on a middle name. Is that right?

A. Yes.

Q. You're laughing about that. Why?

A. Because she didn't want the name Meridan and I wanted the name Maridan, so we came to a compromise that it is Maranlynn. Plus the Lynn comes from her uncle and she wanted to ask her uncle permission to use his middle name as her middle name.

Q. [Redacted] Can you explain that to me, please?

[176]

A. I don't know what [redacted] mean. That would be a doctor term.

Q. [Redacted]. What is your understanding of what that hormone therapy is?

A. She can either get implants or injections and get hormones, female hormones, start female hormones. It depends on her labs and if she goes into osteoporosis. If she goes into osteoporosis from the [redacted], she would have to start hormones sooner.

Q. And what would those hormones do?

A. It would help her live authentically as a female.

Q. You need to be more specific. Would those hormones cause physical changes to BPJ's body?

A. Yes.

Q. What would those physical changes be?

A. She could grow breasts.

Q. Just to be clear, you say she could grow breasts. Would it actually trigger breast growth?

A. Isn't that the same thing?

Q. You said could, which is a possibility. I'm [177] asking if that is, in fact, ---.

A. I'm not a doctor. I'm going to guess that that's, you know, could be.

Q. No, I just want to understand --- make sure we're communicating. And I think we are, so thank you. [Redacted]. Is that what she said?

A. That's her words.

Q. And we talked about this a little bit before, but [redacted], do you know what that means?

[Redacted]

Q. Do you know what age that is or what triggers that?

A. I don't know at what age it's legal in the State of West Virginia.

Q. So is that the only thing that would stop it from happening sooner is just the legal age part?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: And if she was medically able to. If she has reached all of the milestones that she's supposed to reach, being a transgender female on hormone blockers, on hormone replacement therapy.

BY ATTORNEY TRYON:

[178]

Q. Do you know how that is accomplished?

A. Well, they take the penis and they split it almost like a banana and they peel back the skin and they take all of that and they put it into a cavity inside the pelvis and create a vagina out of the erectile tissue from the penis.

Q. I guess the answer's yes. Is she aware that that is what the procedure is?

A. Yes.

Q. Was that --- who explained that to BPJ?

A. I did. Q. And what was BPJ's reaction?

A. Ouch.

Q. That exact word?

A. Yep.

Q. After you explained that did BPJ still want to proceed?

A. Yep.

Q. So I just want to go back to your discussions with Carolyn I think it was who recommended Dr. Montano. Do I remember that correctly?

A. Yes.

Q. And what exactly did Carolyn say about Dr. Montano?

[179]

A. That he specialized in transgender care.

Q. Did you receive recommendations for any other doctors that specialized in transgender care?

A. He was the only one that we could find in the area that specialized in transgender care. He is quite good.

Q. When you say he is quite good, what do you mean?

A. He is very good working with B He talks to her on her level.

Q. So did you review any other doctors for specializing in transgender care before settling in with Dr. Montano?

A. Nope.

Q. And then you then decided to change doctors.

Is that right?

A. Right.

Q. And why is that?

A. Doctor Kidd is practicing closer to home and she's within my healthcare network.

Q. Did you interview with anybody else to see if you wanted to use someone else instead?

A. Nope, she's the only one in my area.

Q. Are you satisfied with Dr. Kidd so far?

A. Yes.

[180]

Q. How many meetings have you and/or BPJ had with Dr. Kidd?

A. Two. We were introduced to her in group with a bunch of --- with that Dr. Someshwar. We were introduced in a group there and then one on one with her later on.

Q. Can you turn to --- it's marked at the bottom as page seven? It also has what is called Bates stamp BPJ 152 at the bottom.

ATTORNEY TRYON: And if the court reporter would put that up.

THE WITNESS: Okay.

[Redacted] This was something that you reported or BPJ reported?

[181]

[Redacted]

Q. And that was as of April of 2021?

A. Yeah.

Q. [Redacted]

Is that a fair statement or not?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Not. I wouldn't say that.

BY ATTORNEY TRYON:

Q. Okay.

[Redacted]

[182]

[Redacted]. Both you and BPJ were in this particular meeting.

Is that right?

A. Correct.

Q. And do you know if this statement came from something that you said or that BPJ said?

A. I don't know.

ATTORNEY BLOCK: Objection to the form.

BY ATTORNEY TRYON:

Q. I'm a little confused as to this form, so it's unclear to me if this is from a discussion with Mr. Bunner or with Dr. Someshwar.

Do you know?

A. This whole note?

Q. This particular paragraph anyways?

A. Oh, well it would be in the same notes as the whole packet from the WVU Healthcare University Town Center.

Q. Right. So maybe I can ask the question a little better perhaps. When you went to this appointment on April 1st, 2021, who did you meet with?

A. I don't know who this note is from. I don't [183] know. It says progress note continued. I don't know where the first page is.

Q. Okay. The first page would be the prior page that appears to me, but let me ask you if you met on this occasion with Matthew Bunner?

A. I don't know who this meeting was with.



Q. Do you remember a meeting on --- I mean, this reports a meeting that you've just indicated to me that you attended?

A. Yes.

Q. Okay.

A. Yes.

Q. Okay.

A. I've been to a lot of doctors' appointments and I don't know which doctor this is from.

Q. Okay.

A. It doesn't say.

Q. Well, it has two names throughout the documents. One is --- if you go to the prior page, on page six, I will let the court reporter bring that up. Towards the top it says I saw and examined the patient. I received resident's note. I agree with the findings and plan of care as documented in the resident's note. Any [184] exceptions/additions are edited/noted. Jean Someshwar.

A. Jean Someshwar (corrects pronunciation).

Q. Thanks.

A. So this note would be from Dr. Someshwar or however you pronounce it.

Q. But then down below it says progress notes by Bunner, Matthew, LPC?

A. Okay.

Q. So let me first ask, do you specifically remember meeting with Jean Someshwar?

A. I remember being in one meeting with him, yes.

Q. Is Jean a man or a woman?

A. I don't know how they identify as.

Q. Okay.

But you said --- all right. And Matthew Bunner, do you know who Matthew Bunner is?

A. Yes, I do.

Q. In the middle of the page here it refers to editor being Matthew Bunner and the author as being Matthew Bunner.

A. Okay.

Q. So it appears --- and correct me if I'm wrong, but it appears that Mr. Bunner also met with you on that date?

[185]

A. Yes, there was a group of people there.

Q. Who else was there besides Mr. Bunner and Jean Someshwar?

A. I don't know.

Q. Was there others?

A. Yeah. There was nurses.

Q. Was this all one big meeting or separate meetings?

A. It was a big group. It was B and I in a room with these people.

Q. How many people?

A. I don't remember.

Q. Can you give me --- more than five?

A. I don't remember.

Q. At the bottom of page seven, under procedure, do you see that?

A. Yes.

[Redacted]. Do you remember that procedure as represented there?

A. I don't remember that.

Q. Then next it says provided assessment/treating utilizing some or all interventions below from WPATH standards of care version seven.

[186]

Do you see that?

A. Yes.

Q. Do you remember that assessment being or treatment being provided to you?

A. I don't know what WPATH Standards of Care version seven is.

Q. Have you ever --- so have you ever heard that term WPATH Standards of Care?

A. No.

Q. And you've never seen the document just titled WPATH Standards of Care?

A. No.

Q. First item under there is one, directly assess gender dysphoria in children and adolescents. Was that discussed with you?

A. It looks like it was an assessment on their part.

Q. And was that assessment when they were discussing it to you and BPJ?

A. I presume that they made their assessment based on their interview.

Q. And do you know what their assessment was?

A. No.

Q. Do you remember what was discussed in that [187] interview?

A. Well, if I go to the first page I can read what was discussed. But other than that ---.

Q. You don't have any independent recollection?

A. No.

Q. If you could go to the next page marked page eight.

A. Okay.

Q. At the top it's got Item Number 4, it talks about referring adolescents for additional physical interventions. And the second sentence says the referral should include documentation of an assessment of gender dysphoria and mental health, the adolescent's eligibility for physical interventions outlined below, comma, the medical health professional's role and expertise and any other information pertinent to the use, health and referral for specific treatments. Are you aware of any such referral?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: She already had blockers.

BY ATTORNEY TRYON:

Q. Understood. This is not limited to puberty blockers.

**[Redacted] [188] [redacted].**

Q. Right. Do you anticipate a referral for any other physical interventions?

A. I don't know the answer to that.

Q. Prior to getting the puberty blocker, was there documentation of BPJ's --- strike that.

Let me start that over. Prior to getting the puberty blocker, [redacted] was there, to your knowledge, an assessment of gender dysphoria and mental health of BPJ?

A. The assessment was made by Dr. Montano.

Q. Do you know what documentation there is for that assessment?

A. No, I don't.

Q. Earlier in this deposition I asked you if you have documentation, and you said you have documents. What documents do you have relative to BPJ's gender dysphoria?

ATTORNEY BLOCK: Objection, MT.

THE WITNESS: I have copies of her Gender Care Plans given to me by the schools. Is that what you mean?

BY ATTORNEY TRYON:

[189]

Q. I'm just asking a broad question to see what documents you have.

A. Oh, off the top of my head, I don't have them with me.

Q. Okay.

And off the top of your head you mentioned the plan assessments from the schools. Anything else?

A. I have --- I have the Gender Care Assessment --- or Gender Care Plans from Norwood and I got one from

Bridgeport. I have those. And I have some copies of partial of her records from UPMC that I gave to Dr. Kidd at WVU.

Q. Have you shared those documents with your counsel?

A. They're here.

Q. Okay. So the documents --- when you say here you mean in the conference room there?

A. Yes, they're with your exhibits.

Q. Okay.

Any other documents that are not with the exhibits that you've seen so far that you think you have in your possession?

A. No, I don't have anything other than what I [190] said.

Q. If you go to what's now page nine.

A. Okay.

**[Redacted]**

A. Yes.

Q. Is that what that represents, **[redacted]**?

A. **[Redacted]**. It's definitely not mine.

Q. **[Redacted]**

Right?

A. Correct.

Q. And this is measured --- do you see down below, at the bottom of that little chart, it says for boys?

A. Where does it say that at?

Q. So I'll just point with the cursor. It's kind of hard to see on the screen, but right here. On the hard copy that I have it's a little clearer?

A. I don't see the cursor moving on my screen. Oh, now I do.

VIDEOGRAPHER: To move the cursor on your screen you have to click first and then you can move it.

ATTORNEY TRYON: Oh.

[191]

VIDEOGRAPHER: There you go.

THE WITNESS: If you say that's what it says then I can't read that, but ---.

BY ATTORNEY TRYON:

Q. Okay?

A. And I have it in this copy, too, and I can't read it there either.

Q. Yeah. You know, I understand because I have a copy under which is probably a copy and you have a ---.

A. A copy of a copy.

Q. But it does say --- in mine it says --- I can't read all of it. [Redacted]

A. You would have to ask them.

Q. That was never discussed with you, I take it?

A. No.

Q. I will just note for the record on BP --- within this document there is on Bates stamp BPJ 162 --- you don't need to look at it, but there are some markings on that page that says Dr. Brunner/Dr. Someshwar, and

it [192] says 2021. I believe those are handwritten notes. Those were not on the original. Those are my notes only. My apologies. Those should have been taken off before this started.

VIDEOGRAPHER: I'm sorry. Did you want me to scroll to that one?

ATTORNEY TRYON: No, unless somebody else wants to see it. But that's just for the record, so if people see that in the future, they can say --- they can understand what that is.

VIDEOGRAPHER: Okay.

BY ATTORNEY TRYON:

Q. Let me go back to Exhibit 1. If you could take a quick look through here. I don't have any specific questions. I just have a general question. If you want to take a look through there.

A. Okay.

Q. So these documents came from the local Board of Education as part of this discovery process. I think that's right. Yes. And I apologize, West Virginia 1-R you have got to look at.

A. Let me grab that.

ATTORNEY BLOCK: Do you have a Bates number for that?

[193]

ATTORNEY TRYON: HBCBOE 00075.

ATTORNEY BLOCK: Thank you.

BY ATTORNEY TRYON:



Q. So my question on this, first of all, is so these are medical records from the Davis Medical Center. The date of the visit appears to be May 13, 2014. And I believe I saw something in here that indicated that these were given to the school in 2016. And I was interested to know if you recall why these were submitted to the school at that time?

ATTORNEY BLOCK: Objection. Foundation.

THE WITNESS: The school requires their vaccination records and their oral evaluations.

BY ATTORNEY TRYON:

Q. What do you mean by oral evaluations?

A. Their dentist.

Q. Oh, okay. So this has more information than just the vaccinations. Were you just being overinclusive when you sent this to them?

A. I just gave them the well child visit.

Q. Okay.

If you could turn to Exhibit 3, please. Do you know --- never mind. We don't need Exhibit 3. Exhibit 4?

[194]

A. Exhibit 4. Okay.

Q. Take a look through there and then I will have a few questions.

A. Okay.

Q. At the top it says that it's from UPMC Children's Hospital of Pittsburgh and it says adolescent medicine evaluation. And the child listed is P J . The first name is blocked out. It references male, age nine years old. And

then down below it has a date of July 15, 2019. Do you see that? No, it's at the top of that page.

A. Oh.

Q. Right at the very top of the page.

A. Oh, I see it, next to Montano's name. Okay.

Q. Yes. Do you remember having a visit on or about that date? A. I don't remember it, but I'm sure there was.

Q. And that was with Dr. Montano or --- yeah, Dr. Montano?

A. Yes.

Q. Without referencing the notes here specifically, do you remember what was discussed at this visit?

A. I don't remember what was discussed at this visit.

[195]

Q. Do you remember the purpose of it?

A. I'm guessing just continued care plan.

Q. Do you remember --- tell me from what you know who Dr. Montano is.

A. Doctor Gerald Montano. He specializes in gender dysphoria, in transitional care patients.

Q. And it appears to me from my review of the records, please correct me if I'm wrong, that this is the first time when there was a diagnosis of gender dysphoria by a medical professional?

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY TRYON:

Q. Is that in your memory or not?

A. I don't know.

**[Redacted]**

A. No.

Q. So it says B , legal name P J , is a nine-year-old transgender female coming to the clinic for gender dysphoria. So does that suggest that's the purpose of this visit.

Is that right?

**[196]**

A. Okay.

ATTORNEY BLOCK: Objection.

BY ATTORNEY TRYON:

Q. Is that consistent with your memory?

A. I'm just going by what the notes say, and the notes say that we're there for gender dysphoria.

Q. Okay.

**[Redacted]**

Do you see all that?

A. Yes.

Q. And do you remember reporting this information to Dr. Montano or that BPJ reported this information to Dr. Montano on or about July 15, 2019?

**[Redacted]**

Q. Okay. And just to be clear, BPJ was in attendance for this meeting as well? A. Yes.

**[197]**

**[Redacted]**

**[Redacted]**

Q. So you don't know what that means then?

A. I would presume it meant **[redacted]**.

Q. Now, on the third page, which is labeled BPJ 036 in the lower right hand corner, do you have that?

A. Under social history?

Q. Yes.

A. Yes.

**[Redacted]**

**[Redacted]**

**[Redacted]** [198] was?

A. No, I don't.

Q. Do you know how it was conducted?

A. No, I don't.

Q. Do you know of any documentation for it?

A. No, I don't.

Q. Other than what is here before us?

A. Unless it's in one of these exhibits, I don't know.

Q. Okay.

Dr. Montano, did he diagnose BPJ with gender dysphoria?

A. Yes.

Q. Do you know the basis of his diagnosis?

A. No. I presume that went with his medical training to diagnose.

Q. Right. Do you know what factors or anything else that he used to make that diagnosis?

A. That would be a question for him.

Q. It will be a question for him, but I'm asking you if you know.

A. I don't know. I'm not a doctor.

Q. So if you go to page four --- let me know when you are there?

[199]

A. Okay.

Q. At the bottom, where it says history suggests that B suggests --- excuse me, history suggests that B suffers from gender dysphoria.

Have you seen that note before today?

A. No.

Q. And then it says the World Professional Association for Transgender Health. Are you familiar with that organization?

A. No, sir.

Q. Have you ever heard of that organization before today?

A. No, sir.

[Redacted]. Do you remember Dr. Montano discussing that with you?

A. Yes.

Q. What else do you remember about what he discussed with you?

A. Just informed --- that just falls under informed consent. Just --- he just told us the benefits and the [200] risks.

Q. And if I recall correctly, you then discussed these risks with your husband.

Is that right?

A. Correct.

ATTORNEY BLOCK: Objection, MT, vague.

BY ATTORNEY TRYON:

Q. And both --- so B , you and your husband are all comfortable with the risks for infertility?

A. Yes.

Q. Has B ever expressed an interest in having children?

A. It has not really come up. I mean, she gets mad at her brother, she says stuff like I'm never having children.

Q. Sorry for laughing, but that is kind of funny.

A. Just in --- just in situations like that.

Q. Yeah. Yeah. Were you advised --- let me rephrase that. Did Dr. Montano advise you that the majority of pre-pubescent children with gender dysphoria desist from gender dysphoria if given affirmation therapy?

ATTORNEY BLOCK: Objection.

BY ATTORNEY TRYON:

[201]

Q. Sorry. Let me just start that all over again. In fact, you can strike that all.

Let me ask you to take a look at Exhibit 33, please.

A. Thirty-three (33)?

Q. Correct.

A. Okay. I have it.

Q. Ma'am, I will represent to you that this is an excerpt from the Standards of Care of the World Professional Association for Transgender Health. It goes through page 21. And this is the seventh version. And I have a few questions about it. You can either read the entire thing right now or you can just wait for me to ask you a question and then if you want to read other parts of it as well, you can do that.

A. I've never seen this before.

Q. Okay.

So Dr. Montano, as I mentioned earlier in the document that we were looking at before, references the Standards of Care for the World Professional Association of Transgender Health.

Do you recall that?

A. I remember it was mentioned in that other document.

[202]

Q. Right.

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY TRYON:

Q. Let me ask you to turn to page five.

A. I don't see page numbers.

Q. At the very bottom right it has page numbers. It looks like they may not have printed very well. At the top it says gender non-conformity is not the same as gender dysphoria.

A. The difference between gender non-conformity and gender dysphoria?

Q. At the top it says gender non-conformity is not the same. Yes. Right. On page four it says the difference between gender non-conformity and gender dysphoria and then I have a question for you on page five, at the top of page five. Take a look at that paragraph and then I have a question about it. And then if you want to --- before you answer my question, if you want to look at more you can, but I don't think you will need to.

A. The one that says gender nonconformity refers to the extent, that paragraph?

Q. That paragraph.

ATTORNEY BLOCK: And while she's looking [203] at this document, I will just refer back to our standing objections.

ATTORNEY TRYON: Thank you.

THE WITNESS: Okay.

BY ATTORNEY TRYON:

Q. So my question is did Dr. Montano explain to you the difference between gender nonconformity and gender dysphoria?

A. No.

Q. Having read that, do you think it would have been useful for him to explain that to you?

A. No.

Q. If you could turn to page 11, please?

A. I have no page numbers.

Q. Well, keep scrolling down on the screen. Do you see --- they're not as faint on the copy that is on the screen, but at the lower right-hand corner it says page 11. So if you count in it would be about 13 pages, but it says



differences between children and adolescents with gender dysphoria. That's the topic near the top of the page.

A. Okay.

I found the page.

Q. Okay.

[204]

I'm just going to read the first --- the sentence that I'm interested in, couple of sentences. And then I'm going to ask you a question. And if you would like to read more of them --- of this before answering you may. But it says an important difference between gender dysphoric children and adolescents is in the proportion for whom dysphoria persists into childhood --- excuse me, into adulthood. Gender dysphoria during childhood does not inevitably continue into adulthood. Rather follow-up studies of pre-pubertal children, mainly boys, who were referred to clinics for assessment of gender dysphoria, the dysphoria persisted into adulthood for only 6 to 23 percent of children. And my question is did Dr. Montano explain that to you?

A. No.

ATTORNEY BLOCK: Objection to form. First, there's a footnote in that paragraph that I think is illegible on the piece of paper. And second, you didn't read the entire paragraph.

ATTORNEY TRYON: I'll read the footnotes that's not illegible because it's legible on my copy. My apologies for that.

BY ATTORNEY TRYON:

Q. It says gender nonconforming behaviors in [205] children may continue into adulthood but such

behaviors are not necessarily indicative of gender dysphoria and a need for treatment. As described in Section 3, gender dysphoria is not synonymous in gender expression. So when you're finished with your review, let me know. I'm just interested if Dr. Montano did explain that to you.

A. I don't remember.

Q. Would that have been helpful for you to have that information?

A. No. A

TTORNEY TRYON: Off the record for just one moment, please.

VIDEOGRAPHER: Going off the record. The current time reads 2:52 p.m.

OFF VIDEOTAPE

---

(WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

---

ON VIDEOTAPE

VIDEOGRAPHER: Back on the record. The current time reads 2:53 p.m.

THE WITNESS: Yes. And I can't see that footnote either on my copies.

BY ATTORNEY TRYON:

[206]

Q. Yes, my apologies. I don't know why that didn't come through on the photocopy, but we'll try and remedy that. Okay. I'm finished with that exhibit.

At what point did you start considering suing the State to have this law declared unconstitutional?

A. When I realized that it was going to affect my child.

Q. And was that before or after the law was actually passed?

A. It was after it was signed by the Governor.

Q. And how did you come to be aware of it?

A. Be aware of the law?

Q. Yes.

A. That it was in consideration or that it was signed?

Q. Well, let's start with consideration. When did you first become aware that it was under consideration?

A. I don't know the date. I remember seeing it on the news, that it was under consideration.

Q. And at that time were you aware that it could affect your child?

A. I was alarmed.

Q. Did you contact any legislators about it?

A. Yes.

[207]

Q. Who did you contact?

A. Romano and Patrick. I can't remember his last name.

Q. Are they --- do you remember which house they're in?

A. No, I don't.

Q. And how did you contact them?

A. Via email.

Q. Do you remember the contents of the emails?

A. Asking them to vote against it.

Q. Did they vote against it?

A. I don't know.

Q. Do you have a copy of that email?

A. I have no idea.

Q. Was it the same email to each one of them?

A. Yes.

Q. And you sent it from your computer?

A. Yeah.

Q. Would it still be on your computer?

A. I don't think so. I don't know.

Q. Why do you think so? You said you don't think so.  
Why would it not be?

A. Because at that point I didn't keep emails.

Q. Can you look on your computer and see if you [208]  
still have, them please? Obviously not right now.

A. Okay.

ATTORNEY TRYON: And then if so, we would  
request copies of those from counsel. And we can make a  
formal request or we can just have this be the formal  
request if you prefer?

ATTORNEY BLOCK: I prefer this to be the formal  
request. We will follow up with you.

ATTORNEY TRYON: Thank you.

BY ATTORNEY TRYON:

Q. Did you ever receive a response from either one of those legislators?

A. No.

Q. Did that bother you?

A. Yes.

Q. Did you do any kind of follow-up?

A. No.

Q. Did you contact any other public officials about that piece of legislation?

A. I called the Governor's Office and asked them not to sign it.

Q. Did you get to talk to the Governor?

A. No.

Q. Do you know who you talked to?

[209]

A. A voicemail.

Q. Did you ever hear back?

A. No.

Q. He never saw this?

A. No.

Q. And then once you saw that the law was actually passed, did you do anything else?

A. I contacted the ACLU and asked if they were going to fight against this law.

Q. And how did you contact them?

A. By phone.

Q. Was that your first contact with the ACLU?

A. Correct.

Q. About anything at all?

A. Yep.

Q. And why did you think to call the ACLU?

A. Because they fight for civil liberties.

Q. So you just had that background knowledge about the ACLU, you thought I will call the ACLU or was there anything else that triggered your ---?

A. I felt like my daughter's --- I felt like my daughter's civil liberties were being violated.

Q. And that was after the law was passed?

A. Correct.

[210]

Q. On the Complaint it has your name as next friend and mother of BPJ.

Do you recall that?

A. Yes.

Q. And do you know why your name is on there?

A. Because I'm the next friend and mother of BPJ.

Q. Do you know why that is legally --- what the legal impetus behind that is?

A. The next friend part?

Q. Do you know why your name needs to be on that part of the document?

A. Because I'm the adult. I'm the mom.

Q. So it's your understanding simply because BPJ is a minor your name needed to be on there in some capacity?

A. Yes.

Q. Did you review the Complaint before it was filed?

A. I don't remember. I reviewed documents.

Q. Let's take a look at Exhibit 32, which is the Complaint.

ATTORNEY BLOCK: Before we do that I just want to check to see if the witness needs a break at all.

[211]

THE WITNESS: I'm good.

ATTORNEY TRYON: I'm nearing the end.

THE WITNESS: Oh, yeah, this.

BY ATTORNEY TRYON:

Q. Before we turn to that, let me ask you real quick, my colleague gave two names. Would the legislators have been Patrick Martin?

A. Pat Morrissey.

Q. Okay.

Well, Morrissey is the Attorney General. Is there another Morrissey? Mike Romano?

A. Mike Romano, yeah.

Q. Okay.

Having this in front of you now, do you recall reviewing this before it was filed?

A. Yes.

Q. On page eight there is a picture of BPJ?

A. Yeah.

Q. Is that a picture that you supplied?

A. Yes.

Q. And so it appears to be to me that BPJ is wearing makeup.

Is that right?

A. Yes, for cheer competition.

[212]

Q. And did BPJ apply that makeup or did you?

A. We both did it.

Q. And BPJ is wearing an Indian jersey. Is that right?

A. Correct.

Q. Is BPJ part American Indian?

A. No, she cheers for the Indians.

Q. Is that the name of the local team?

A. Yes.

Q. Not the Cleveland Indians?

A. No, not that they're known as Cleveland Indians anymore.

Q. I understand.

A. The Cleveland Guardians.

Q. I understand. I'm from Cleveland.

A. Oh, are you a Browns fan?

Q. You know, I think we'll just leave that alone. We can talk about it off the record. How's that?



Were you asked if you agreed with everything in here before it was filed?

A. Yes.

Q. And do you understand the legal issues?

A. Which legal issues?

Q. Well, it talks about on --- you know, I should [213] just clarify. What I'm showing you is the Amended Complaint. There was a prior Complaint that was filed and then there was a subsequent that was filed for clarification for the record. So on page 20 there's count one?

A. Yes.

ATTORNEY BLOCK: Just objection. I'm just going to refer back to our standing objections.

ATTORNEY TRYON: Okay. I haven't asked the question yet, but that's okay.

BY ATTORNEY TRYON:

Q. Having --- did you review this count one?

A. A while back.

Q. And in your own mind or your own terminology would you be able to explain what you understand count one to ask or claim?

A. Well, I'd say that she is protected under Title IX.

Q. What do you know about Title IX? And if you don't know anything about it, that's okay. I'm just asking for your --- what you know because your lawyers are the ones that really put this aspect of it together. I just want to understand your understanding.

ATTORNEY BLOCK: Objection to the form.

[214]

BY ATTORNEY TRYON:

Q. Go ahead.

A. You could be denied based on your sex, meaning your biological sex.

Q. I didn't understand your answer. Could you say that again?

A. You could be denied benefits based on your biological sex, benefits afforded to you under Title IX.

Q. And then Count 2, if you could take a look at that and tell me what your own understanding of what that is about?

A. It's about the equal protection clause of the 14th Amendment.

Q. Do you know anything about that?

ATTORNEY BLOCK: Objection, vague.

BY ATTORNEY TRYON:

Q. Do you know anything about the equal protection, the claim for equal protection --- excuse me, the 14th Amendment, the equal protection clause?

A. It's just equal protection under the law.

Q. Have you looked into what that law is at all on your own?

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: No.

[215]

BY ATTORNEY TRYON:

Q. I didn't hear you.

A. No.

Q. Let me go back to the title, though. I'm just going to ask you one more question about it. Where it says BPJ, her next friend and mother, Heather Jackson, is there a reason you were selected to be the next friend as opposed to your husband as the next friend and father?

A. I'm the one that reached out for help in the first place.

Q. Did anyone ask if your husband wanted to be named on here as also another next friend and parent?

ATTORNEY BLOCK: Just objection to the extent that this calls for communications with your attorneys. I'm instructing you not to answer.

BY ATTORNEY TRYON:

Q. Without any communication with your attorney, did you have a discussion with your husband about him being named on here?

A. My husband and I have been hand in hand throughout this whole procedure.

Q. I understand. That wasn't my question. My question was did you have any discussion with his name [216] appearing on here as well?

A. No.

Q. Let me ask you about Exhibit WV 23R.

A. Okay.

Q. So on the third page of this document?

A. Yes.

ATTORNEY TRYON: Can the court reporter put that up?

VIDEOGRAPHER: I'm looking. I don't see a 23R, I just see a 23.

ATTORNEY TRYON: Put up 23, and then it should be --- if you scroll down it should be there.

VIDEOGRAPHER: So I got that article and then it moves into 24.

ATTORNEY TRYON: Well, my apologies. We will use 23 for this deposition. And as we've already indicated, we will not be using this exhibit with BPJ.

BY ATTORNEY TRYON:

Q. So on the --- so can you look at 23?

A. Yes.

Q. So on the --- this is an article from 2016. And in 2016 you were already referring to BPJ as B and using the pronouns her. Right?

[217]

A. Correct, with family.

Q. So then, yes, my question is on page three, when you're talking to apparently the reporter you say Stratton looks forward to it. He does this every year because he says he wants to help other babies. Why did you continue to use [redacted] name in public?

ATTORNEY BLOCK: Objection, the document looks like [redacted] is in brackets from the quote you read.

ATTORNEY TRYON: Yes.

BY ATTORNEY TRYON:

Q. So ma'am, let's be ---.

ATTORNEY TRYON: Thank you for that clarification.

BY ATTORNEY TRYON:

Q. Did you, in fact, refer to BPJ as [redacted] when you talked to the reporter for this article?

A. Yes.

Q. And why did you do that?

A. Because it was public, not private.

Q. And when did you go public?

ATTORNEY BLOCK: Objection, vague.

THE WITNESS: I don't know the date.

BY ATTORNEY TRYON:

[218]

Q. Okay. Let's take a look at 25.

VIDEOGRAPHER: There's 23R. It was right after 24R.

ATTORNEY TRYON: Oh, well, my apologies.

BY ATTORNEY TRYON:

Q. Do you have 25 in front of you?

A. Correct.

Q. So on the second page of that exhibit it appears to have a quote from BPJ saying I just want to run. I come up from a family of runners, P J said in a news release. I know how hurtful a law like this is to all kids like me who just want to play sports with their classmates and I'm doing this for them. Trans kids deserve better, closed quote. Now, sometimes newspapers misreport things, so I'm asking you if you know if that's an accurate quote?

A. That is accurate.

Q. Was that an oral statement that BPJ made?

A. Oral.

Q. And did you help her come up with that or did BPJ come up with that all on BPJ's own?

A. BPJ.

Q. So what exactly is BPJ doing for others, for [219] them?

ATTORNEY BLOCK: Objection, vague, foundation.

THE WITNESS: She wants all kids to be able to run with the teams that they identify with or play with the teams that they identify with.

BY ATTORNEY TRYON:

Q. And trans kids deserve better, do you know what that meant?

ATTORNEY BLOCK: Objection, speculation.

THE WITNESS: They deserve to be treated equally.

BY ATTORNEY TRYON:

Q. On the next page, at the top of that page, the second paragraph says the Complaint complains that House Bill 3293 was prompted by unfounded stereotypes. Do you have an opinion on what those unfounded stereotypes are?

A. Unfounded stereotypes ---.

ATTORNEY BLOCK: Just objection to reading only part of the sentence.

BY ATTORNEY TRYON:

Q. Go ahead.

A. The fear that if she runs on a girls team, that she's going to beat all the other girls because she was [220] born as a biological sex male. That's an unfounded stereotype.

Q. How about false scientific claims, do you know what that is?

A. Same thing.

Q. Do you know what baseless fear and misunderstandings of girls who are transgender, do you know what that refers to?

A. Same thing.

Q. Well, what's the fear?

A. The fear that they're going to beat out all the other competition and win all the awards and get all the scholarships.

Q. Okay. And just to be clear that --- I think I understood the prior testimony, you don't have any data or articles or scientific claims to support this data, do you?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I don't have anything.

BY ATTORNEY TRYON:

Q. Has anything been shown to you?

ATTORNEY BLOCK: Objection to form, vague.

[221]

BY ATTORNEY TRYON:

Q. You're shaking your head no. Is that a no?

A. Shown to me in regards to ---?

Q. Thank you for asking for that clarification. Do you have any --- this talks about false scientific claims. Do you have any scientific evidence to show that those claims are false?

A. I don't have anything to show that they're false or true.

Q. And you haven't seen anything, have you?

A. No.

Q. Okay.

Let me ask you to take a look at Exhibit 27. And I'm going to ask you a question about the seventh page in. It's actually the last page of the article itself.

A. Okay.

Q. All right.

So on that page B is quoted as --- B was devastated. She said, quote, I felt horrible because I knew then I couldn't run with the other girls. So is that her quote or did somebody supply that to her?

A. No, that's her.

Q. And then it says B immediately started [222] discussing potential lawsuit with her mom. Can you explain that to me?

A. She wanted to know what we could do to fight it.

Q. Did she raise that before you did or ---

A. Yes.

Q. --- on her own?

A. Yes. She wanted to know how we could fight it.

Q. So it sounds like, and correct me if I'm wrong, it sounds like the lawsuit was initially --- let me rephrase that. Was the lawsuit her idea or just the idea of fighting it?

A. The idea of fighting it.



ATTORNEY BLOCK: Objection to the form.

THE WITNESS: The idea of fighting it.

BY ATTORNEY TRYON:

Q. And then how was the idea of a lawsuit, how did that come to pass?

A. That was the only way we could fight it.

Q. Well, did you come up with that idea or did that idea come after you called the ACLU?

A. I asked for help.

Q. In the form of a lawsuit or was that a suggestion they made to you?

A. No, a suggestion I made.

[223]

Q. Okay. Exhibit 29.

A. Okay.

Q. I'm going to ask you a question about the third paragraph down. That starts with the term --- with the words that I just want to run. Take your time to read through this as much as you want, and I just have a question about that.

A. Okay.

Q. So this appears to be a press release by Lambda Legal. And this appears to be a quote attributed to B . In the third paragraph it says I just want to run and the State wants to stop me from running as part of a team at my school, said B , an 11-year-old middle school student. I love running and being part of a team. And the State of West Virginia should explain in court why they won't let me, closed quote.

You know, sometimes in the press releases like this the person putting together the press release puts together a quote and then attributes it to --- shows it to the person to whom it's attributed and says is this okay for me to say. And other times it's something that the person quoted actually said. Can you tell me which one of those it is?

[224]

A. That's B .

ATTORNEY BLOCK: Objection to the form.  
Objection to the form.

THE WITNESS: That's B .

BY ATTORNEY TRYON:

Q. So she came up with this quote all on her own?

A. Yes.

Q. And so she wants the State of West Virginia to explain in court why they won't let BPJ run as part of the team. Right?

A. Yes.

Q. Okay.

When this lawsuit was filed, did she understand that she might be subject to a deposition?

A. We didn't even know what a deposition was.

Q. Okay.

So I'll ask the same question of you, although I think the answer is obvious. At the time that you filed this lawsuit, did you know that you might be subject to a deposition?

A. I didn't even know what a deposition was.

Q. So the answer would be no?

A. That would be a no.

[225]

ATTORNEY TRYON: Let me go off the record for just a minute and see if I have any other questions.

VIDEOGRAPHER: Going off the record. The current time reads 3:23 p.m.

OFF VIDEOTAPE

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

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ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 3:27 p.m.

BY ATTORNEY TRYON:

Q. I want to go back and just reconfirm something about --- you said you wrote to two legislators. And we just checked to see which legislators are in your district, and one is Patrick Martin and one is Mike Romano.

A. That's who it is. It's Patrick Martin.

Q. Okay.

Very good. And then I'm interested, given there's been a fair amount of publicity in this case, have you received media inquiries about this case?

A. The only inquiries I have had has come to me through my lawyers.

[226]

Q. Okay.

Do you have any --- has anyone contacted you about you or BPJ being some sort of representative or advocate for transgender rights?

A. No.

Q. And you said that you have received --- no, let me rephrase that. Have you received any press inquiries about this case through your attorneys?

A. The inquiries I have were the ones that you brought forth as exhibits.

Q. There weren't any others?

A. No.

Q. Well, I should represent to you there are a few others that I have not shown.

A. Okay.

Q. So I'm not trying to trick you. I just want to --- but you don't remember any others right now?

A. No, but I haven't seen all the exhibits either. I don't know if you have them in here as exhibits.

Q. Yeah, and that's fine. If you don't remember any others, that's all right. There are one or two more, but that's okay.

ATTORNEY TRYON: I don't think I have any other questions at this time, subject to any follow-up [227] after other questions and any other reservation rights we might make at the end of this deposition. Thank you for your time.

ATTORNEY BLOCK: Before other counsel begins, do you need a break, Heather?

THE WITNESS: I would like to use the restroom.

ATTORNEY BLOCK: Okay. So let's come back at 3:35, everyone.

ATTORNEY TRYON: Okay. Thank you.

VIDEOGRAPHER: Going off the record. The current time reads 3:29 p.m.

OFF VIDEOTAPE

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(WHEREUPON, A BREAK WAS TAKEN.)

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ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 3:36 p.m.

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EXAMINATION

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BY ATTORNEY GREEN:

Q. All right. We are back on the record. And I've [228] just --- the State has signed off officially, and so --- oh, there you are. You just popped her into the screen. It took me a minute to find her.

Ms. Jackson, my name is Roberta Green. I'm an attorney here on behalf of West Virginia Secondary School Activities Commission, also known as WVSSAC.

Do you know the those initials, WVSSAC?

A. Yes, I know the WVSSAC initials. Yes.

Q. Okay. Great. So if I refer to it then --- it as WVSSAC, you'll know who I mean?

A. Yes, yes.

Q. That will save us ten words every time I --- so I just have a few questions for you today. If I understood your testimony correctly, you learned of House Bill 3293 when you heard about it on the news.

Is that accurate?

A. Yes, that's accurate.

Q. Do you recollect whether at any time prior to learning of House Bill 3293 you had notified WVSSAC of BPJ's interest in running on the girls cross-country team?

A. I did not notify them of her desire.

Q. All right.

And at any time prior to filing the lawsuit do [229] you recall whether you ever notified WVSSAC of BPJ's interest in running on the girls cross-country team?

A. I did not contact the WVSSAC in advance.

Q. All right.

And do you know whether at any time, like up until today, you have contacted WVSSAC to notify them of BPJ's interest in running on the girls cross-country team?

A. I have not.

ATTORNEY GREEN: Okay. I don't think I have any other questions. So thank you very much. I appreciate it.

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# EXAMINATION

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BY ATTORNEY DENIKER:

Q. Good afternoon, Ms. Jackson. My name is Susan Deniker. I introduced myself earlier today, but I

represent the Harrison County Board of Education and superintendant Dora Stutler in this litigation. Thank you for your time today. I know it's been a long day and I appreciate you hanging in there with us.

I do have some additional questions for you. If I ask you anything that you don't understand today [230] please tell me and I'll be glad to rephrase the question. If you don't do that I will assume that you have understood the question.

Is that fair?

A. Okay.

Q. Thank you.

Ms. Jackson, tell me about BPJ's education. Did she start her education in Harrison County schools?

A. Yes, she started her education in Harrison County schools.

Q. And did she start in pre-K or in kindergarten?

A. Kindergarten.

Q. Did she have any formal education before going to kindergarten? In other words, was she in a pre-school program or a pre-K program anywhere before starting kindergarten?

A. No.

Q. And did she do her entire elementary schooling at Norwood Elementary?

A. Yes, she did.

Q. Tell me the first --- well, in general, how was your experience for --- how was the experience for BPJ at the Norwood Elementary School did she have a positive experience at that elementary school?

[231]

A. She had a positive experience.

Q. The current Superintendent of Harrison County schools is Dora Stutler. Was she the principal at Norwood during part of the time period that BPJ would have been enrolled at Norwood Elementary School?

A. Yes, she was.

Q. So you had interactions with Ms. Stutler while she was the principal at Norwood.

Is that true?

A. Interactions, yes.

Q. And were your interactions with her positive?

A. I think I've received a couple phone calls from her in regards to B , that maybe she had concerns over not getting a homework assignment in or that kind of thing, but it was positive criticism.

Q. So your interactions with Ms. Stutler when she was principal at Norwood Elementary School were all professional in nature?

A. Yes.

Q. And you didn't have any concerns with those communications?

A. No concerns.

Q. Did your other --- did your two older children, your sons, did they go through Norwood Elementary School [232] as well?

A. Yes.

Q. And did you have any issues or concerns when they went through Norwood Elementary School?



A. Correct that. My oldest one transferred from St. Mary's to Bridgeport Middle. My second one was all in Norwood.

Q. Okay.

A. I think his kindergarten year, there was no room at Norwood and he had to go to Johnson.

Q. Very good.

So you transferred your oldest child to St. Mary's?

A. From St. Mary's directly to Bridgeport Middle, so I correct that.

Q. So your middle --- your middle child, that child did go through Norwood Elementary School?

A. Yes, yes.

Q. Any issues or concerns during his time at Norwood Elementary School?

A. No.

Q. When did you first make any employees of Norwood Elementary School or anybody in Harrison County schools aware that BPJ identified as a female and was a [233] transgender student?

A. I contacted Mr. James Thornton, who was the school counselor, but I don't know the date.

Q. Do you recall what grade BPJ was in at the time?

A. Third.

Q. And Mr. Thornton was the guidance counselor at Norwood Elementary School at that time?

A. Yes.

Q. And can you tell me at about that communication? What was discussed when you contacted Mr. Thornton?

A. That B is a transgender female and wishes to be --- conduct her life as such and her pronouns were she/her.

Q. What was Mr. Thornton's response to that?

A. He understood and was going to take it to a higher power. I'm guessing it was the principal at the time.

Q. Was there anything else that you can recall that was part of that initial communication with Mr. Thornton about BPJ's transgender status?

A. That she was going to start presenting as a female at school.

Q. And then what was Mr. Thornton's response to that?

[234]

A. The same, that he would go ahead and handle what had to be handled on his end.

Q. Did you find him to be supportive of ---?

A. Yes.

Q. Did you say extremely?

A. Extremely supportive of Becky's transition.

Q. Very good. Did Mr. Thornton, in fact, get back to you after he spoke with the principal?

A. I don't recall.

Q. What was --- what was the next communication that you recall having with the school officials with regard to B transition?

A. I would have had contact with her teacher at that time. I can't remember her name at that time. And

realizing that she was going to have questions or that the students would have questions, but I can't remember that teacher's name. I apologize.

Q. That's no problem.

Tell me about the nature of your communications with --- this would have been the third grade teacher.

Is that correct?

A. Right, right. That she was going to start presenting as a female at school.

Q. And was the teacher supportive of that?

[235]

A. Yes.

Q. And then BPJ did start presenting as a female at school I think I heard you testify earlier. Is that correct?

A. That is correct.

Q. Were there any problems or issues with that?

A. The only thing that I know of is that the teacher did get questions as to why B was dressing the way she was dressing, and her answer was she's B and that's what makes her happy.

Q. Were you comfortable with that response from the teacher?

A. Yes.

Q. And so in the third grade did you have any concerns with regard to how the school handled B transition?

A. No, I did not.

Q. And then BPJ also would have been enrolled at Norwood Elementary School in the fourth and fifth grades. Is that true?

A. That is correct.

Q. And at that point she was --- in those grades she was fully transitioned ---

[236]

A. Correct.

Q. --- to being a female student.

Is that correct?

A. Correct.

Q. And did you have any issues or concerns with the way school officials handled that?

A. School officials handled it quite well.

Q. So during BPJ's tenure as a student at Norwood Elementary School did you have any concerns or issues with regard to how school officials handled --- how your daughter wanted to handle her transgender status and how she wanted to present at school?

A. They respected her transition and her transgender status. They used her correct pronouns, which was she/her.

Q. That was something that was important to you and BPJ.

Is that correct?

A. Correct.

Q. So part of that --- my understanding is that part of the communications that you would have had with school

officials at Norwood Elementary School included completing a Gender Support Plan for BPJ.

Is that correct?

[237]

A. That is correct.

Q. And I'll ask you --- I'm going to ask you about both Gender Support Plans because I know you're having to grab things. I'm going to ask you about Exhibits 17 and 19, if you want to pull them out. We'll look at Exhibit 17 first.

A. I've got 17 in front of me.

Q. Okay. Very good. We'll start there. We can get to 19 when we get there.

And you can take as much time as you want to review this, but my initial question is going to be is this the Gender Support Plan that was in place when BPJ was at Norwood Elementary School?

A. Yes, it is.

Q. And you would agree with me that this document is dated August 23rd, 2019?

A. Correct.

Q. And this was a document that the Harrison County Board of Education had in place, so that there was a process to discuss a combination of a student who's transgender like BPJ.

Is that correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: That's my understanding.

[238]

BY ATTORNEY DENIKER:

Q. And in fact, did you meet with school officials from the Harrison County Board of Education to develop this Gender Support Plan to support BPJ?

A. I met with the people that are listed on the last page of the Gender Peer Support Plan.

Q. Was there anybody present in the meeting on August 23rd, 2019, whose name doesn't appear on the signature page on page five, which is Bates number BPJ 011?

A. I don't know. I know that we were all supposed to sign it to say that we were there in attendance. So I presume everyone signed it.

Q. In looking at this signature page, do you recall anybody being there whose name you don't see there?

A. I don't off the top of my head, no.

Q. Is your signature on this document?

A. Yes, ma'am, it is.

Q. And it looks like BPJ's signature is on this document as well.

Is that correct?

A. Correct, because she was in attendance. She had to sign it.

Q. So she was part of this meeting.

[239]

Is that right?

A. That's correct.

Q. Did you find the school officials that participated in this process to be respectful of you and of BPJ?

A. Yes, I did.

Q. And did you find that the purpose of this was to help accommodate any needs that BPJ might have as a transgender student?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: That's my understanding that that was the purpose of the document.

BY ATTORNEY DENIKER:

Q. Did you --- were you in agreement with the Gender Support Plan that was put into place through this August 23rd, 2019 document?

A. Yes, I was in agreement with it.

Q. Was BPJ in agreement with it?

A. Yes, as much as she understood. Yes.

Q. And did you believe that the school followed through and accommodated her in accordance with this Gender Support Plan while she was at the Norwood Elementary School?

A. They followed the Gender Support Peer Plan, yes.

[240]

Q. So is it fair to say that you didn't have any issues or concerns of BPJ's treatment as a transgender student during the time that she was a student at Norwood Elementary School?

A. I would say correct.

COURT REPORTER: I'm sorry. I'm sorry. Can you state that question one more time? It was a little fast.

ATTORNEY DENIKER: I will try to do that.

BY ATTORNEY DENIKER:

Q. Is it fair to say that you did not have any issues or concerns with BPJ's treatment as a transgender student during the time that she was enrolled as a student at Norwood Elementary School?

A. We had no issues.

Q. Ms. Jackson, to confirm, it is my understanding that Harrison County Schools does not offer school-sponsored athletics for students who are in elementary school. Is that consistent with your understanding?

A. That's my understanding.

Q. And I heard you testify earlier that BPJ participated in cheerleading, which was not a school-related activity, while we was in elementary [241] school.

Is that correct?

A. That was through the Bridgeport Youth Football.

Q. And that's not affiliated with the Harrison County Board of Education.

Is that correct?

A. That is --- that is correct.

Q. So the first time that BPJ was eligible to participate in school-sponsored sports was when she went to middle school for this coming academic year. Is that correct?

A. That is correct.

Q. And BPJ, is she currently in the 6th grade?

A. That is correct.

Q. And is she still 11 years old?



A. Yes.

Q. And prior to her --- so she would have transferred from Norwood Elementary School to Bridgeport Middle School for the beginning of this academic year. Is that correct?

A. Correct.

Q. And it's my understanding that Bridgeport Middle School is a three-year middle school that has grades six, seven and eight.

[242]

Is that correct?

A. That is correct.

Q. Your older children, your two sons, have they both gone through Bridgeport Middle School?

A. Yes, they have.

Q. So you're familiar with the school?

A. Yes.

Q. And you were familiar with it before BPJ enrolled there.

Is that correct?

A. Yes.

Q. And did you have --- well, strike that. Now, I am going to ask you to look at Exhibit Number 19, if you can find it, please.

A. I got to find it. Can they bring it up on the screen rather than me finding it?

Q. Yes. And if you need to see a paper copy, I'll be glad to take a break for you to be able to find it.

A. That's okay. I can look on the screen. I'm familiar with this document.

Q. Great. Would you agree with me that this document we just marked as Exhibit West Virginia 19 is a Gender Support Plan for BPJ, which is dated May 18th, 2021?

[243]

A. Correct.

Q. And was this a meeting that you would have had with school officials to create another Gender Support Plan for BPJ?

A. Correct.

Q. May 18th of 2021, at that time am I correct that BPJ would have been finishing her 5th-grade year at Norwood at that time?

A. Yes.

Q. So this meeting was done in preparation for BPJ's transition to Bridgeport Middle School.

Is that correct?

A. Correct, and the meeting was held at Norwood.

Q. And as before, the folks that were in attendance, are their signatures on page five of this document, which is Bates number BPJ 006?

A. Yes, I presume that is everyone that was there. We were all asked to sign in if we attended.

Q. And again, as I asked you before, is there anybody who you recall being present for this meeting whose name or signature doesn't appear on page five of this document?

A. I don't think so.

Q. Is your signature on this document?

[244]

A. Yes, it is.

Q. And I also see BPJ's signature on this document.

Is that correct?

A. Yes.

Q. This included --- even though it was held at Norwood Elementary School, this did include school officials from Bridgeport Middle School.

Is that correct?

A. Correct.

Q. And this included a discussion about accommodation for BPJ once she got to the middle school for this current academic year.

Is that correct?

A. Correct.

Q. Was this meeting conducted professionally in your opinion?

A. Yes.

Q. And were you able to discuss wishes, ideas, and concerns you had about accommodations for BPJ as she was starting into the middle school?

A. Yes.

Q. And did you feel like this was a positive meeting?

A. Yes.

[245]

Q. Dave Mazza is somebody who's on the signature page. He's the principal at Bridgeport Middle School.

Is that correct?

A. That is correct.

Q. Did you know Mr. Mazza before you had this meeting?

A. Yes.

Q. And again, you would have been a parent of students who have been at Bridgeport Middle School.

Is that correct?

A. That is correct.

Q. Your middle child, Ms. Jackson, I'm trying to figure out the ages, is he a couple of years older than BPJ?

A. Thirteen (13).

Q. He's 13. And what grade is he currently in?

A. Eighth.

Q. So you have two children currently at the middle school.

Is that correct?

A. That is correct.

Q. Okay. So Mr. Mazza wasn't new to you in this meeting?

A. That is correct.

[246]

Q. And did you have a --- prior to this meeting, did you have a positive relationship with Mr. Mazza?

A. That is correct.

Q. He's a nice guy, isn't he?

A. He is.

Q. And my experience with him has been that he's very student centered. Has that been your experience as it relates to your children?

A. He's extremely student oriented.

Q. He really cares about the students, doesn't he?

A. I believe so, yes.

Q. And I see that Tarra Shields was on this document. Is she the counselor at Bridgeport Middle School?

A. She's the principal I believe now, isn't she?

Q. Is she one of the principals there?

A. I think so, at Norwood.

Q. At Norwood?

A. At Norwood.

Q. That's right. That's right, Ms. Jackson. So she was there as the Norwood principal.

Is that correct?

A. Correct, correct.

Q. And it looks like Ms. Merrill was there and she [247] is a counselor at Bridgeport Middle School.

Is that correct?

A. That is correct.

Q. And how was your experience with her in this meeting?

A. Can you be more specific?

Q. Sure. Was she professional with you?

A. Yes.

Q. And was she helpful in terms of identifying appropriate accommodations for your daughter as she was getting ready to transition to the middle school?

A. Yes.

Q. Did you feel that the Bridgeport Middle School team was committed to making your daughter's transition to the school as a transgender student a positive experience?

A. Yeah. The only concern that was raised was the concern about her participating in cross-country.

Q. And I wanted to talk to you about this, Ms. Jackson. Let me ask you this. Other than conversation as it related to participation on the cross-country team, did you have any concerns at all about what was discussed during this meeting for the Gender Support Plan on May 18th, 2021?

[248]

A. No.

Q. So during this meeting it sounds like you did have a discussion with the school officials with regard to BPJ's participation in athletics.

Is that correct?

A. That is correct.

Q. And in fact, that's part of this plan is to discuss --- that is a topic to be discussed.

Is that correct?

A. I'm sorry. Can you repeat that?

Q. Sure. And I probably didn't ask it very well. And let me actually ask you by looking at the document. Let's look at page four of the document. And this is Bates number BPJ 005. And Ms. Jackson, I will ask you to look at the top of that document as we scroll up to it. And there's a specific

section on this Gender Support Plan to have a discussion about the student's participation in extracurricular activities.

Would you agree with that?

A. Yeah, there's definitely information there regarding that.

Q. And it specifically also addresses sports, doesn't it?

A. Yes, specifically is cross-country and track.

[249]

Q. Okay.

And so I think the question on the form, it says, in what extracurricular programs or activities will the student be participating and then in parentheses it says sports, theater, clubs, et cetera, question mark. Did I read that accurately, Ms. Jackson?

A. Yes.

Q. And then in handwriting under that question it says cross-country and track.

Is that right?

A. That is correct.

Q. And did you fill this document out?

A. No, that is Ms. Merrill's handwriting.

Q. Okay.

And the entries that say cross-country and track, did that --- where did that information come from?

A. From B and myself, that she wanted to participate in cross-country and track.

Q. Okay.

And that was noted on this form.

Is that correct?

A. Correct.

Q. And was there a discussion about BPJ's [250] participation in school sports and specifically cross-country and track since BPJ expressed an interest in that participation?

A. Yes. What was discussed is actually on that next line, about the coaches have to be aware of the transition.

Q. Okay.

The next line says what steps will be necessary for supporting the student there. And as you noted, it says coaches would need to be aware of Becky's transition. If teammates have questions, they can approach the coach or administration. Did you have any concern with that?

A. The only concern I had at the time was, was she going to be able to run on the girls cross-country team.

Q. And did you ask that question during the meeting?

A. It came up during the meeting. I don't know if it was in question form or in statement form.

Q. Do you remember who brought it up?

A. I brought it up.

Q. Do you remember what you said during the meeting?

A. Not specifically, just that I was concerned that [251] she would be able to run on the girls cross-country team.

Q. And did somebody respond to that inquiry from you?

A. David Mazza.



Q. And what did Mr. Mazza say?

A. That it would all depend on how the bill was going to come about, and that if she wanted to run, she wouldn't be able to run on the girls cross-country because of the bill.

Q. And when you say the bill, are you talking about House Bill 3293?

A. Yeah.

Q. And is that the bill that --- is it your understanding that it's House Bill 3293 that your current litigation seeks to overturn and address?

A. Yes.

Q. So were you aware as of the date of this Gender Support Plan, May 18th, 2021, what the status of House Bill 3293 was?

A. I just knew it was in legislature.

Q. And Mr. Mazza was also aware of it, it sounds like from his response to you.

Is that your understanding?

[252]

A. Yes.

Q. And so was there any further discussion of BPJ's ability to run on the girls team other than what you have already told me?

A. That was the gist of the conversation, was regarding my concerns whether or not she would be able to run on the girls cross-country team.

Q. And so you were aware of the House Bill --- and were you aware that it was a state law?

A. All I knew was about the bill.

Q. Okay.

And were you aware that that was a bill that was considered and passed by the West Virginia State Legislature?

A. I'm not sure what year it was passed. I know it was signed by the Governor in April.

Q. So you understood that the bill was signed by the Governor.

Correct?

A. Yes.

Q. I'm not trying to quiz you on dates here, Ms. Jackson, but were you aware that at some point the West Virginia Legislature passed that bill?

A. Yes. Yes, it was passed. Yes.

[253]

Q. Would you agree with me that there is no Harrison County Schools rule or policy that addresses transgender student participation in sports?

A. I don't know that there is or is not.

Q. Has anybody ever told you that there is a Harrison County policy or rule that would prohibit BPJ from participating in a girls sports team?

A. No one has ever told me that.

Q. And the only discussion that you had with Mr. Mazza with regard to BPJ's participation on a girls sports team related specifically to House Bill 3293.

Is that correct?

A. Can you repeat that question, please?

Q. Sure. The only conversation you had with Mr. Mazza with regard to BPJ's ability to participate in a girls sports team at Bridgeport Middle School related to House Bill 3293.

Is that correct?

A. Yes.

Q. Have you had any communication with any other official of Harrison County Board of Education or Harrison County Schools related to BPJ's ability to participate in girls sports?

A. No, I have not.

[254]

Q. So the only communication related to this occurred with Mr. Mazza on May 18th, 2021.

Is that correct?

A. Correct.

Q. And your only discussion about a possible limitation of BPJ's ability to participate in girls sports related to House Bill 3293.

Correct?

A. I'm sorry. I thought I answered that. Can you repeat the question? I'm confused.

Q. Sure. And your only communication then with anybody in Harrison County Schools related to BPJ's ability to participate on a girls sports team was with Mr. Mazza.

Correct?

A. Correct.

Q. And that conversation only related to BPJ's ability to run as it would have been impacted by House Bill 3293.

Is that correct?

A. The conversation was in regards to how --- if she would be able to run on the girls cross-country team and that would have been dictated by that House Bill.

Q. Mr. Mazza didn't tell you that it would be [255] dictated by anything else, did he?

A. No.

Q. And Mr. Mazza, he did not indicate to you that he wouldn't permit BPJ to participate on the girls team personally.

Is that correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yeah. Can you repeat that question?

BY ATTORNEY DENIKER:

Q. Sure. Did Mr. Mazza tell you that he personally had any objection to BPJ participating on a girls sports team?

A. He never said those words, no.

Q. Okay.

And did anybody else in Harrison County Schools affiliated with Harrison County Schools in any way tell you that they wouldn't permit or had a problem with BPJ participating in a girls sports team?

ATTORNEY BLOCK: Objection. Compound question.

THE WITNESS: I didn't contact --- I wasn't in contact with any other individuals.

BY ATTORNEY DENIKER:

[256]

Q. So you didn't have any communications with anybody else about that.

Is that correct?

A. That is correct.

Q. Is there any other communication that you had with anybody in Harrison County Schools about BPJ's participation on a girls sports team other than what we just talked about?

A. No.

Q. Were you otherwise comfortable --- well, strike that.

This Gender Support Plan that is dated May 18th, 2021, is that currently in effect for BPJ?

A. Yes.

Q. And were you in agreement with that when you signed it on May 18th, 2021?

A. Correct.

Q. And have you had any issues or concerns or problems with the implementation of this Gender Support Plan during the school year?

A. With the Gender Support Plan I've had no issues.

Q. Did you raise any concerns with anybody within the Harrison County Board of Education or Harrison County Schools about your objections or disagreements [257] with House Bill 3293?

A. I hadn't had any conversations with those individuals.

Q. And when you say I hadn't I just want to make sure that sitting here today have you had any discussions with

anybody affiliated with Harrison County Board of Education other than the communication you had with Mr. Mazza about concerns or problems you had with House Bill 3293?

A. I have not.

Q. Are you aware that there is an elected Board of Education for all of the county Boards of Education in West Virginia?

A. Yes.

Q. And are you aware that there is a specific County Board --- elected County Board of Education for Harrison County Schools?

A. Yes.

Q. Did you have any communications with anybody on the elected Board of Education with regard to BPJ and her ability to participate in girls sports teams?

A. I've had no contact with anybody on the elected board.

Q. Have you had any communication with Dora Stutler [258] with regard to BPJ's ability to participate in school sports?

A. No.

Q. Was BPJ permitted to participate in summer conditioning with the Bridgeport Middle School cross-country team in the summer of 2021?

A. Yes.

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY DENIKER:

Q. And it's my understanding that the Middle School cross-country team at Bridgeport Middle School does the summer conditioning where they run together.

Is that correct?

A. They --- they all condition together, but they separate out into groups, if that makes sense.

Q. How were those groups separated? Do you know?

A. Normally by speed in the conditioning environment.

Q. Are they separated by sex or gender in any way?

A. Only by boys team and girls team.

Q. And was BPJ permitted to run then with the girls teams in the girls groups?

A. Correct.

ATTORNEY BLOCK: Objection to form.

[259]

BY ATTORNEY DENIKER:

Q. Did you have any issues or concerns with how BPJ was treated concerning conditioning?

A. No. The coaches were very respectful of her pronouns and her transgender identity.

Q. And was that true for the entire cross-country season?

A. The coaches --- yes, the coaches were very much so, yes.

Q. So you had --- did BPJ have a positive experience participating on the girls cross-country team?

A. Yes.

Q. And so I got a little bit ahead of myself because we were talking about summer conditioning and then there were tryouts for cross-country.

Is that correct?

A. That's correct.

Q. And did that take place in August of 2021?

A. Yes.

Q. And BPJ tried out for the girls cross-country team.

Is that correct?

A. That is correct.

[260]

Q. And she was permitted to do so by the middle school.

Is that right?

A. That is correct.

Q. And was she selected for membership on the girls cross-country team?

A. That is correct.

Q. And I think I heard you testify earlier that she did compete through the whole season on the girls cross-country team.

Is that right?

A. That is correct.

Q. And she had a good experience doing that?

A. Yes, she did.

Q. Good. I'm glad to hear that. And I had to laugh when Mr. Tryon was asking you questions about where she placed because it's clear to me that he has never been to a



middle school cross-country meet because they're just --- even in high school, there are just tons of kids and lots of runners, aren't there?

A. There's tons of them, yes.

Q. And just for the record, my kids never came in first or second either, so I understand that.

Who were the coaches for the cross-country team [261] this year at the Bridgeport Middle School?

A. Schoonmaker or Shumaker, I'm not sure how to pronounce her name, and I can't remember the names of the other two.

ATTORNEY BLOCK: Sorry. Just can you give me a five-second pause while I move to the other room. My son is about to come home from school.

ATTORNEY DENIKER: Absolutely. No problem.

ATTORNEY BLOCK: Shift over. All set.

ATTORNEY DENIKER: That was fast.

ATTORNEY BLOCK: Small apartment.

BY ATTORNEY DENIKER:

Q. Ms. Jackson, I was asking you about the Bridgeport cross-country coaches. Are the coaches the same for the girls and the boys teams?

A. Yes, they are.

Q. And was the head coach Danielle I think maybe it's Schoonmacher?

A. Yes.

Q. And then you said there were two other coaches. I think one of them may be Natalie McBriar?

A. Yes, that is one of them.

Q. Is that correct?

[262]

A. Yes.

Q. And do you who the other one was?

A. I can't remember her name.

Q. But your daughter would have interacted with these coaches throughout the season?

A. Correct.

Q. And didn't have any issue or problem with them.

Is that correct?

A. That is correct.

Q. Did she have any issues or problems with other students on the cross-country team?

A. At one point she came home and reported that somebody had told her that she's not a real girl. I asked her at that point if she reported it to the coach and she said that she did.

Q. And do you know whether the situation was addressed by the coaches?

A. I do not know.

Q. Did you follow up with the coaches to discuss this concern?

A. I did not.

Q. Did you feel that BPJ had handled it herself and you were comfortable with that?

A. Oh, quite well, yes.

[263]

Q. And were there any issues after that with students, after BPJ raised this concern with the coaches?

A. There was not.

Q. If you thought that there was a further problem would you have gotten involved and either addressed it with either the coaches or school officials?

A. Most definitely.

Q. Is it fair to say you didn't think that was necessary?

A. Correct.

Q. That season is over now.

Is that correct?

A. That is correct.

Q. And is BPJ --- did she try out for any winter sports at the middle school?

A. No, she did not.

Q. Does she intend to try out for any spring sports?

A. Yes, she does.

Q. And what does she intend to try out for?

A. Track.

Q. And has --- have you had any communications with school officials about her ability to try out for track [264] this spring?

A. We have not.

Q. Is it your understanding that she will be permitted to try out for the girls track team?

A. I don't have an understanding whether she'll be permitted or not.

Q. Because you have not had any discussions.

Is that correct?

A. Correct.

Q. Let me talk more candidly about BPJ's school year. And I'm sorry if I already asked you this, but at the middle school she's I guess almost halfway through her sixth grade year.

Is that correct?

A. That is correct.

Q. And is she having a good school year?

A. She's having an excellent school year. After she learned her locker combination, everything went well.

Q. Right now all of us are having a flashback to middle school and the trauma that was remembering your locker code. I understand that, Ms. Jackson. And do you feel that the school has appropriately implemented the Gender Support Plan that you agreed upon?

[265]

A. Yes.

Q. And you don't have any issues or concerns with how school officials have treated BPJ this school year-to-date?

A. No.

Q. I want to follow up on a question that Mr. Tryon asked about cross-country meets this fall. You mentioned that some meets --- I think you called them one and done meets?

A. Yes.

Q. And I think you described that everybody --- they have the girls teams and the boys teams all run at one time.

Is that correct?

A. Correct, correct.

Q. And in those situations the boys teams are still competing against the boys teams and the girls teams are still competing against the girls teams.

Is that correct?

A. Yes. The statistics go towards the appropriate team.

Q. That was what I assumed was the case in those meets, but I just wanted to ask you. I haven't seen one of those, but I figured they still separated the results [266] by girls teams and boys teams.

Right?

A. Correct.

Q. And in those situations BPJ would have been listed on girls roster and would have been competing against other girls teams.

Correct?

A. That is correct.

Q. I did notice in one of the pictures that was provided through your counsel in discovery there were some pictures of BPJ at various cross-country meets this fall. It looks like she was having a good time.

Was that correct?

A. That is correct.

Q. I saw the one of her in the creek, and I will tell you that I have been there with my daughter and what a muddy mess. Huh?

A. Yes, very much so.

Q. But the middle school kids love it. I don't know if BPJ loved it, but I know that my daughter thought it was great to get muddy.

A. The creek crossing runs are her favorites.

Q. Let me just look at my notes here, Ms. Jackson. I'm almost done.

[267]

I want to go back briefly to your communications with Mr. Mazza about House Bill 3293. Mr. Mazza did not tell you that he agreed with that bill, did he?

A. He didn't say he agreed or disagreed.

Q. And did anybody employed by Harrison County Schools or any elected official of Harrison County Schools ever tell you that they agreed with House Bill 3293?

A. I've had no communication with anybody in that genre whether they agreed or disagreed.

Q. And that would include Superintendant Stutler, she also didn't tell you that she agreed with House Bill 3293.

Correct?

A. Yes, there has been no communication between me or her whether she agrees or disagrees.

ATTORNEY DENIKER: Ms. Jackson, thank you. I don't have any further questions at this time.

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EXAMINATION

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BY ATTORNEY MORGAN:

Q. Ms. Jackson, my name is Kelly Morgan and I [268] represent the West Virginia Board of Education and Superintendant Burch. Can you hear me okay?

A. Yes.

Q. All right.

I only anticipate a few questions here, so I don't anticipate going very long. But if you don't understand my question, please let me know. Otherwise, I'm going to assume that you understood my question if you answer my question.

Is that fair?

A. Okay. Yes.

Q. All right.

Had you ever had any discussions with anyone from the West Virginia Board of Education?

A. I have not.

Q. And when I say the West Virginia Board of Education, what does that mean to you?

A. I don't know how to answer that. That means the West Virginia Board of Education.

Q. Do you know what the West Virginia Board of Education is?

A. Yeah, the governing body of the board --- of the educational system.

Q. Can you describe that any more for me as to what [269] your understanding is?

A. No, I cannot.

Q. Do you know like the hierarchy of how that's set up at all?

A. No.

Q. Okay.

Do you know where they are in relation to say Harrison County Board of Education?

A. No.

Q. Fair enough.

A. Do you mean physically where they're located?

Q. No, not physically?

A. Oh, okay.

Q. Like as who might give direction to who?

A. Oh, okay. No.

Q. Or who does what or anything like that? A. No.

Q. Okay. Fair enough.

I just wondered. Have you ever talked to Superintendant Burch?

A. No.

Q. Have you ever contacted his office?

A. No.

Q. Are you aware of anyone in your family who has [270] contacted the West Virginia Board of Education or Superintendant Burch?

A. I am not aware.



Q. Do you have any reason to believe that the West Virginia Board of Education had any specific role or involvement in the passage of House Bill 3293?

A. I don't know.

Q. You wouldn't know one way or another? A. Nope.

Q. Okay.

And so if you never had any contact with the West Virginia Board of Education or Superintendent Burch, is it fair to say that you don't have any complaints of anything that they've done in this case with regard to BPJ?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Can you repeat the question?

BY ATTORNEY MORGAN:

Q. Sure. Let me even rephrase it a different way. Do you have any complaints as to anything that the West Virginia Board of Education has done with regard to BPJ?

A. Up to this point they have let her run on the girls cross-country team, so we're happy with that.

[271]

Q. And when you say they, who are you referring to?

A. The Board of Education. They have not --- because of the stay, they didn't tell her she couldn't run.

Q. And are you specifically referring to Harrison County Board of Education?

A. I'm referring to any Board of Education.

Q. You said earlier that you had never been contacted by anyone for BPJ to be, in essence, the spokesperson for transgender rights.

Is that right?

A. That's correct.

Q. Had you ever contemplated her being a spokesperson for transgender rights?

A. Heavens, no.

Q. You said that you had a family friend who also had a transgender, I believe male.

Is that right?

A. That's correct.

Q. What discussions have you had with that friend regarding transgender rights?

ATTORNEY BLOCK: Objection. Vague.

THE WITNESS: Yeah, I'm not sure how to answer that. I mean ---.

[272]

BY ATTORNEY MORGAN:

Q. As you sit here today, can you think of anything specific about things you might do to promote transgender rights?

A. What we would do as individuals to promote it?

Q. Yes.

A. Like publicly promote it?

Q. Sure.

A. No.

Q. Have you talked to this friend? And I forget her name.

A. Carolyn.

Q. Carolyn. Have you talked to Carolyn about this case?

A. No.

Q. Do you know whether B has talked to Carolyn or her transgender son, if I'm using that term correctly, about this case?

A. She has not.

ATTORNEY MORGAN: Ms. Jackson, those are all the questions that I have for you. Thank you.

And before someone questions, I think it was Tim possibly, I may be switching to a different device so just be patient if I drop off this for the [273] court reporter and all other counsel. I'll be joining on another device. Thank you again.

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# EXAMINATION BY ATTORNEY DUCAR:

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Q. Good afternoon, Ms. Jackson. I'm Tim Ducar and I represent Lainey Armistead, an intervenor in this case. You previously --- strike that.

Let's go back to this cross-country competition example that we were talking about because I am unfamiliar with it. Is this one and done competition everybody runs all at one time but the rankings are kept track somehow?

A. Correct.

Q. And you said the rankings are done in what manner?

A. Sometimes they have chips, sometimes it's done manually.

Q. So it is separated by gender or sex or is it separated by --- how are those separated?

A. Sorry. There's a huge echo.

ATTORNEY MORGAN: Sorry. That may have been me. I think I fixed it.

[274]

THE WITNESS: Okay.

I'm sorry. Mr. Ducar, could you repeat?

BY ATTORNEY DUCAR:

Q. How are the groups that are competing separated in those kinds of events?

A. I'm not sure how the logistics works. I've never worked an event where that happens, so I'm not sure how they do it.

Q. Okay.

But when BPJ ran in an event like that, I guess she only ran in one, would you describe her as not being first, not being second, not being last, but how?

A. I wouldn't know to tell you where she ranked.

Q. Okay.

On the times that she competed against --- on the girls team, she didn't end up first, second or last. Was she in the front of the pack? Was she in the back? How did she end up?

A. She was in the back of the pack.

Q. So the second 50 percent anyway.

Correct?

A. She was not in the top 50 percent.

Q. She still enjoyed herself.

Right?

[275]

A. She had a blast.

Q. You previously testified that BPJ was born a male. Can you please explain what you meant when you said BPJ was born a male?

A. She was born as a male in that she was designated male at birth because she had a penis when she was born.

Q. Is there any other characteristics that would conclude you to say BPJ was born a male?

A. No. That is how they're identified when you give birth. They look at the genitalia and tell you it's a boy or a girl.

Q. You previously testified the reason BPJ is female is based upon BPJ's identification as a female. In your view, how does someone know what they identify as?

A. She knows that she's a female just like I know that I'm a female and you know that you're a male.

Q. So it's something somebody knows internally.

Correct?

A. Yes. She knows that she's a female.

Q. And the way one identifies whether or not they're male or female is their internal thought about that.

[276]

Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Their internal thought and their outward thought.

BY ATTORNEY DUCAR:

Q. How they act, is that what you're saying?

A. How they express themselves, if they come out and say that I am a female.

Q. Very well.

You testified earlier that someone who identifies as a female should be able to run on girls cross-country teams. Do you think it's true even if the person was born a biological male and has not taken puberty blockers?

A. Yes.

Q. Earlier you testified that BPJ showed female characteristics at about age three. What are female characteristics that she would have --- or that BPJ displayed?

A. Her mannerisms, her choice of clothing, limited vocabulary but able to say that she's a girl, expressing concern over the fact that she had a penis.

Q. I presume you supported her the entire time when she was showing these characteristics?

[277]

A. Yes, I nurtured her.

Q. Did you ever dissuade BPJ's from these characteristics?

A. Nope.

Q. Have you ever?

A. Nope.

Q. How do you feel about BPJ's transitioning?

A. I think she's a beautiful little girl.

Q. Do you think her desire to transform is permanent?

A. Yes.

Q. What happens if BPJ changes BPJ's mind and wants to transition back?

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY DUCAR:

Q. Would you support that?

A. I would support her true self, however she chooses live authentically.

Q. So would you support de-transitioning if that is what BPJ wanted to do?

A. If some day she came to me and said she chose to de-transition, yes, I would support her.

Q. Does the fact that BPJ wants to transition or is transitioning causing you any anxiety?

[278]

A. Just worried about any sort of discrimination that she may face.

Q. Anything else?

A. No.

Q. Is it causing your husband any anxiety?

A. You would have to ask him.

Q. None that you're aware of?

A. It seems that he's doing just fine.

Q. Is it causing BPJ any anxiety?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: If she gets misgendered, she's upset.

BY ATTORNEY DUCAR:

Q. Is there anything else about the transitioning that causes her anxiety?

A. No. She's happy to transition.

Q. How about this lawsuit, is this lawsuit causing you anxiety?

A. The whole process of it is quite overwhelming.

Q. Is it causing your husband anxiety?

A. You would have to ask him on that one.

Q. Is it causing BPJ anxiety?

A. Not that I know of.

Q. Has your husband told you about how he feels [279] about BPJ's desire to transition?

A. I know that he supports her.

Q. Do you have any hesitation about BPJ's interest in socially or medically transitioning?

A. Can you repeat that, please?

Q. Do you have any hesitation about BPJ's interest in socially or medically transitioning?

A. No hesitation.

Q. Have you encouraged BPJ's interest in transitioning? A. I have helped ---.

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I have helped her in her desire to transition.



BY ATTORNEY DUCAR:

Q. So that would be yes.

Correct?

A. I helped her in her desire to transition.

Q. Have you encouraged her?

A. I have helped her.

ATTORNEY BLOCK: Objection to the form.

BY ATTORNEY DUCAR:

Q. So you have not encouraged BPJ?

A. I wouldn't use the word encourage.

[280]

Q. Do you think it's important that team sports have fair rules?

ATTORNEY BLOCK: Objection to form.

ATTORNEY DUCAR: Excuse me. What is wrong with the form? That's a simple question.

ATTORNEY BLOCK: I think the fair rules is vague.

ATTORNEY DUCAR: Okay. Thank you.

BY ATTORNEY DUCAR:

Q. So I'll ask it again. Ms. Jackson, do you think it's important that team sports have fair rules?

A. I think rules are necessary in society.

Q. Do you think it's important that team sports have fair rules?

A. What constitutes fair?

Q. Well, that's a good question. Okay. I'll move on then.

Do you have any long-term treatment goals for BPJ?

A. Well, I hope she'll continue her blockers until she's ready for her next step, whatever she and her doctors decide that need be.

Q. You're going to follow the medical advice of the doctors.

[281]

Correct?

A. Correct.

Q. Whose idea was it for BPJ to start puberty blockers?

A. She expressed her desire to start the puberty blockers. She was concerned about her body producing male hormones.

Q. Earlier you testified that Dr. Montano talked to you about risks of puberty blockers.

Did you understand what he said?

A. Yes.

Q. Did BPJ understand what he said?

A. Yes.

Q. And do you understand the long-term ramifications of BPJ taking puberty blockers?

A. As I read the package insert.

Q. What do you understand the risks to be of cross sex hormones?

A. I don't understand the question.

Q. You talked about hormone therapy throughout this deposition.

Correct?

A. Correct.

Q. What do you define as hormone therapy?

[282]

A. Well, in her particular case she will be receiving female hormones.

Q. Do you understand the risks of her taking female hormones?

A. Yes.

Q. Does B?

A. Yes.

Q. And you understand the long-term ramifications of BPJ taking these hormones.

Correct?

A. I know there are risks.

Q. And BPJ knows those as well.

Right?

A. There are risks, yes.

Q. What are those risks?

A. Possibility of increased chance of cancer.

Q. Anything else?

A. Non-reversible characteristics.

Q. For example, what would that be?

A. Decreased size in testes.

Q. Anything else?

A. If she would eventually want to go off the hormones, a decreased size in breasts.

Q. Anything else?

[283]

A. Those are the biggies.

Q. Earlier I did not hear that Dr. Montano talked about the risks of testosterone. Did Dr. Montano talk to you about the risks of testosterone?

A. She's not taking testosterone.

Q. Did Dr. Montano ever talk to you about that?

A. She won't be taking testosterone.

Q. Does that mean no?

A. No, because she's not taking testosterone.

Q. Has any medical professional talked to you about the risks of taking testosterone?

A. No, because she wouldn't be taking testosterone.

Q. Is BPJ eligible to compete on Bridgeport Middle Schools cross-country team, girls?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: She was permitted to participate this past season.

BY ATTORNEY DUCAR:

Q. Bridgeport Middle School has a boys cross-country team. Correct?

A. Correct.

Q. Is BPJ eligible to compete on Bridgeport Middle School's boys cross-country team?

[284]

A. She would not participate.

Q. Do you know if BPJ is eligible to do so?

A. It was irrelevant to the conversation in regards that she would refuse to try out for the boys cross-country team.

Q. So is it fair to say you're not sure?

A. I don't know if she would be eligible.

Q. I believe in your Declaration you said that BPJ's running on a boys cross-country team is not an option. What did you mean by that?

A. She will not be running on a boys cross-country team. She has exhibited absolutely no desire to run on a boys cross-country team.

Q. Are there situations where it would be not fair to allow a male, a biological male, to run on a girls cross-country team?

A. Can you repeat the question?

Q. Are there situations where it would be not fair to allow a biological male to run on a girls cross-country team?

A. If a biological male identifies as a female they should be allowed to run on a girls cross-country team or play girls sports.

Q. Okay.

[285]

But my question is, is there a situation where it wouldn't be fair to allow that to happen?

A. I guess I don't understand how the wording of it --- it's almost like you are using a double negative. I'm not understanding the question.

Q. Is it --- can you think of a situation where it would be unfair to allow a biological male to run on a girls cross-country team?

A. No, I can't think of a situation.

ATTORNEY DUCAR: Thank you, Ms. Jackson. I have nothing further for you.

ATTORNEY TRYON: I have two follow-up questions.

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RE-EXAMINATION

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BY ATTORNEY TRYON:

Q. You indicated that ---.

ATTORNEY DUCAR: I'm sorry. Can I interrupt?

ATTORNEY TRYON: Yes.

ATTORNEY DUCAR: I have like three other questions that I forgot about. I'm sorry to interrupt.

ATTORNEY TRYON: Okay. Go ahead.

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ATTORNEY DUCAR: All right. Do you need a break, Heather?

THE WITNESS: I just need to get a little more water. I'm out.

ATTORNEY DUCAR: Okay.

I'm changing my mind. I've already handled these questions, so I'm sorry for interrupting and now I have no further questions.

THE WITNESS: Got it.

BY ATTORNEY TRYON:

Q. Two quick questions. You indicated during some of the other questioning that BPJ intends to or wants to run in track this next year.

Is that right?

A. That is correct.

Q. Do you know which events that BPJ wants to or intends to run in this next year?

A. She's interested in distance running.

Q. Can you be more specific?

A. The mile, two-mile.

Q. Any others?

A. She's not really experienced any of the other events in track because this would be her first year to be exposed to them. So she hasn't really raised any [287] desire because she hasn't experienced them.

Q. Okay.

So what about cross-country, does BPJ want to do them again?

A. Oh, yes.

Q. Great. Then when running in these meets, these cross-country meets, it's my understanding that BPJ was competing against both sixth, seventh and eighth graders.

Is that right?

A. That is correct.

Q. Ninth graders?

A. No.

Q. That's true for all cross-country that BPJ's grade levels.

Right?

A. That is correct.

ATTORNEY TRYON: Thank you. I have no further questions with the caveat in the event that we need to reopen this upon delivery of additional documents we would want to continue this deposition. Other than that, I have no other questions.

ATTORNEY BLOCK: And Plaintiff would object to any continuation of the deposition.

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ATTORNEY GREEN: On behalf of WVSSAC I have no further questions. Thank you, Ms. Jackson.

THE WITNESS: Thank you.

ATTORNEY DENIKER: I have no further questions. Thank you for your time today, Ms. Jackson.

THE WITNESS: Thank you.

ATTORNEY MORGAN: I have no further questions. Thank you so much.

THE WITNESS: Thank you.

ATTORNEY DUCAR: I have nothing further. Thank you so much.

THE WITNESS: Thank you.

ATTORNEY BLOCK: And the witness will review the transcript in accordance with the Rules.

VIDEOGRAPHER: If there are no further questions, then that this concludes the deposition. The time reads 4:49 p.m.



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VIDEOTAPED VIDEOCONFERENCE  
DEPOSITION CONCLUDED AT 4:49 P.M.

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