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August 1, 2016

VIA ECF

The Honorable George Levi Russell, III
United States District Court for the District of Maryland
101 West Lombard Street
Baltimore, MD 21201

Re: *M.A.B. ex rel. L.A.B. & L.F.B. v. Bd. of Educ. of Talbot County, et al.*
Case No. GLR-16-2622

Dear Judge Russell:

I am writing to submit two declarations in further support of our Motion for Preliminary Injunction. Due to the haste with which we prepared the complaint and motion, at the time we initially filed we did not have witness testimony describing the boys' locker room facilities at the School from firsthand experience. Although "district courts may look to, and indeed in appropriate circumstances rely on, hearsay or other inadmissible evidence when deciding whether a preliminary injunction is warranted," *G.G. ex rel. Grimm v. Gloucester County Sch. Bd.*, 822 F.3d 709, 726 (4th Cir. 2016), we nevertheless thought it would be prudent and helpful to the Court to provide firsthand witness testimony on this important point.

Therefore, attached please find two declarations submitted by "B.F." and "J.F.," two of M.A.B.'s fellow students at the School. Both boys have utilized the locker room regularly as students in physical education classes and as participants in the extracurricular soccer program. Because the declarants are minors, both declarations are redacted pursuant to Fed. R. Civ. P. 5.2(a)(3); unredacted versions, shielded from the public docket, are also being filed contemporaneously.

Thank you for your consideration of this matter. Please do not hesitate to contact me at (410) 625-5428 x13 with any questions or concerns.

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Hon. George Levi Russell, III

August 1, 2016

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Very truly yours,

FREESTATE JUSTICE, INC.

A handwritten signature in blue ink, appearing to read "Jer Welter", with a long horizontal flourish extending to the right.

Jer Welter

Deputy Director & Managing Attorney

cc: All Counsel (via ECF)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

M.A.B., a minor,
by and through his parents and next friends,
L.A.B. and L.F.B.,
Plaintiff,

v.

Civil Action No. GLR-16-2622

BOARD OF EDUCATION OF TALBOT
COUNTY, et al.,
Defendants.

DECLARATION OF J.F.

I, [REDACTED] ("J.F."), do solemnly declare:

1. My initials are J.F.
2. I am under the age of eighteen, and am executing this Declaration with the consent of my parents, [REDACTED] ("S.F." and "C.F.").
3. My older brother, whose initials are B.F., is also submitting a Declaration in this case.
4. Except as otherwise specifically stated, I have first-hand, actual knowledge of the matters stated in this Declaration.
5. I personally know the Plaintiff in this case, whose initials are M.A.B. He and I are friends and classmates. We are both rising ninth graders at St. Michaels Middle-High School.
6. I competed on the middle-school soccer team at St. Michaels Middle-High School last year, and intend to try out for the high-school soccer team this year.
7. I have regularly used the boys' locker room at St. Michaels Middle-High School

to change clothing for physical education class and as a player on the soccer team.

8. The boys' locker room contains about five rows of lockers, with benches in the middle of each row. At the beginning of the soccer season or quarter of physical education class, each boy will claim an unused locker in the locker room to lock his clothes and other items in for the remainder of the season or quarter. (During the school year, each student is also provided with a separate, individual personal locker that is inside the school building.)

9. The boys' locker room also contains two toilet stalls and two urinals. The toilet stalls are surrounded by stall walls and each stall has a door at the front of the stall. The stall door and stall walls begin at approximately mid-shin height above the floor.

10. The boys' locker room also contains two shower stalls. Each shower stall has a single shower head and is large enough for a single user. In each stall, the shower head is mounted on the back wall, facing toward the entrance to the stall. Along the sides, each shower stall has stall walls that extend from the floor to the ceiling. The entrance to each stall is open: there is no door or curtain covering the entrance to each shower stall. However, because the stalls have stall walls on both sides, it would not be hard to install a curtain or door for each stall.

11. In my experience using the locker room, when boys are changing clothes, we generally change clothes together at the benches in the part of the locker room where the rows of lockers are located, stripping down only to our underwear. No one strips down past their underwear. If someone wanted to strip down past their underwear, they would use one of the toilet stalls, so that they could have privacy. In my experience using the locker room, no one has ever stripped down past their underwear in the locker area in view of other users.

12. In my experience using the locker room, no one takes showers in the shower stalls there. I have never showered in the locker room and I have never seen anyone else use the

showers in the locker room to shower.

13. M.A.B. told me sometime at the end of Sixth Grade or the start of Seventh Grade that he is transgender and is a boy.

14. All students that I know of are cool with the fact that M.A.B. is a boy. I do not know of any student at the school who is bothered by M.A.B. being transgender, or by M.A.B. being able to use the boys' restrooms or locker room. As far as I know, all of the students are fine with M.A.B. using the boys' restrooms and boys' locker room.

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

Executed on: 7-31-16
Date

J. F.
J.F. (sign with initials only)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

M.A.B., a minor,
by and through his parents and next friends,
L.A.B. and L.F.B.,
Plaintiff,

v.

Civil Action No. **GLR-16-2622**

**BOARD OF EDUCATION OF TALBOT
COUNTY, et al.,**
Defendants.

DECLARATION OF B.F.

I, [REDACTED] ("B.F."), do solemnly declare:

1. My initials are B.F.
2. I am under the age of eighteen, and am executing this Declaration with the consent of my parents, [REDACTED] ("S.F." and "C.F.").
3. Except as otherwise specifically stated, I have first-hand, actual knowledge of the matters stated in this Declaration.
4. I am a student at St. Michaels Middle-High School in St. Michaels, Maryland. In the Fall of 2016, I will begin the Tenth Grade.
5. My younger brother, whose initials are J.F., is also submitting a Declaration in this case.
6. I personally know the Plaintiff in this case, whose initials are M.A.B., although he is closer with my brother, J.F., who is a classmate of M.A.B.
7. I competed on the high-school soccer team at St. Michaels Middle-High School last year, and intend to try out for the team this year as well. I also competed on the middle-

school soccer team at St. Michaels Middle-High School when I was in middle school.

8. I have regularly used the boys' locker room at St. Michaels Middle-High School to change clothing for physical education class and as a player on the soccer team.

9. The boys' locker room contains about five rows of lockers, with benches in the middle of each row.

10. The boys' locker room also contains two toilet stalls and two urinals. The toilet stalls are surrounded by stall walls and each stall has a door at the front of the stall.

11. The boys' locker room also contains two shower stalls. Each shower stall has a single shower head and is large enough for a single user. In each stall, the shower head is mounted on the back wall, facing toward the entrance to the stall. Along the sides, each shower stall has stall walls that extend from the floor to the ceiling. The entrance to each stall is open: there is no door or curtain covering the entrance to each shower stall. However, because the stalls have stall walls on both sides, it would not be hard to install a curtain or door for each stall.

12. The entrance to the gym director's office is in the boys' locker room, and the director's office has windows that look out into the locker room and allow the director to monitor activity in the locker room. The director's office also contains a separate toilet and shower, although I have not used them and am not familiar with how they are physically arranged.

13. The locker room also has a door to the outside, which allows participants in outdoor sports like soccer to go directly from the locker room to the athletic fields.

14. In my experience using the locker room, when boys are changing clothes, we generally change clothes together at the benches in the part of the locker room where the rows of lockers are located, stripping down only to our underwear. No one strips down past their underwear. If someone wanted to strip down past their underwear, they would use one of the

toilet stalls, so that they could have privacy. In my experience using the locker room, no one has ever stripped down past their underwear in the locker area in view of other users.

15. In my experience using the locker room, no one takes showers in the shower stalls there. I have never showered in the locker room and I have never seen anyone else use the showers in the locker room to shower. The only way I have ever seen anyone use the showers in the locker room is to fill ice buckets with water, for use during soccer games and practices.

16. I do not know of any student at the school who is uncomfortable with M.A.B. being transgender, or with M.A.B. being able to use the boys' restrooms or locker room. All of the students as far as I am aware are comfortable with M.A.B. using the boys' restrooms and boys' locker room.

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

Executed on:

7-31-16
Date

B.F.
B.F. (sign with initials only)