

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

SELINA SOULE, *et al.*, )  
 )  
                                   *Plaintiffs*, )  
 )  
                                   v. )  
 )  
 CONNECTICUT ASSOCIATION OF )  
 SCHOOLS, INC. *et al.*, )  
 )  
                                   *Defendants*, )  
 )  
 and )  
 )  
 ANDRAYA YEARWOOD and THANIA )  
 EDWARDS on behalf of her daughter, T.M., )  
 )  
                                   *Proposed Intervenors.* )  
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No. 3:20-cv-00201-RNC

February 21, 2020

**MOTION OF ANDRAYA YEARWOOD AND THANIA EDWARDS,  
ON BEHALF OF HER DAUGHTER, T.M.,  
TO INTERVENE AS DEFENDANTS**

Andraya Yearwood (“Andraya”) and Thania Edwards on behalf of her daughter T.M. (“Terry”) move to intervene as defendants as of right pursuant to Fed. R. Civ. P. 24(a)(2) or, alternatively, for permissive intervention under Rule 24(b)(1). The basis for the Proposed Intervenor-Defendants’ motion to intervene is set forth below as well as in the accompanying declarations.

The central goal of Plaintiffs’ lawsuit is to prevent Andraya, Terry, and others girls who are transgender from participating in Connecticut athletics. Throughout their Complaint and Motion for Preliminary Injunction, Plaintiffs repeatedly refer to Andraya and Terry by name and single out Andraya and Terry as the source of Plaintiffs’ alleged irreparable injury. *See, e.g.*, Compl. ¶¶ 14-15, 76-77, 80-104, 130-37, 142, 145-46. Their Complaint is replete with factual

inaccuracies about Andraya and Terry personally, as well as about issues and policies that directly impact their lives. Andraya and Terry should not be forced to watch on the sidelines while Plaintiffs attempt to bar them from participating in the 2020 spring track and field season and expunge all record of their past accomplishments. The Court should therefore grant their motion to intervene either as of right, or, in the alternative, permissively.

## **BACKGROUND**

### **Andraya and Terry**

Andraya and Terry are track athletes in Connecticut who have spent the past four years participating in Track and Field in accordance with Connecticut law and state policy. Yearwood Decl. [Exhibit 1] ¶ 6; T.M. Decl. [Exhibit 2] ¶¶ 6, 10. Both Terry and Andraya are girls who are transgender, which means that they were assigned a male sex at birth but are young women. Yearwood Decl. ¶ 2; T.M. Decl. ¶ 3. Like non-transgender girls, Terry and Andraya have a female gender identity and live their lives as girls. Yearwood Decl. ¶¶ 2-3; T.M. Decl. ¶¶ 3-5. Andraya is an eighteen-year old student in her senior year at Cromwell High School. Yearwood Decl. ¶ 1. Terry is a seventeen-year old student in her senior year at Bloomfield High School. T.M. Decl. ¶ 1.

From the time she was a child, Andraya has known that she is a girl. Yearwood Decl. ¶ 2. In the summer before eighth grade, Andraya told her parents that she is transgender and started to receive social and medical support for her transition. *Id.* ¶ 2. By the time Andraya started high school, she was known to her family and peers as a girl and participated in all aspects of school consistent with her female gender. *Id.* She has legally changed her name to “Andraya” and has been undergoing hormone therapy for several years. *Id.* ¶ 3. As a result of her medical transition, Andraya’s circulating hormones are comparable to the hormone levels of non-transgender girls.

*Id.* In her everyday life and on her track team, Andraya is accepted as a girl by her family, her friends, her teammates, and her coaches. *Id.* ¶¶ 2, 6.

Terry also knew from a young age that she is a girl. T.M. Decl. ¶ 3. She recalls as far back as fifth grade being aware of her female gender but not yet having the language or support to understand what she needed in order to live authentically. *Id.* After years of repressing her identity, Terry came out as transgender in tenth grade and began to live all aspects of her life as a girl. *Id.* ¶ 4. She has since updated her Connecticut birth certificate to accurately reflect her sex as female and is undergoing hormone therapy. *Id.* ¶¶ 4-5. As a result of her hormone treatment, Terry has circulating hormones at levels typical of non-transgender girls and, like Andraya, is accepted as a girl by her family, her friends, her teammates, and her coaches. *Id.* ¶¶ 4, 11-12.

Andraya and Terry love to run, and they both participate in Indoor and Outdoor Track and Field on their respective girls' teams. Yearwood Decl. ¶¶ 4-7; T.M. Decl. ¶¶ 6-8. They participate in track for the same reasons as their non-transgender peers: being a part of a team creates lasting social and emotional relationships; through the training and competition they are able to invest physical and emotional energy and release stress and anxiety; and the experience gives them a place to be free to be themselves and thrive. Yearwood Decl. ¶¶ 4-7; T.M. Decl. ¶¶ 6-8. Like their teammates and other athletes in Connecticut and beyond, they value participation and not an expectation of winning. Yearwood Decl. ¶¶ 4, 11; T.M. Decl. ¶¶ 6, 14. During the season they each train multiple hours per day, five days per week, and push themselves and their teammates to improve. Yearwood Decl. ¶ 7; T.M. Decl. ¶ 7. "I am lucky to live in a state that protects my rights and to have a family that supports me," Andraya explained last year. "This is

what keeps me going. Every day I train hard—I work hard to succeed on the track, to support my teammates, and to make my community proud.”<sup>1</sup>

Andraya and Terry have both excelled in track and field but, contrary to the allegations by Plaintiffs, their successes have been a result of hard work and are well within the range of high school track times for non-transgender girls. Indeed, some of the Plaintiffs in this case have placed ahead of one or both Andraya and Terry in the 55 meter, the 100 meter and the 300 meter events. Yearwood Decl. ¶ 11; T.M. Decl. ¶ 14. After the Complaint was filed, Plaintiff Chelsea Mitchell placed *first* in the 55 meter race at the Class S State Open in front of both Terry and Andraya. Yearwood Decl. ¶ 11; T.M. Decl. ¶ 14. *But see* Compl. ¶ 67 (asserting that the message sent to non-transgender girls under CIAC’s policy is “Give up. You can’t win.”).

### **CIAC’s policy**

Under rules established by the Connecticut Interscholastic Athletic Conference (“CIAC”), which serves as the “sole governing body for inter-scholastic athletic activities in Connecticut,” Andraya, Terry, and other girls who are transgender participate on girls’ sports teams, and boys who are transgender participate on boys’ sports teams.<sup>2</sup> The current CIAC policy, which has been in effect since 2013, does not, as Plaintiffs allege, allow students to play on girls’ teams based on whether “they claim” to have a female gender identity. Compl. ¶ 2. The governing by-laws of the CIAC dictate student participation based on “the gender identification of that student in current school records and daily life activities in the school and community.”

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<sup>1</sup> Dan Brechlin, *Connecticut high school transgender athletes ‘no longer want to remain silent’ following Title IX complaint*, Hartford Courant (June 20, 2019), <https://www.courant.com/sports/high-schools/hc-sp-transgender-policy-runners-respond-20190619-20190620-5x2c7s2f5jb6dnw2dwpftiw6ru-story.html>.

<sup>2</sup> Connecticut Interscholastic Athletic Conference, “About CIAC”, [http://ciacsports.com/site/?page\\_id=13](http://ciacsports.com/site/?page_id=13).

CIAC, 2019-2020 Handbook: CIAC By-Law, Article IX, Section B at 55 (2019-20). The student's school must verify that the "expression of the student's gender identity is bona fide and not for the purpose of gaining an unfair advantage in competitive athletics." *Id.* The policy restricts participation to the athletic classification of the student's lived and consistently expressed gender identity and bars participation in athletics of both genders. *Id.*

The CIAC's policy is not unusual. Across the country, the overwhelming majority of high school athletic associations have policies allowing boys and girls who are transgender to play on the same teams as other boys and girls. Athletic associations in eighteen states have policies that—like the CIAC's—allow transgender students to participate without requiring students to establish any proof of medical transition. In an additional eighteen states, the athletic associations allow transgender students to participate without hormone therapy or other medical transition on a case-by-case basis. Other states allow transgender students to participate after beginning hormone therapy. *See* CIAC, Reference Guide for Transgender Policy, [https://www.casciac.org/pdfs/Principal\\_Transgender\\_Discussion\\_Quick\\_Reference\\_Guide.pdf](https://www.casciac.org/pdfs/Principal_Transgender_Discussion_Quick_Reference_Guide.pdf). Based on the athletic policies that exist in almost every state, Terry and Andraya would be eligible to participate in the girls' category either based on their female gender identity, their updated birth certificate, and/or their hormone levels.

Transgender men and women also continue to participate in competitive athletics at every stage of their careers, and no post-secondary or elite athletic body regulates competition based on chromosomes, the relief requested by Plaintiffs. Compl. Prayer for Relief (C). The National College Athletic Association (NCAA) and the International Olympic Committee allow women

who are transgender to compete on women's teams after a period of undergoing hormone therapy.<sup>3</sup>

### **Plaintiffs' allegations**

In their Complaint and Motion for Preliminary Injunction, Plaintiffs make a series of misleading and inaccurate assertions about Terry and Andraya, the CIAC policy, and Plaintiffs' alleged injuries, which Terry and Andraya strongly dispute.

Plaintiffs misleadingly allege that CIAC changed its policy "at some time before 2017." Compl. ¶ 70. In fact, CIAC adopted its policy four years earlier, in 2013. *See* CIAC, *CIAC Statement on Transgender Policy Change* (Feb. 20, 2020), <http://ciacsports.com/site/?p=14124>. For seven years, transgender athletes in Connecticut have been participating in interscholastic athletics consistent with their gender identity. During those seven years—in which tens of thousands of student athletes have competed on single sex teams—Plaintiffs have not identified any support for their claims that "the problem of [girls and women who are transgender] taking opportunities from [non-transgender girls and women] has grown very rapidly," Compl. ¶ 61, that "increasing numbers of [girls who are transgender] are in fact competing in girls' and women's events each year," *id.* ¶ 62, or that non-transgender girls "will simply vanish from the victory podium and national rankings," *id.* ¶ 63.

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<sup>3</sup> *See* NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes* (August 2011) at 13 [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf) (permitting men who are transgender to participate on men's teams with no medical intervention and women who are transgender to participate on women's teams after one year of hormone therapy); International Olympic Committee, *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism* (November 2015), [https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf) (permitting men who are transgender to compete in the men's category with no medical intervention and women who are transgender to compete in the women's category upon proof of suppressed testosterone for a period of 12 months).

Plaintiffs also allege that Terry and Andraya “abruptly appeared” in girls’ track competition. Compl. ¶¶ 76, 87. Neither Andraya nor Terry “abruptly” began competing in girls’ track. Rather, both girls spent long periods of their lives coming to terms with their gender, coming out to their friends and family, and then transitioning at school. Yearwood Decl. ¶ 2; T.M. Decl. ¶¶ 3-4. Only then did they begin to compete on girls’ teams consistent with the recommendation of medical providers and CIAC policy. Yearwood Decl. ¶ 6; T.M. Decl ¶ 10.

Throughout their Complaint, Plaintiffs also refer to Andraya and Terry as “biological males” but offer no consistent definition of “biological male.” There are many biological components of sex, including chromosomal, anatomical, hormonal, and reproductive elements. These elements do not always align within an individual as typically male or typically female, either because that individual has intersex traits or because that individual has undergone medical care for gender dysphoria. For these reasons, the Endocrine Society has said “the terms ‘biological sex’ and ‘biological male or female’ are imprecise and should be avoided.” *See Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 743 (E.D. Va. 2018). Plaintiffs appear to equate “biological sex” with chromosomes, Compl. ¶¶ 4, 67, 101, but all of their alleged “inescapable biological facts,” *id.* ¶ 47, are the result of hormones—not chromosomes.

For example, Plaintiffs focus on alleged athletic advantages resulting from “male puberty,” but as a result of puberty blockers and hormone therapy, many transgender girls go through a typically female puberty, and many transgender boys go through a typically male puberty. A girl who is transgender and who has XY chromosomes undergoing puberty blocking treatment, therefore, would have none of alleged advantages of “male puberty” that Plaintiffs attribute to “biological males.” Even if a girl who is transgender begins puberty based on her sex assigned at birth, there is no evidence to support the assumption that girls who are transgender

and who receive hormone therapy retain any of the alleged advantages identified by Plaintiffs as being outside the range of performance for non-transgender girls. *See* NCAA Inclusion of Transgender Student-Athletes at 7.

Referring to Andraya and Terry as “males,” Plaintiffs claim that “if males compete in girls’ events after puberty, equally gifted and dedicated female athletes simply can’t win.” Compl. ¶ 60. But neither Terry nor Andraya is undefeated and neither have dominant race times among high school girls nationally. Plaintiffs list the best 2019 Outdoor times for the 100m for girls, *see id.* ¶ 54, and the best times listed for Terry and Andraya do not come close to the best times registered for the presumably non-transgender girls on that list, *see id.* ¶¶ 80, 86, 89. Thus, based on the allegations in the Complaint alone, it is demonstrably untrue that a non-transgender female athlete “can’t win” in a race with a transgender athlete. Indeed, two days after filing the complaint, Plaintiff Chelsea Mitchell beat *both* Terry and Andraya in the 55 meter race and beat Terry in the 300 meter race at the Connecticut State Championship for Class S for the 2020 Indoor Track & Field season. T.M. Decl. ¶14; Yearwood Decl. ¶ 11.

In their Complaint, Plaintiffs also claim that their alleged deprivation of participation at championship meets cost them “the visibility necessary to attract the attention of college recruiters and resulting scholarships.” Compl. ¶ 103. But Plaintiffs make no allegations that college recruitment and the resulting scholarships are linked to participation in certain meets or tied to a threshold of media coverage, as opposed to result times alone. All track and field race times are publicly available and college recruiters can assess a runner’s skill, consistency, and improvement through high school based solely on result times. T.M. Decl. ¶ 16.

## ARGUMENT

### **I. Andraya and Terry Are Entitled To Intervene As of Right**

“To intervene as of right, a movant must: (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.”

*Brennan v. N.Y.C. Bd. of Educ.*, 260 F.3d 123, 128–29 (2d Cir. 2001) (internal quotation marks omitted). *See* Fed. R. Civ. P. 24(a)(2). Andraya and Terry satisfy every element of this test.

#### **A. Andraya and Terry’s Motion Is Timely.**

Andraya and Terry’s motion to intervene is timely because it has been filed only nine days after Plaintiffs’ complaint, and before any responsive pleadings have been filed by Defendants. *See Tyson v. Alvarez*, No. 17-cv-731, 2018 WL 5961425, at \*1 (D. Conn. Nov. 14, 2018) (holding that motion to intervene was timely where “one defendant has not yet been served” and “discovery has only recently commenced”); *Privacy Matters v. United States Dep’t of Educ.*, No. 16-CV-3015 (WMW/LIB), 2016 WL 6436658, at \*3 (D. Minn. Oct. 27, 2016) (same where “Defendants have not yet answered Plaintiffs’ complaint, no scheduling order has been issued, and discovery has not begun”); Wright & Miller, 7C Fed. Prac. & Proc. Civ. § 1916 (3d ed. 2002) (explaining that “an application made before the existing parties have joined issue in the pleadings has been regarded as clearly timely”).

#### **B. Andraya and Terry Have a Protectable Legal Interest that Could Be Impaired By Disposition of This Action.**

Andraya and Terry have a protectable legal interest in being able to compete in the spring track and field season and in protecting records of their past accomplishments. “For an interest to be cognizable by Rule 24(a)(2), it must be direct, substantial, and legally protectable.”

*Bridgeport Guardians, Inc. v. Delmonte*, 602 F.3d 469, 473 (2d Cir. 2010) (internal quotation

marks omitted). In this case, Plaintiffs' lawsuit poses a direct and substantial threat to Andraya and Terry's interests, which are protected under Connecticut law, Title IX, and the Equal Protection Clause. The relief that Plaintiffs seek is an injunction prohibiting Andraya and Terry from competing in the spring season of track and field and expunging Andraya and Terry from the records of any previous track-and-field season in which they competed.

In similar situations, district courts have routinely held that transgender students have a legally protectable interest when non-transgender students challenge policies at their school protecting them from discrimination. *See Meriwether v. Trustees of Shawnee State Univ.*, No. 1:18-CV-753, 2019 WL 2052110, at \*9 (S.D. Ohio May 9, 2019) (granting intervention to transgender student who "established a specific and direct interest in the subject matter of this litigation, which involves [her school's] Non-discrimination Policy and its application and enforcement for the protection of transgender students"); *Privacy Matters*, 2016 WL 6436658, at \*3 (holding that Jane Doe, a transgender student, had standing to intervene because "Plaintiffs seek preliminary and permanent injunctive relief that would require Doe's school to prohibit Doe from using the school restrooms and locker rooms that align with her gender identity" and explaining that "if Plaintiffs prevail on the merits, she will suffer an injury because her school will immediately stop providing her with equal treatment as required under Title IX, 20 U.S.C. §§ 1681, *et seq.*, and the Equal Protection Clause of the United States Constitution"); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, No. 2:16-CV-524, 2016 WL 4269080, at \*4 (S.D. Ohio Aug. 15, 2016) (holding that Jane Doe, a transgender student, had substantial interest allowing her to intervene in lawsuit seeking to exclude her from using the girls' restrooms).

The Second Circuit's decisions in *Bridgeport Guardians*, 602 F.3d at 473, and *Brennan*, 260 F.3d at 129, are instructive. In both cases, white male employees were allowed to intervene as defendants in employment discrimination cases brought against their employers. The intervening white male employees argued that granting relief to the original plaintiffs, who alleged discrimination against women and racial minorities, would adversely affect intervenors' own employment status and seniority rights. The Second Circuit held that the white male employees could intervene because their legal interests were "the mirror image" of the claims asserted by the original plaintiffs. *Brennan*, 260 F.3d at 130. The white male employees had a right to intervene because the central issue in the case was "whether the remedy [requested by the original plaintiffs] restores circumstances that would have existed but for discrimination or is itself discrimination [against the intervenors]." *Id.* at 130-31; *see Bridgeport Guardians*, 602 F.3d at 474.

The same is true here. Plaintiffs have alleged that allowing Andraya and Terry to play on the same track and field team as other girls violates Plaintiffs' rights under Title IX. Andraya and Terry's defenses are "the mirror image" of those claims. Granting Plaintiffs' requested injunctive relief and banning Andraya and Terry would not remedy any legally cognizable discrimination against Plaintiffs, but would instead constitute unlawful discrimination against Andraya and Terry. *See, e.g., Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (treating boy who is transgender differently than other boys in the context of single-sex restroom access violates Title IX); *Grimm v. Gloucester Cty Sch. Bd.*, 400 F. Supp. 3d 444 (E.D. Va. 2019) (same); *Adams v. Sch. Bd. of St. Johns Cty*, 318 F. Supp. 3d 1293 (M.D. Fla. 2018) (same); *M.A.B. v. Bd. of Educ. of Talbot Cty*, 286 F. Supp. 3d 704, 719-22 (D. Md. 2018) (same); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017) (same).

**C. Movants' Interests Are Not Adequately Represented By an Existing Party.**

Andraya and Terry's interests are not adequately protected by the current defendants. The burden to demonstrate inadequacy of representation is "minimal," *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972), but the Second Circuit has "demanded a more rigorous showing of inadequacy in cases where the putative intervenor and a named party have the same ultimate objective," *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 179 (2d Cir. 2001). Specifically, "[w]here there is an identity of interest . . . the movant to intervene must rebut the presumption of adequate representation by the party already in the action." *Id.* at 179-80. "[R]epresentation by an existing party is determined to be adequate only if the party's 'interests are so similar to those of the intervenor that adequacy of representation is assured.'" *Willis v. Firestone Bldg. Prod. Co.*, 231 F.R.D. 447, 449 (D. Conn. 2005) (quoting *Brennan*, 260 F.3d at 133) (brackets omitted) (emphasis added by *Willis*).

In this case, Andraya and Terry seek to defend the lawfulness of Defendants' policy, but their interests and Defendants' interest are not "so similar . . . that adequacy of representation [is] assured." *Brennan*, 260 F.3d at 133. As the Second Circuit explained in *Brennan*, a defendant faced with competing discrimination claims "may . . . behave like a stakeholder rather than an advocate" because the defendant may have "an equally strong or stronger interest in bringing such litigation to an end by settlements." 260 F.3d at 133; *see also Briscoe v. City of New Haven*, 654 F.3d 200, 203 (2d Cir. 2011) (holding in context of non-party preclusion that city defending racial discrimination claim by white applicants did not adequately represent the interests of non-white applicants with contrary discrimination claims "because their interests are widely divergent").

Once again, the same is true here. Faced with the prospect of expensive litigation, Defendants' have an interest in defending their policy, but they also have an interest in bringing the litigation to a speedy and inexpensive conclusion. Andraya and Terry are the only potential parties with an undivided interest in protecting their rights to equal treatment. *See Wright & Miller*, 7C Fed. Prac. & Proc. Civ. § 1909 (“Since the rule is satisfied if there is a serious possibility that the representation may be inadequate, all reasonable doubts should be resolved in favor of allowing the absentee, who has an interest different from that of any existing party, to intervene so that the absentee may be heard in his own behalf.”).

Moreover, although Defendants may be willing to defend the lawfulness of their current athletic policy, they may not have a similar incentive to argue that the policy is legally required by Title IX and the Equal Protection Clause. *See N.Y. Pub. Interest Research Grp. v. Regents of Univ. of State of N.Y.*, 516 F.2d 350, 352 (2d Cir. 1975) (granting intervention because intervenors would “make a more vigorous presentation of the economic side of the argument than would the [defendants]”); *Meriwether*, 2019 WL 2052110, at \*12 (holding that transgender student’s interests were not adequately represented by university defending nondiscrimination policy because university did not affirmatively argue that the policy was required by the Constitution and Title IX).

Finally, Defendants have neither the same incentive nor the same ability as Andraya and Terry to rebut the numerous factual inaccuracies in Plaintiff’s complaint and to ensure that their personal information and history is correctly presented. Terry and Andraya are best positioned to contest the allegations that are directed at them personally, to provide their responses to the Plaintiffs’ alleged injuries, and to accurately and fully identify the harms that would result from Plaintiffs’ requested relief. They deserve the opportunity to answer these inaccuracies directly,

rather than relying on the Defendants to do so with only partial information. *See, e.g., Day v. Sebelius*, 227 F.R.D. 668, 674 (D. Kan. 2005) (granting intervention where “none of the[] existing defendants are or ever will be personally impacted by [the challenged law]. The proposed intervenors may have access to evidence that the government of the state of Kansas and the officials of Kansas colleges may not have.”)

## **II. In the Alternative, Andraya and Terry Should Be Granted Permissive Intervention.**

Andraya and Terry also satisfy the requirements for permissive intervention under Rule 24(b)(1). On a timely motion, the Court may permit anyone to intervene who has a claim or defense that shares a common question of law or fact with the main action. Fed. R. Civ. P. 24(b)(1). In exercising its discretion, the Court “considers substantially the same factors” as for an intervention as of right. *“R” Best Produce v. Shulman-Rabin Marketing*, 467 F.3d 238, 240 (2d Cir. 2006). “A district court may grant a motion for permissive intervention if the application is timely and if the ‘applicant’s claim or defense and the main action have a question of law or fact in common.’” *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 202 (2d Cir. 2000) (quoting Fed. R. Civ. P. 24(b)(2)).

Permissive intervention is particularly appropriate here because the Defendants may face multiple lawsuits with conflicting results if Andraya and Terry are not joined as parties. Indeed, Federal Rule of Civil Procedure 19(a)(1)(B) specifically instructs that a person is considered an “indispensable party” if they “claim[] an interest relating to the subject of the action and [are] so situated that disposing of the action in the person’s absence may . . . leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.” *See Briscoe*, 654 F.3d at 203 (advising that when faced with potential

competing discrimination suits, an employer should join all interested parties so they can be bound by the same litigation).

The same considerations support granting permissive intervention here. If Andraya and Terry are not permitted to intervene, a settlement or other resolution of the case would likely lead to subsequent litigation by Andraya, Terry, and other transgender student-athletes whose rights are affected under the resolution but not represented in the litigation. *See Students & Parents for Privacy v. U.S. Dep't of Educ.*, No. 16 C 4945, 2016 WL 3269001, at \*3 (N.D. Ill. June 15, 2016) (allowing transgender student to intervene because granting the motion to intervene could obviate subsequent lawsuits).

### CONCLUSION

For all the foregoing reasons, the Motion of Andraya and Thania Edwards on behalf of her daughter T.M. to Intervene should be granted.

Respectfully submitted,

/s/ Dan Barrett

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## **Exhibit 1**

Declaration of Andraya Yearwood

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

SELINA SOULE, *et al.*, )  
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 Plaintiffs, )  
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 EDWARDS on behalf of her daughter, T.M., )  
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No. 3:20-cv-00201-RNC

**DECLARATION OF ANDRAYA  
YEARWOOD**

February 20, 2020

**DECLARATION OF ANDRAYA YEARWOOD IN SUPPORT OF MOTION TO  
INTERVENE**

I, Andraya Yearwood, declare as follows:

1. I am eighteen years old and live in Cromwell, CT. I attend Cromwell High School where I am a senior.
2. I was assigned the sex of male at birth but have always known I was a girl. It was always something that just felt true inside but I did not have the words to share it until I came out as transgender the summer before I started eighth grade. My family supported me throughout my transition. By the time I started high school I was known to everyone as a girl and ever since I have been living all aspects of my life as a girl.

3. I legally changed my name to Andraya and underwent puberty blocking treatment such that I never went through full puberty in my assigned sex. I currently take hormone therapy and have hormone levels typical of non-transgender girls.

4. I started to run track when I was in seventh grade. I love to run and particularly enjoy the connection to and camaraderie with my teammates. Running has been so important for my identity, my growth as a person, and my ability to survive in a world that discriminates against me.

5. I am thankful that I live in Connecticut where I can be treated as a girl in all aspects of life and not face discrimination at school.

6. I have been running on the girls' team since ninth grade and I have always been supported by my teammates and coaches. Everyone at my school knows me and treats me as a girl.

7. During the track season I train 2 hours each day, 5 days each week. I work hard in every thing I do.

8. Both my running and my mental health are negatively impacted by all the media attention and language that people use calling me a "boy" and a "cheater" and saying it is "unfair" for me to run.

9. If I was not on a team for girls, then I would not be able to be on any team.

10. It can be difficult for people to understand but my identity as a girl is just as real as other girls and when I am told that I am a boy or a male, it makes me want to stop running.

11. At the Connecticut State Championship for Class S, I was disqualified in the 55m and my indoor season for the 55m is over. I run track for the full experience and not just to win. In fact, I have frequently placed below the top spots and still enjoy the chance to participate in the sport I love. At multiple meets, Chelsea Mitchell and other non-transgender girls have placed ahead of me in the 55m, the 100m and other races.

12. I have been completely demoralized by the all the negative attention surrounding my high school track career and hope that I can move on to other things in college. I have not been recruited to run track in college and at this time I intend to finish my track career this season. For my final high school season, the only way I can be a part of track is if I continue to participate on the girls' team. I have been on the team for four years, I am a girl, and I want to be treated like a girl.

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

DATED: February 20, 2020

  
\_\_\_\_\_  
ANDRAYA YEARWOOD

**Exhibit 2**  
Declaration of T.M.



5. I have a birth certificate that classifies my sex as female and am known as a girl in all aspects of my life.

6. I have been running track since I was in ninth grade.

7. During the season, I train between 4 and 5 hours each day, 5 days each week.

8. Running track is a central part of my life. I train and compete because it gives me a sense of calm and joy. When I run, I feel free. It is so important for me because so much of my life I have felt trapped. And I know that as a black trans girl I am going to face a lifetime of discrimination. Participating in track helps me feel safe.

9. I am grateful to live in Connecticut, a state that has protected my rights for many years.

10. When I came out as transgender publicly and was diagnosed with gender dysphoria, I started to compete in girls' track because it was essential to my health that I be treated as a girl in all aspects of life. This was in tenth grade.

11. At my school, I have the support of my coaches and teammates who recognize and treat me as a girl. I am a part of the team and it is only people from other schools who call me a boy or try to get me banned from girls' track.

12. At home and outside of track, I have the support of my friends and family who recognize and love me for who I am.

13. The joy I feel from running is often negatively impacted by people who call me a cheater or a boy. I am aware that for the past two years, my name has been constantly used in the media and I have been called a "boy", "a biological male", "a male" and a "cheater". These attacks are deeply painful. I am a girl and every time I am

referred to as anything other than a girl, it hurts and it makes me lose confidence and sends me in a spiral of sadness.

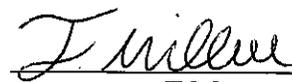
14. I work hard and have enjoyed a lot of success in athletics, which I am grateful for. I have also had times when I have not come in first place, including at the Connecticut State Championship for Class S in the 55m held on Friday, February 14, 2020. Plaintiff Chelsea Mitchell came in first and I came in second. I participate in track not solely to win but mainly for the experience, the competition, the connection and the release. At different times, Chelsea has placed ahead of me in the 55m, the 100m, and the 300m.

15. If I am told that I have to run with the boys, then I won't be able to run at all. I will lose everything that I have trained for and will miss out on my final races of high school.

16. I am hoping to run in college and am still deciding what college to attend. Based on my experience and the experience of my teammates, my understanding is that college recruiters contact and recruit track athletes based on times and not based on placement in individual races. All times for track races are publicly available for recruiters to search and use for scouting.

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

DATED: February 20, 2020

  
\_\_\_\_\_  
T.M.

## **Exhibit 3**

Fed. R. Civ. P. 24(c) Pleading  
Setting Out Defense for Which Intervention is Sought

**ANSWER TO ALLEGATIONS IN COMPLAINT**

1. Admitted that Plaintiffs are three high school girls who compete in interscholastic girls' track and field in Connecticut. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remainder of the allegations.

2. Denied.

3. Denied.

4. Denied.

5. Admitted that the quoted portions of *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 295 (2d Cir. 2004) are accurately reproduced. The remaining allegations are denied.

6. Admitted that this Court has subject matter jurisdiction over claims brought pursuant to Title IX, 20 U.S.C. § 1681. The remainder of the paragraph is denied.

7. Admitted that this Court has subject matter over claims raising questions of federal or vindicated federal civil rights pursuant to 28 U.S.C. §§ 1331, 1343(a). The remainder of the paragraph is denied.

8. Admitted that this Court has power to award declaratory relief and other relief pursuant to 28 U.S.C. §§ 2201, 2202. Denied that Plaintiffs have standing to seek such relief in this case.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

14. Denied that T.M. is male. The remainder of the paragraph is admitted.

15. Denied that Andraya Yearwood is male. The remainder of the paragraph is admitted.

16. Denied that the CIAC policy is discriminatory. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations.

17. Denied that the CIAC policy is discriminatory. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations.

18. Denied that the CIAC policy is discriminatory. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations.

19. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

20. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

21. The allegations in the first sentence are admitted. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations.

22. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

23. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

24. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

25. Denied.

26. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

27. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

28. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

29. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

30. Admitted that Congress enacted Title IX, 20 U.S.C. § 1681, in 1972 and that the quoted portion of the statute is accurately reproduced.

31. Admitted that the quoted portions of *Neal v. Bd. of Trs. of Cal. State Univs.*, 198 F.3d 763, 766 (9th Cir. 1999) are accurately reproduced. Admitted that one of the purposes of Title IX was to eliminate discrimination against women in education.

32. Admitted that the quoted portions of 118 Cong. Rec. 5808 (1972) are accurately reproduced.

33. Admitted that the quoted portions of *Williams v. School District of Bethlehem*, 998 F.2d 168, 175 (3rd Cir. 1993) are accurately reproduced. The remaining allegations are admitted.

34. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence. Admitted that the quoted portions of 34 C.F.R. § 106.41(a) are accurately reproduced. The remaining allegations are denied.

35. Admitted that Congress expressly delegated authority to HEW to promulgate regulations implementing Title IX. Admitted that the regulations and guidance exist where cited. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations concerning the applicability of the Policy Interpretation to high school athletics and the OCR Clarification.

36. Admitted that the quoted portions of 34 C.F.R. § 106.41(c) are accurately reproduced. The remaining allegations are denied.

37. Admitted that the quoted portions of 34 C.F.R. § 106.41(c) and 44 Fed. Reg. 71,413 (1979) are accurately reproduced. The remaining allegations are denied.

38. Admitted that the quoted portions of 34 C.F.R. § 106.41(c) and 44 Fed. Reg. 71,413 (1979) are accurately reproduced. The remaining allegations are denied.

39. Admitted that the quoted portions of the cited documents are accurately reproduced. The remaining allegations are denied.

40. Admitted that the quoted portions of 34 C.F.R. 106.41(b) are accurately reproduced. The remaining allegations are denied.

41. Admitted that the quoted portions of the cited documents are accurately reproduced. The remaining allegations are denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations.

49. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations.

50. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations.

51. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations.

52. Admitted that Doriane Lambelet Coleman, Martina Navratilova, Sanya Richards-Ross wrote the quoted statement and that it is accurately reproduced. The substance of the statement is denied.

53. Admitted that Coleman made the quoted statement and that it is accurately reproduced. The substance of the statement is denied.

54. Admitted that data in the tables are accurate. The remaining allegations are denied.

55. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence. The remaining allegations are denied.

56. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence. The remaining allegations are denied.

57. Denied that CeCe Telfer is male. Intervenor object to Plaintiffs' references to Ms. Telfer's former name and those allegations are, therefore, denied. Intervenor lack sufficient knowledge or information to form a belief about the truth of the remaining allegations.

58. Intervenor object to Plaintiffs' references to Ms. Telfer's former name and those allegations are, therefore, denied. Intervenor lack sufficient knowledge or information to form a belief about the truth of the remaining allegations.

59. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations

60. Denied.

61. Denied that males, boys, and men are competing in girls' and women's categories. The remaining allegations are also denied. The allegations in the heading III.C. are denied.

62. Denied that males, boys, and men are competing in girls' and women's categories. The remaining allegations are also denied. The allegations in the heading III.C. are denied.

63. Intervenor lack sufficient knowledge or information to form a belief about the truth of the allegations about unspecified "multiple sources." The allegations in the heading III.C. are denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. The allegations in the paragraph are admitted. The allegations in the heading IV.A. are denied.

69. The allegations in the paragraph are admitted. The allegations in the heading IV.A. are denied.

70. Denied that CIAC policy “allow[s] boys who identify as girls to compete in girls’ athletic events.” Under the CIAC policy, “the school district shall determine a student’s eligibility to participate in a CIAC gender specific sports team based on the gender identification of that student in current school records and daily life activities in the school and community at the time that sports eligibility is determined for a particular season.” The school district must “determine[] that the expression of the student’s gender identity is bona fide and not for the purpose of gaining an unfair advantage in competitive athletics.” The allegations in the heading IV.A. are denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied that Andraya Yearwood and T.M. have “taken . . . women’s state championship titles” and “opportunities to participate in higher level competitions” away “from female track athletes.” Denied that allowing girls who are transgender to participate on girls’ sports teams has an “adverse impact on girls and young women.”

78. The allegations in the paragraph are admitted. The allegations in heading IV.B. are denied.

79. Denied that the cited records reflect “male athletes competing in women’s events.”

80. Denied that the records cited in Tables 7 and 8 state that Andraya Yearwood's sex is "M."

81. Denied.

82. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations about unspecified "different girls". The allegations in heading IV.B. are denied.

83. Denied.

84. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations from an unspecified source. The allegations in heading IV.B. are denied.

85. Denied.

86. Denied that Andraya "deprived a girl of a statewide title and opportunity to advance to still high levels of competition that she had rightfully earned." Denied that Plaintiff Chelsea Mitchell was denied "the nearly unprecedented opportunity to qualify for the New England Regional Championships" as a fourteen-year old freshman. Plaintiff Chelsea Mitchell placed third in the 2017 CIAC State Open Women's Outdoor Track for the 200-meter dash, and she went on to compete in the 2017 New England Regional Championships for the same event, where she placed second. Andraya placed eighth in the 2017 CIAC State Open Women's Outdoor Track for the 200-meter dash, and she did not qualify for the 2017 New England Regional Championships for the same event. Denied that the records cited in Table 9 state that Andraya Yearwood's sex is "M." The allegations in heading IV.B. are denied.

87. Denied.

88. The allegations in the first sentence are denied. The remaining allegations in the paragraph are admitted. The allegations in heading IV.B. are denied.

89. Denied. Denied that the records cited in Table 10 state that Andraya Yearwood's sex and T.M.'s sex is "M." The allegations in heading IV.B. are denied.

90. Denied that the 2019 State Indoor Open "saw similar results and a similar impact." Denied that Andraya and T.M. "defeat[ed] the fastest girl." Denied that the records cited in Tables 11 and 12 that Andraya Yearwood's sex and T.M.'s sex is "M." The allegations in heading IV.B. are denied.

91. Denied that CIAC's policy was the "but for" cause of other girls' placement. The allegations in heading IV.B. are denied.

92. Denied that CIAC's policy was the "but for" cause of other girls' placement. The allegations in heading IV.B. are denied.

93. Denied that CIAC's policy was the "but for" cause of other girls' placement. The allegations in heading IV.B. are denied.

94. Denied that CIAC's policy was the "but for" cause of other girls' placement. The allegations in heading IV.B. are denied.

95. Denied that only State Open Champions are recognized as All State Athletes. CIAC Class State Champions are also recognized as All State Athletes. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations. The allegations in heading IV.B. are denied.

96. Denied that Plaintiff Chelsea Mitchell was denied "accolades and publicity she earned." Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations. The allegations in heading IV.B. are denied.

97. Denied that T.M. is a male athlete. The remaining allegations in the paragraph are admitted. The allegations in heading IV.B. are denied.

98. Admitted that T.M. placed first in the 200m in 2019 State Outdoor Open. The remaining allegations are denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Intervenors lack sufficient knowledge or information to form a belief about the truth of the placement as to each competitor. Denied as to the characterization of the table. The remaining allegations are denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Intervenors lack sufficient knowledge or information about what Plaintiff Alanna Smith knows to form a belief about the truth of that allegation. Denied that she or anyone else is competing against males. The remaining allegations are denied.

112. Intervenors lack sufficient knowledge or information about the feelings of Plaintiffs to form a belief about the truth of that allegation. Denied that Plaintiffs are competing against male athletes. The remaining allegations are denied.

113. Intervenors lack sufficient knowledge or information about the experiences and feelings of Plaintiffs to form a belief about the truth of those allegations. Denied that Plaintiffs are competing against male athletes. The remaining allegations are denied.

114. The allegations in the first sentence are denied. Admitted that the newspaper quote is accurately reproduced. Intervenors lack sufficient knowledge or information to form a belief about the truth of the substance of the allegations by the unspecified source. The allegations in heading IV.B. are denied.

115. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations. The allegations in heading IV.B. are denied.

116. Admitted that Plaintiffs filed a complaint with the U.S. Department of Education for Civil Rights on June 18, 2019. Denied that the allegations in the complaint are true. All other allegations, including those in heading IV.C., are denied.

117. Denied.

118. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations. The allegations in heading IV.C. are denied.

119. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations. The allegations in heading IV.C. are denied.

120. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations. The allegations in heading IV.C. are denied.

121. Deny that “accurate credit to girls who would have been recognized as victors but for Defendants’ violations of Title IX,” or that Title IX was violated. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations. The allegations in heading IV.C. are denied.

122. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations. The allegations in heading IV.C. are denied.

123. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations. The allegations in heading IV.C. are denied.

124. Deny that “accurate credit to girls who would have been recognized as victors but for Defendants’ violations of Title IX,” or that Title IX was violated. Intervenors lack sufficient knowledge or information to form a belief about the truth of the remaining allegations. The allegations in heading IV.C. are denied.

125. The allegations in the paragraph are admitted. Denied that plaintiffs are entitled to injunctive relief.

126. The allegations in the paragraph are admitted. Denied that plaintiffs are entitled to injunctive relief.

127. Denied.

128. Denied.

129. The allegations in the paragraph are admitted. Denied that plaintiffs are entitled to injunctive relief.

130. Denied that T.M. is a male athlete. The allegation in the remainder of the sentence is admitted.

131. Denied that Andraya Yearwood is a male athlete. The allegation in the remainder of the sentence is admitted.

132. Denied.

133. Denied. Plaintiff Chelsea Mitchell won first place in both the 55m and 300m events for the 2020 Indoor Class S Championship. T.M. placed second in the 55m and placed sixteenth in the 300m.

134. Denied.

135. The allegations in the paragraph are admitted. Denied that plaintiffs are entitled to injunctive relief.

136. Denied.

137. Denied. Plaintiff Chelsea Mitchell won first place in both the 55m event for the 2020 Indoor Class S Championship. Andraya Yearwood failed to place. Also denied that the cited records cited in Table 15 state that Andraya Yearwood's sex and T.M.'s sex is "M."

138. The allegations in the paragraph are admitted. Denied that plaintiffs are entitled to injunctive relief.

139. The allegations in the paragraph are admitted. Denied that plaintiffs are entitled to injunctive relief.

140. The allegations in the paragraph are admitted. Denied that plaintiffs are entitled to injunctive relief.

141. Denied. Plaintiff Selina Soule placed tenth in the preliminaries for the 55m for the 2020 Indoor Class LL Championship and is not eligible to advance to the State Open. None of the athletes that placed ahead of Plaintiff Selina Soule is known to be transgender.

142. Denied.

143. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence. The allegations in the second sentence are admitted. Denied that plaintiffs are entitled to injunctive relief.

144. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations. Denied that plaintiffs are entitled to injunctive relief.

145. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence. The allegations in the second sentence are denied. Denied that plaintiffs are entitled to injunctive relief.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

151. The allegations in the first two sentences are admitted. The allegations in the third sentence are denied. Denied that plaintiffs are entitled to injunctive relief.

152. Denied.

153. Denied.

154. Denied.

155. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

156. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

165. Intervenors lack sufficient knowledge or information to form a belief about the truth of the allegations.

166. Denied.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. Denied.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs lack Article III standing because they have failed to allege an injury in fact that concrete, particularized and actual or imminent; fairly traceable to the challenged action and redressable by a favorable ruling.

2. Plaintiffs have failed to state a claim upon which relief can be granted.

3. Plaintiffs are not entitled to the requested relief because they have not established irreparable harm, the balance of equities tips against them, and the requested relief would be contrary to the public interest.

4. Plaintiffs' claims are barred by Title IX and the Equal Protection Clause.