

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s) 20-35813; 20-35815

Case Name Lindsay Hecox, et al. v. Bradley Little, et al.

**Counsel submitting
this form** W. Scott Zanzig

**Represented party/
parties** Please see Attachment 1

Briefly describe the dispute that gave rise to this lawsuit.

Two plaintiffs brought facial and as-applied challenges to the constitutionality of a newly enacted Idaho statute, the Fairness in Women's Sports Act, Idaho Code §§ 33-6201 through -6206. The Act permits three kinds of sports teams: male, female, and co-ed. It promotes fair opportunities to female athletes by prohibiting males from participating in female sports. This prohibition is enforced by allowing any person to challenge the biological sex of a student participating in female sports. If the challenged athlete is unable to establish they are a biological female, they are not allowed to participate.

Briefly describe the result below and the main issues on appeal.

The defendants moved to dismiss, and the plaintiffs moved for a preliminary injunction, seeking an order enjoining enforcement of the Act. The district court granted the motion to dismiss in part, dismissing the plaintiffs' facial challenge. The court also granted the plaintiffs' preliminary injunction motion. It determined that the plaintiffs were likely to succeed on their claims that the Act violates the Equal Protection Clause. The court held that the Act discriminates against transgender females, because their biological sex (male) renders them ineligible to participate in female sports. The court also held that the Act discriminates against cisgender females, because it subjects them to the risk that they will have to establish their biological sex if challenged. The defendants, along with two intervenors, appealed the preliminary injunction order. A primary issue on appeal is whether the district court erred by rejecting an argument advanced by the defendants, the intervenors, and the United States (which filed a statement of interest in support of the Act). That argument: Ninth Circuit precedent holds that rules prohibiting males from participating in female sports satisfy heightened scrutiny due, at least in part, to the physiological advantages males enjoy over women in athletics. *Clark ex rel. Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1127 (9th Cir. 1982); *Clark ex rel. Clark v. Arizona Interscholastic Ass'n*, 886 F.2d 1191, 1192 (9th Cir. 1989).

Describe any proceedings remaining below or any related proceedings in other tribunals.

The plaintiffs seek declaratory and permanent injunctive relief. This request is based on several theories, including the Equal Protection theory the district court relied on to grant its preliminary injunction. Discovery has not yet begun, and no trial date has been set.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

ATTACHMENT 1

**UNITED STATES COURT OF APPEALS
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***Lindsay Hecox, et al. v. Bradley Little, et al.,* USCA Case No. 20-35813**

Represented party/parties:

BRADLEY LITTLE, in his official capacity as Governor of the State of Idaho; **SHERRI YBARRA**, in her official capacity as the Superintendent of Public Instruction of the State of Idaho and as a member of the Idaho State Board of Education; **THE INDIVIDUAL MEMBERS OF THE STATE BOARD OF EDUCATION**, in their official capacities; **BOISE STATE UNIVERSITY**; **MARLENE TROMP**, in her official capacity as President of Boise State University; **INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1**; **COBY DENNIS**, in his official capacity as superintendent of the Independent School District of Boise City #1; **THE INDIVIDUAL MEMBERS OF THE BOARD OF TRUSTEES OF THE INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1**, in their official capacities; **THE INDIVIDUAL MEMBERS OF THE IDAHO CODE COMMISSION**, in their official capacities

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