

**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** Roger G. Brooks
Alliance Defending Freedom

**Represented party/
parties** Intervenor Madison Kenyon and Mary Marshall

Briefly describe the dispute that gave rise to this lawsuit.

The Fairness in Women's Sports Act, Idaho Code §§ 33-6201 through -6206, was enacted in 2020 to protect equal opportunities in athletics for female students in Idaho. The Act permits three kinds of sports teams: male, female, and co-ed, and provides that when public schools or universities or educational institutions compete in athletics with public schools or universities, teams designated for females, women or girls shall only be open to biological females. The Act further provides a mechanism for resolution of a dispute concerning the biological sex of a competitor who seeks to participate on a team designated for females, women, or girls, should such a dispute arise. The Act creates a private right of action, against the responsible educational institution, for any student who is deprived of an athletic opportunity as a result of the Act's violation.

Plaintiffs brought facial and as-applied claims, alleging that the Act violates rights of biological males who claim a female gender identity under several theories. Plaintiffs filed a motion for preliminary injunction based only on the Equal Protection claim.

Defendants moved to dismiss. Intervenor defendants, two female collegiate athletes at Boise State University, filed a motion to intervene to defend the Act.

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

The United States filed a Statement of interest in support of the Act's validity. The district court granted the motion to intervene and dismissed Plaintiffs' facial challenges, but it declined to dismiss the as-applied challenges.

The court preliminarily enjoined defendants "from enforcing any of the provisions" of the Act, reasoning that the Act violated Equal Protection by discriminating against biological males who claim a female gender identity by denying them the opportunity to participate in female sports. The court also held that the Act discriminates against females, because it subjects them (and not males) to a risk that they will have to establish their biological sex if challenged. All Defendants appealed the preliminary injunction order.

Issues on appeal include whether the Act discriminates at all based on gender identity; what level of scrutiny should be applied; whether in light of average physiological advantages enjoyed by males the Act is substantially related to furthering an important governmental interest in protecting equal athletic opportunities for females students, and whether *Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126 (9th Cir. 1982) is controlling on that question; whether the court erred in construction of the Act's provision concerning verification of female biological sex if challenged; and whether the scope of the injunction entered was consistent with law.

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

Discovery has not yet begun, and no trial date has been set.

Signature s/ Roger G. Brooks

Date 09/21/2020

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