

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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 SELINA SOULE, A MINOR, BY : No. 3:20CV201 (RNC)
 BIANCA STANESCU, HER MOTHER, :
 CHELSEA MITCHELL, A MINOR, BY :
 CHRISTINA MITCHELL, HER MOTHER, :
 ALANNA SMITH, A MINOR, BY :
 CHERYL RADACHOWSKY, HER MOTHER, :
 :
 Plaintiffs, :
 :
 vs :
 :
 CONNECTICUT ASSOCIATION :
 OF SCHOOLS, INC., D/B/A :
 CONNECTICUT INTERSCHOLASTIC :
 ATHLETIC CONFERENCE, ET AL. :
 : HARTFORD, CONNECTICUT
 Defendants. : APRIL 16, 2020
 :
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TELEPHONE CONFERENCE ON MOTIONS

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

DARLENE A. WARNER, RDR
OFFICIAL COURT REPORTER

APPEARANCES:

FOR THE PLAINTIFFS:

ALLIANCE DEFENDING FREEDOM
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FOR THE DEFENDANTS:

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BY: LINDA L. YODER, ESQ.
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BY: JOHANNA G. ZELMAN, ESQ.

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BY: DAVID S. MONASTERSKY, ESQ.

FOR THE PROPOSED INTERVENORS:

AMERICAN CIVIL LIBERTIES UNION - NY
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BY: JOSHUA A. BLOCK, ESQ.
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BY: MICHAEL ROBERTS, ESQ.

10:00 A.M.

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3 THE COURT: Good morning, this is the Judge
4 speaking. The announcement informs me that there are 16
5 people who are participating in this telephone conference.
6 That's quite a large group.

7 Why don't we do a roll call starting with
8 plaintiffs' counsel.

9 Would you please state your appearances for the
10 record?

11 MR. BROOKS: Roger Brooks with Alliance
12 Defending Freedom on behalf --

13 MR. SHAFER: Jeff Shafer --

14 (Telephone interference)

15 THE COURT: Excuse me. I'm having some trouble
16 here.

17 May I suggest that anybody on this call who is
18 not in the process of speaking should mute whatever phone
19 they're using. That may help. So please keep your phone
20 on mute unless I call on you to speak.

21 Let's try again. Let's start with the
22 appearances of counsel for the plaintiffs.

23 MR. BROOKS: Roger Brooks with Alliance
24 Defending Freedom on behalf of the plaintiffs.

25 MR. SHAFER: Jeff Shafer with Alliance Defending

1 Freedom on behalf of the plaintiffs.

2 MS. HOLCOMB: Christiana Holcomb, Alliance
3 Defending Freedom on behalf of plaintiff.

4 MR. HOWARD: James Howard, Fiorentino, Howard
5 Petrone also on behalf of the plaintiffs.

6 THE COURT: Which of you will be speaking on
7 behalf of the plaintiffs in this call?

8 MR. BROOKS: Roger Brooks.

9 THE COURT: All right, thank you.

10 Now let's turn to defense counsel. Why don't we
11 start with counsel for the Connecticut Association of
12 Schools.

13 MS. YODER: Linda Yoder representing the
14 Connecticut Association of Schools and also the Danbury
15 Board of Education.

16 THE COURT: Okay.
17 Counsel for Bloomfield?

18 MS. ZELMAN: Johanna Zelman representing
19 Bloomfield Board of Education and Cromwell Board of
20 Education.

21 THE COURT: And Canton?

22 MR. MONASTERKSY: David Monastersky representing
23 Canton and Glastonbury Board of Educations.

24 THE COURT: Is that everybody on behalf of the
25 school boards?

1 MR. MURPHY: Peter Murphy here, Your Honor, too
2 with Linda Yoder for Connecticut Association of Schools
3 and Danbury.

4 THE COURT: All right, thank you.

5 Now, turning to the proposed interveners.

6 MR. BLOCK: Thank you, Your Honor, this is Josh
7 Block on behalf of proposed interveners Andraya and Terry;
8 and with me on the line also are Chase Strangio and Dan
9 Barrett.

10 THE COURT: Which of you will be speaking on
11 behalf of these proposed interveners during this call?

12 MR. BLOCK: I will be speaking, Joshua Block.

13 THE COURT: All right, thank you.

14 CHRO?

15 MR. ROBERTS: Yes, Your Honor, Michael Roberts
16 for the CHRO.

17 THE COURT: All right. Is there anybody we've
18 missed?

19 (Pause)

20 THE COURT: Hearing nothing, I assume that
21 everyone who wants to enter an appearance has done so.

22 Proceeding from there, this is a telephone
23 conference to address the pending motions to intervene,
24 ECF documents 36 and 43.

25 I have read the papers that you have submitted

1 in support of and in opposition to these motions, and in
2 this telephone conference you will have an opportunity to
3 make any additional presentations you wish.

4 Why don't we start with counsel for the
5 individuals who propose to intervene as defendants
6 Yearwood and Edwards.

7 Is there anything you would like to add to your
8 papers?

9 MR. BLOCK: Thank you, Your Honor. This is
10 Joshua Block. I guess only very, very briefly.

11 We think this is a textbook case for
12 intervention under the Second Circuit's decision in
13 Brennan and Bridgeport Guardians. It's a case where you
14 have two mirror image claims of discrimination and the
15 fundamental question is whether granting the relief to the
16 plaintiffs would cure discrimination or rather inflict
17 discrimination on my client.

18 I think that the Second Circuit's cases are
19 clear that the school or employer is really just a
20 stakeholder in those claims and that our interest
21 fundamentally cannot be adequately represented.

22 And I think that's also confirmed by all the
23 cases we've cited in which transgender students have been
24 allowed to intervene in similar circumstances.

25 And then just on permissive intervention, I

1 think in addition to us needing to protect our own
2 interest, our clients are most directly affected. They
3 have the most knowledge about their own medical treatments
4 and about the races they race in. And this is a situation
5 where our clients are going to be in the middle of
6 discovery, either as witnesses or as parties, and they're
7 going to be subject to a great many discovery requests.

8 And we think that it would be sort of
9 fundamentally unfair to have them so involved in a lawsuit
10 that is fundamentally about them without them having the
11 agency to represent their own interests in that process.

12 So unless the Court has any further questions,
13 that's all we have to say.

14 THE COURT: All right. I do have some follow-up
15 questions.

16 The plaintiffs focus on the adequacy of
17 representation element of the analysis and argue that you
18 have failed to overcome the presumption of adequacy of
19 representation.

20 In the cases that you cite, the one that seemed
21 to me to be most on point, looked carefully at the
22 question whether the proposed intervenors would seek to
23 raise arguments that the existing party had failed to make
24 in a then pending motion to dismiss.

25 The Court concluded that the presumption of

1 adequacy of representation was overcome because there was
2 the significant difference between the arguments the
3 proposed intervenor wished to make and the arguments that
4 had been made at that point in the pending motion to
5 dismiss.

6 With that precedent in mind, can you please
7 explain for me whether your clients would make arguments
8 that the existing parties are not going to make and if so,
9 what are those arguments and how do they differ from the
10 arguments that the existing parties are intending to
11 present?

12 MR. BLOCK: Thank you, Your Honor. I'm happy to
13 address that question; and then I want to say afterwards,
14 I don't think that that's an essential requirement.

15 But to answer the specific question: Our
16 clients, you know, intend to argue that excluding them or
17 excluding transgender girls, especially them, from
18 participating on girls' teams based on their chromosomes,
19 would affirmatively violate Title IX, and that it would
20 affirmatively violate the Equal Protection Clause.

21 And the school boards are not usually in the
22 business of arguing that actions they take will place
23 themselves in legal jeopardy under Title IX or the Equal
24 Protection Clause because, you know, they're often sued by
25 transgender students as well.

1 So I think that is the fundamental set of
2 arguments that we intend to make and we're in the best
3 position to make.

4 I do think that the precedent from -- Meriwether
5 is I think the case you were referencing -- I think in
6 that case the facts that deal with the motion to dismiss
7 that has been filed and was being reviewed, was really
8 icing on the cake, that the standard is whether adequacy
9 of representation is assured. And it's not whether it's
10 already been proven, it's whether there's a substantial
11 risk of lack of adequacy of representation. And I don't
12 think the Court has to wait for motions to dismiss to be
13 filed before making that determination.

14 And I guess the one additional fact I would
15 bring to light is the followup to the Ricci case in which
16 the City of New Haven affirmatively argued that they would
17 be subject to disparate impact liability if they had not
18 set aside the firefighter exam; and nevertheless, after
19 they lost that case, African American firefighters were
20 allowed to bring their counter suit.

21 So even if our interest would otherwise be
22 adequately represented, we're not going to be bound by the
23 judgment unless we are parties. And so the risk of
24 conflicting lawsuits here is inevitable unless we are
25 actually bound to the judgment in this case.

1 THE COURT: Thank you.

2 Picking up on that last point, by way of
3 clarification with regard to the risk of future lawsuits,
4 as we all know, sadly, Connecticut is in lockdown and it
5 appears that Connecticut is likely to remain in lockdown
6 for some significant period of time, making it highly
7 unlikely that your clients will be given an opportunity to
8 run yet again as high school athletes, unfortunately; and
9 so I'm wondering, what is the risk of a future lawsuit by
10 your clients if the plaintiffs in this case managed to
11 prevail?

12 As a practical matter, how would their interest
13 in the case be impaired? What is the claim for relief
14 that remains of concern to them personally, given the
15 indefinite suspension of the track season and how would
16 that interest be impaired if they weren't permitted to
17 intervene as parties now?

18 MR. BLOCK: Well, Your Honor, for their request
19 for injunctive relief, plaintiffs are seeking an order
20 requiring the school to expunge all records of our
21 clients' past accomplishments on the girls sports team.

22 So not only records in their possession, it also
23 is to seek out and seek to amend any other records, so
24 their scores, their rankings, their medal awards; and so
25 that is a form of injunctive relief that they're

1 continuing to seek that is targeted directly at our
2 clients.

3 And I believe that they're continuing to seek
4 that form of injunctive relief, you know, precisely
5 because of the standards for injunctive relief and damages
6 can be different under Title IX. And so they -- my
7 understanding is that they are continuing to seek those
8 orders. And I think expunging the records of our clients'
9 competition would be an Article III injury in fact and,
10 you know, would plainly give rise to our own sets of
11 claims.

12 THE COURT: Let me ask you to please pause for a
13 moment, Mr. Block, and call on Mr. Brooks to tell us
14 whether in fact the plaintiffs do intend to continue to
15 seek injunctive relief in the form of expunging records.

16 Mr. Brooks, do they or do they not?

17 MR. BROOKS: Your Honor, the answer to that is,
18 yes, we will continue to seek that relief. That is part
19 of the relief requested.

20 THE COURT: So your point is, Mr. Block, that if
21 the plaintiffs were to prevail on that claim, your clients
22 would be in a position to bring a future lawsuit to seek
23 to have the expungement of the records reversed?

24 MR. BLOCK: That's correct, Your Honor.

25 THE COURT: Okay, is there anything other than

1 the expungement of the records that is at issue here that
2 you think could provide the basis for a future lawsuit if
3 the plaintiffs were to prevail?

4 MR. BLOCK: I don't think there is another thing
5 that would provide us with an Article III injury in fact,
6 no. I think that we would still qualify as having a
7 legally protectable interest, which is a different
8 standard, and permissive intervention would also still be
9 justified. But I don't think there's another basis for a
10 dueling lawsuit.

11 THE COURT: Again, let me ask you to please
12 pause, Mr. Block, and let me call on counsel for the
13 existing defendants to clarify whether they agree or
14 disagree with your argument that adequacy of
15 representation is not assured.

16 On that point, I'd like to hear first from
17 Attorney Yoder.

18 MS. YODER: Yes, Your Honor. We do support the
19 proposed intervention in this matter. We feel very
20 strongly that the CIAC does not represent individual
21 athletes. In fact, their structure is such that
22 individual athletes address their issues with the public
23 school and the public schools address issues with the
24 CIAC. And one of the original claims raised in this
25 matter was that the CIAC would not speak directly to the

1 parents of one of the plaintiffs.

2 We really feel strongly that we are in the
3 middle here, that the claims have said, you know, on the
4 plaintiffs' side, Title IX is clear and it's preemptive.
5 The guidance from the prior administration was you look to
6 state law and state law is clear and supports the
7 plaintiffs' position.

8 So CIAC believes that all of the proposed
9 interveners are necessary parties here and that we do
10 not -- and in fact have somewhat different interests than
11 the CIAC.

12 THE COURT: What about in your capacity as
13 counsel for Danbury? Do you see a difference of interest
14 that justifies intervention to the individuals?

15 MS. YODER: I do think for Danbury, Danbury
16 feels that it's not a proper party to this action at all
17 because it simply participates in a league that allowed
18 one of the plaintiffs to participate in track.

19 So to ask it to take some action with regard to
20 what another school did with regards to who they put on
21 their roster, Danbury's feeling that it's not in a
22 position to represent any of the claims by the proposed
23 interveners. Because again it simply is a school that
24 participates in the CIAC and allowed one of the plaintiffs
25 through that process to have participated on the track

1 team.

2 So Danbury feels that its position in this case
3 is very different and it would have no -- in defending the
4 claim against it, it is not in any position to defend
5 either of the two individual athletes from the other
6 school. It had no input into their participation, and
7 that's really not the direct claim against it, and it's
8 not in any position to redact any records or change any
9 records.

10 So I think it's in a very different position and
11 very strongly feel that it is not representing the
12 interests of these two individual athletes given the
13 posture of the case.

14 THE COURT: Okay, thank you.

15 Let me call next on Attorney Zelman, please.

16 MS. ZELMAN: Sure, Your Honor, and good morning.

17 So both of the proposed intervenors do attend my
18 clients' school, one in Bloomfield and one in Cromwell.
19 Cromwell and Bloomfield, although will defend this
20 lawsuit, neither believe that they are in or out of the
21 position to completely protect the rights of the two
22 individual athletes.

23 Both strongly agree and support the intervention
24 of them. There are multiple scenarios under which the
25 rights of the individuals in Danbury -- I'm sorry, in

1 Cromwell and Bloomfield could diverge.

2 For example, if Bloomfield and Cromwell could
3 agree to potentially settle the case -- I don't think it
4 would happen, but hypothetically could agree to that --
5 and the individual intervenors, their rights could be
6 affected by any kind of settlement. And certainly that
7 would be something that they would need to participate in
8 to protect their own rights.

9 I also, similar to what Attorney Yoder was just
10 saying, we do not believe Bloomfield or Cromwell are
11 proper parties. We do not believe that the plaintiffs
12 have standing to sue them. And none of the plaintiffs
13 attended either one of these schools. So there is a
14 number of situations under which neither Bloomfield nor
15 Cromwell could adequately represent the interest of the
16 proposed intervenor.

17 I also would say that, in terms of the record, I
18 could foresee a situation where Bloomfield and Cromwell
19 are required to strike a record and we would be under
20 court order to do that, and both intervenors would have
21 their own set of rights to then oppose that. Those would
22 be rights that Bloomfield and Cromwell could not protect.

23 And I will certainly answer any questions that
24 Your Honor may have.

25 THE COURT: Thank you.

1 By way of clarification, what records do your
2 clients have that reflect the accomplishments of the
3 individuals who seek to intervene?

4 MR. ZELLNER: Well, I believe the records are --
5 may be held by the CIAC. I'm not 100 percent sure at this
6 point -- we haven't done discovery -- where all the
7 records are held.

8 But there are acknowledgments in the school
9 records about the winnings of both intervenors. Those
10 would be those tossed. And other acknowledgments that
11 occurred within the school.

12 THE COURT: But as you point out, none of the
13 plaintiffs have attended Bloomfield or Cromwell?

14 MR. ZELLNER: Correct. Bloomfield and Cromwell
15 are where the two proposed intervenors attend school.

16 THE COURT: Right. So if none of the plaintiffs
17 has attended either of your clients' schools, Bloomfield
18 or Cromwell, for them to seek expungement of your records
19 would have to be predicated on something that would give
20 them a particular stake in those records?

21 MR. ZELLNER: Correct. I think there's a
22 fundamental standing issue under Title IX.

23 Title IX does not require my clients to protect
24 the rights of students in attending other schools.

25 THE COURT: With regard to Title IX, is it your

1 intention to argue that Title IX compels your client
2 schools, Bloomfield and Cromwell, to permit the individual
3 interveners to participate as they have done in girls
4 track?

5 MR. ZELLNER: Certainly. And I certainly think
6 that we would argue that state law requires that as well.

7 THE COURT: Would you also invoke their rights
8 under the Equal Protection Clause?

9 MR. ZELLNER: At this point I don't believe so.

10 THE COURT: Okay.

11 MR. ZELLNER: I'm not sure that my clients in
12 the district have standing to invoke the equal --
13 individual equal protection rights of two students that
14 attend those schools.

15 THE COURT: All right, thank you.

16 MR. ZELLNER: Sure, my pleasure.

17 THE COURT: Mr. Monastersky?

18 MR. MONASTERSKY: Yes, Your Honor.

19 So Canton and Glastonbury are essentially in the
20 same position that Danbury is in in the fact that two of
21 the plaintiffs attend those districts respectively.

22 My clients certainly are not going to be
23 asserting the individual rights of the intervening
24 plaintiffs, and we are not in a position to be arguing for
25 their -- certainly their equal protection rights or even

1 their Title IX rights.

2 I'm simply going to be defending my clients'
3 actions in this matter, and which were simply as Attorney
4 Yoder explained, were simply permitting plaintiffs to
5 participate on track teams.

6 So I don't -- I am not in the position, and my
7 clients are not in the position, of asserting the rights
8 of the individuals. And, frankly, we're not concerned
9 about protecting the rights of the individuals.

10 THE COURT: All right, thank you.

11 (Pause)

12 THE COURT: Mr. Block, coming back to you at
13 this point, we have talked a bit about the plaintiffs'
14 request for an injunction expunging records. Are you in a
15 position to tell me this morning what records would be of
16 interest to your clients in that regard?

17 In other words, if they were to find themselves
18 in a position whereby records were at risk for being
19 expunged, can you tell me what records would be of concern
20 to them in particular?

21 MR. BLOCK: Well, Your Honor, I don't have as
22 much insight into the recordkeeping practices and what
23 specifically plaintiffs are seeking to expunge. I think
24 in addition to, you know, trophies, history of awards,
25 there's the -- every runner's times for every race they've

1 run is publicly available and posted on these websites for
2 track and field teams, and that website is cited
3 repeatedly in the complaint.

4 I read the requested injunction as requiring
5 CIAC to seek out and attempt to correct those records as
6 well. It's essentially to whatever extent possible,
7 taking all steps to erase the records of, you know, my
8 clients' times.

9 And if you look up on this website, it shows,
10 you know, they ranked this number at the state level, they
11 ranked stat number of New England. It's just a public
12 record of all their races and their best scores.

13 And so I -- maybe plaintiffs can clarify the
14 scope of the injunction they're requesting, but because I
15 think their claims are tied to an injury from lack of
16 public recognition, that they are seeking not just to
17 affect the internal recordkeeping of CIAC, but to, you
18 know, erase the public manifestations of their
19 accomplishment to the extent that CIAC can make those
20 requests or seek corrections from third parties.

21 THE COURT: Let me follow up by once again
22 turning to Attorney Brooks.

23 Mr. Brooks, please be as helpful as you can be
24 this morning in explaining what your clients would be
25 seeking with regard to expungement of records.

1 What records do you have in mind and what basis
2 would they have for seeking expungement of those records?

3 MR. BROOKS: Well -- and for the court reporter,
4 this is Roger Brooks speaking.

5 For the CIAC itself -- and again, as a lot of my
6 colleagues said earlier, we've not had discovery and what
7 I say today may not be fully accurate because I do not
8 have it. My understanding is the CIAC itself, and to a
9 lesser extent, individual schools, maintain records of
10 awards and championships in publicly available forms which
11 may be boxed on the wall, or more commonly this day and
12 age it's online on websites. And certainly part of our
13 request would be that the defendant organizations, schools
14 and CIAC correct those records to reflect what should have
15 been the achievements of various girls and young women in
16 various races.

17 It is also true that times, results from races,
18 are maintained -- well, of course they're published in the
19 press sometimes -- and they are maintained by a private
20 service, as Mr. Block mentioned. Nobody can tell the
21 press what to print and we wouldn't seek that.

22 And as for the private organization, they're not
23 a party, and I think the limit of what we would seek would
24 be asking that CIAC send corrected and accurate
25 information to that organization, or those organizations

1 if there are more than one, and then what they do with
2 that, of course they would be directly subject to an order
3 of this Court, and that would be in their hands.

4 THE COURT: So if we take each of your
5 plaintiffs in turn, we start with the first named
6 plaintiff, Ms. Soule, what record would she seek to have
7 altered, expunged or corrected?

8 I gather from what you have just said that she
9 would call on CIAC to do something by way of altering
10 records to reflect that but for the participation of the
11 proposed interveners, she would have won or placed?

12 MR. BROOKS: We put all that in great detail in
13 the complaint, and I don't have that memorized or in front
14 of me at the moment.

15 But, yes, if there's a record that says that she
16 came in third and absent the participation of a male
17 competitor, she would have come in second, then the
18 request would be that the records be corrected to reflect
19 that reality. And on a race-by-race basis followed by a
20 time-by-time basis, perhaps not exhaustively, but
21 extensively, put those details in the complaint.

22 I apologize it, I don't have it at my fingertips
23 this morning.

24 THE COURT: Okay. Given the impact of the
25 lockdown on the reality of our lives in Connecticut,

1 including the reality of this case, the request for
2 injunctive relief with regard to records seems to loom
3 larger at this point than it did before, and I would very
4 much appreciate a statement from the plaintiffs to be
5 filed on the docket setting out exactly what that request
6 for injunctive relief entails.

7 I understand that you haven't had discovery,
8 that's certainly fair for you to point out, but there must
9 be some basis for this claim, and given its centrality to
10 this case at this point, it would be most helpful to me if
11 I had such a statement from you; and it would be
12 particularly helpful if you could set forth each
13 individual plaintiff's request for injunctive relief.

14 If a plaintiff did not attend a defendant
15 school, I'd be interested to know what records that
16 plaintiff would ask that school to alter; and if there is
17 no such request being made, then would you please tell me
18 that so there's no misunderstanding.

19 MR. BROOKS: Your Honor, we can certainly do
20 that within the bounds of our present understanding.

21 I will say that our focus definitely at this
22 point is -- and this is, of course, assuming that there's
23 no tag in spring season that gets active, our focus is on
24 protecting the winter season, which may require us to
25 return to the question of a preliminary protection.

1 So our primary focus right now is on protecting,
2 for the plaintiff who will be at school next year,
3 protecting a season, and correcting records is -- it's
4 important, but it doesn't have the same immediate urgency.

5 But we're happy to provide what you request to
6 the best of our present understanding.

7 THE COURT: And when could you provide that?

8 I'd like to have it as soon as reasonably
9 possible.

10 MR. BROOKS: Well, is the end of next week
11 workable, Your Honor?

12 THE COURT: Yes, that's fine.

13 Then we'll look forward to seeing that on the
14 docket before the end of the business day a week from
15 tomorrow.

16 In the meantime, and I don't want to prolong
17 this unduly, but I think it's helpful when we're all on
18 the phone if we take advantage of the opportunity to try
19 to get a clear idea of what we're dealing with here.

20 You refer to the winter season. I understand
21 that two of the three plaintiffs will be graduating and
22 both of the interveners, the proposed intervenors, are
23 graduating. Where does that leave this case with regard
24 to the so-called winter season?

25 MR. BROOKS: Well, as far as impact on the

1 plaintiffs' impact, essential impact would be on Alanna
2 Smith.

3 With regard to the graduation of the two
4 proposed intervenors, that leaves us in the situation
5 where over the last three years, plaintiffs, including
6 Alanna, when she arrived in high school has faced
7 competition from male athletes. In at least one of those
8 cases, really by a surprise, an athlete from the previous
9 season had competed in boys track and field.

10 So absent discovery and given the way the CIAC
11 policy works of confidentiality and non-disclosure, we
12 don't know, but the reality of the last experience is this
13 is a real and impending threat to next season as well. We
14 need discovery to find out, and we need to find out if the
15 situation we face indicates preliminary relief.

16 So obviously I anticipate a dispute about that.
17 But that's -- if we wait until the season starts, as it's
18 been very clear, it will be too late to get through a
19 process to get relief. So we can't realistically wait
20 until the season starts and see who shows up on the
21 starting line.

22 THE COURT: What grade is Alanna in at the
23 moment?

24 MR. BROOKS: She's in tenth grade this year, so
25 she'll be a junior next year.

1 THE COURT: Is she aware, to your knowledge, of
2 any other participant in female track who is transgender
3 besides the people who are named in the complaint?

4 MR. BROOKS: To my knowledge, she is not aware,
5 just as Selina was not aware, of transgender athletes
6 until she abruptly met them on the track.

7 THE COURT: All right, thank you.

8 Let me raise a point that undoubtedly will cause
9 some consternation for you, Mr. Brooks, and your
10 colleagues, but I exercise my prerogative as the presiding
11 judge in this instance and I hope you will forgive me.

12 I don't think we should be referring to the
13 proposed intervenors as "male athletes." I understand
14 that you prefer to use those words, but they're very
15 provocative, and I think needlessly so. I don't think
16 that you surrender any legitimate interest or position if
17 you refer to them as transgender females. That is what
18 the case is about. This isn't a case involving males who
19 have decided that they want to run in girls' events. This
20 is a case about girls who say that transgender girls
21 should not be allowed to run in girls' events.

22 So going forward, we will not refer to the
23 proposed intervenors as "males"; understood?

24 MR. BROOKS: Your Honor, I hear what you're
25 saying. If I may respond?

1 THE COURT: No, no, I just want to be sure you
2 understand what I'm saying.

3 MR. BROOKS: May I respond?

4 THE COURT: If you first tell me you understand
5 what I'm saying.

6 MR. BROOKS: I do understand what you're saying.

7 THE COURT: All right, then go ahead. If you
8 want to respond, go right ahead.

9 MR. BROOKS: Your Honor is right that this is
10 exactly what the case is about.

11 The entire focus of the case has to do with the
12 fact that male bodies have a physiological advantage over
13 female bodies that gives them an unfair advantage to
14 competition.

15 The entire focus of the case is the fact that
16 the CIAC policy allows individuals who are
17 physiologically, genetically male to compete in girls'
18 athletics.

19 But if I use the term "females" to describe
20 those individuals -- and we've said in our opening brief,
21 we're happy to use their preferred names, because
22 names are not the point to the case. Gender identity is
23 not the point of this case. The point of this case is
24 physiology of bodies driven by chromosomes and the
25 documented athletic advantage that comes from a male body,

1 male hormones, and male puberty in particular.

2 So, Your Honor, I do have a concern that I am
3 not adequately representing my client and I'm not
4 accurately representing their position in this case as it
5 has to be argued before Your Honor and all the way up if I
6 refer to these individuals as "female," because that's
7 simply, when we're talking about physiology, that's not
8 accurate, at least in the belief of my clients.

9 So I believe --

10 THE COURT: I'm fairly --

11 MR. BROOKS: I --

12 THE COURT: Go ahead, I'll let you finish.

13 MR. BROOKS: So I believe, consistent with
14 vigorous representation of my clients, I am not -- as I
15 sit here right now, Your Honor, this is a serious thing to
16 say -- I am not sure that I can comply with that direction
17 consistent with vigorous representation of the position
18 that my clients are putting forward here.

19 If you see Dr. Brown's expert report that we put
20 in in support of the preliminary injunction, you will see
21 that it's all about male and female bodies using the terms
22 as they're understood in science, and we can't get away
23 from that.

24 THE COURT: Mr. Brooks, are you done?

25 MR. BROOKS: I am.

1 THE COURT: Okay, thank you.

2 I'm not asking you to refer to these individuals
3 as "females." I know that you don't want to do so. What
4 I'm saying is you must refer to them as "transgender
5 females" rather than as "males." Again, that's the more
6 accurate terminology, and I think that it fully protects
7 your client's legitimate interests. Referring to these
8 individuals as "transgender females" is consistent with
9 science, common practice and perhaps human decency.

10 To refer to them as "males," period, is not
11 accurate, certainly not as accurate, and I think it's
12 needlessly provocative; and, for me, civility is a very
13 important value, especially in litigation.

14 So if you feel strongly that you and your
15 clients have a right to refer to these individuals as
16 "males" and that you therefore do not want to comply with
17 my order, then that's unfortunate. But I'll give you some
18 time to think about it and you can let me know if it's a
19 problem. If it is, gosh, maybe we'll need to do
20 something. I don't want to bully you, but at the same
21 time, I don't want you to be bullying anybody else.

22 Maybe you might need to take an application to
23 the Court of Appeals. I don't know. But I certainly
24 don't want to put civility at risk in this case. Quite
25 the opposite. My goals for this case include, very

1 importantly, the goal of maintaining civil discourse,
2 respectful, humane, intelligent, civil discourse in the
3 course of the case. Nothing more, nothing less.

4 Beyond that, let me turn now to Mr. Block and
5 ask: Is there anything more that you want to say in
6 support of your application to intervene?

7 MR. BLOCK: Your Honor, this isn't on the merits
8 of the application, but if we could have some guidance
9 about in terms of upcoming deadlines, whether we should
10 tender a request for a prefiling conference or any other
11 stuff while we, you know, wait for either a future filing
12 or an order, that would be helpful for us in just figuring
13 out how to proceed.

14 THE COURT: Whoever is pressing buttons on their
15 phone, please don't do that.

16 Let me now come back to Mr. Brooks.

17 Mr. Brooks, this is your opportunity to make
18 whatever presentation you want to make this morning in
19 opposition to the motion to intervene filed on behalf of
20 the transgender females.

21 Is there anything you would like to add to your
22 papers?

23 MR. BROOKS: Yes, Your Honor, briefly; but may I
24 ask a follow-up question on your earlier instruction?

25 THE COURT: Sure.

1 MR. BROOKS: Do you have any objection to our
2 referring to those intervenors simply as transgender
3 athletes?

4 THE COURT: That's fine. That's fine with me.

5 MR. BROOKS: Am I correct that you also have no
6 objection to our discussing, as need be to make argument,
7 the fact that they have male bodies and, in at least one
8 case, don't deny that they went through male puberty?

9 THE COURT: That is your prerogative, certainly.
10 As you say, that's what the case is about.

11 MR. BROOKS: Thank you, Your Honor. That's very
12 helpful, and I appreciate it.

13 So on the position of the proposed -- individual
14 proposed interveners, let me emphasize that the challenge
15 of this lawsuit is against a policy and the authorities,
16 not against the individuals. We don't accuse, have never
17 accused them, those individuals, of doing anything at all
18 wrong. They are simply following the policy, and that's
19 not an accusation against them, and we're not seeking to
20 bind the individuals by judgment in any way.

21 I'd also like to point out that an intervention
22 by affected individuals in a Title IX athletics-related
23 case would be, so far as we have been able to find in the
24 case law, and there's 50 years of case law, it would be
25 unprecedented.

1 Athletics Title IX cases often involved some
2 solutions. The McCormick case is one example where if the
3 girls won then the boys teams had to be scheduled off
4 season and miss out on championships.

5 We're all aware of those many cases in the
6 college level, men's varsity teams have had to be
7 eliminated or reduced in status to achieve the merits and
8 funding balance requirements of Title IX. And in both
9 cases, the boys or the men are directly impacted.

10 And that's not a defect, that's not a wrong,
11 that's a legislative choice that Congress made in passing
12 Title IX.

13 As I say, we don't see a single case out there
14 with the affected boys or affected men, as the case in
15 most of the Title IX athletic litigation, are thought of
16 or are treated as either necessary parties or are in the
17 case as intervenors.

18 Now, I don't want to repeat our -- but I think
19 we've spelled out in some detail -- about the burden on
20 the intervener to show not to speculate, not to
21 hypothesize, but to show inadequate representation.

22 We've heard this morning a few different
23 arguments. It's been suggested that the CIAC is just a
24 stakeholder caught in the middle here. But CIAC is not
25 behaving like a stakeholder caught in the middle.

1 There are litigations where an institution comes
2 forward and says, we don't care, we're a stakeholder.

3 That's not how CIAC is behaving. They have
4 adopted this policy and vigorously defended it publicly.
5 More than that, they have and all the defendant schools
6 have maintained the defense of the policy in the face of
7 findings by the Department of Education that they need to
8 change the policy, they're violating Title IX, and that
9 process is whatever it leads to.

10 But my point is simply that they're not acting
11 like stakeholders, they're acting like parties who intend
12 to vigorously defend the policy. And as one of my
13 esteemed colleagues said earlier, certainly she intends to
14 make the argument that Title IX and state law require the
15 policies.

16 So what we hear is organizations that adopted
17 the policy, they believe in the policy, they have retained
18 competent counsel to defend the policy, and they're in
19 fact vigorously defending the policy before the Office of
20 Civil Rights and before this Court.

21 One of my colleagues said, well, the adequacy of
22 representation is not ensured and put forth hypotheticals
23 about possible settlement, possible arguments that might
24 or might not be made. I think we've cited the case law
25 that says that just doesn't meet the threshold of the

1 burden with regard to a demonstration of an adequate
2 representation. It's all hypotheticals.

3 And the Butler case we cited to Your Honor from
4 the Second Circuit is quite strong and says it's even more
5 strong when the entity defending the law is governmental.
6 It takes an even stronger showing to overcome the
7 presumption of adequacy.

8 Mr. Block spent some time saying his clients
9 have distinct factual information not directly available
10 to the schools and such. He does say in his brief, and
11 I'm not aware of any case law that suggests that's a basis
12 for intervention. That's a basis for putting witness on
13 the stand or for taking discovery.

14 Your Honor, the last thing I would say is,
15 speaking to permissive intervention, I'm aware that
16 there's obviously more discretion in that area. But
17 multiplication of parties does increase the burden on
18 plaintiffs. Generally plaintiffs are allowed to choose
19 the jurisdiction, the lawsuit that they want to structure.
20 Of course, absent the type of tests and burdens that we've
21 just been discussing.

22 And when you look at the precedent that we've
23 cited in our brief on this matter where they go through
24 adequacy of representation, what they don't do is say,
25 well, you didn't demonstrate inadequate representation,

1 but you know what, come on in through permissive
2 intervention anyway. That's just not the path of what the
3 courts do when they find a demonstration of inadequate
4 representation has not been made, is to deny intervention.
5 I think you'll see that in case after case.

6 And the final thing I'll say, Your Honor, and I
7 don't want to seem to concede anything, but this is the
8 burden point: If permissive intervention were granted, we
9 would strongly urge the Court to not be structured in a
10 way that minimizes increased burden; that is that the
11 discovery limitations are structured per size so that
12 adding interveners doesn't increase the burden on
13 plaintiffs, and that interveners are -- I mean, their
14 claimed point is that they have different additional
15 arguments to make. And we would suggest that if they're
16 permitted to intervene, which I've indicated as strongly
17 as I can they shouldn't be, that they be permitted to have
18 separate briefs and separate page limits only for the
19 purpose of advancing argument that in fact the CIAC for
20 instance and other defendants generally are not making.

21 And with that, Your Honor, I will stop.

22 THE COURT: Thank you.

23 Putting aside the points you just made about
24 limitations on intervention, which I think are fair, do
25 you want to comment on the argument heard earlier that

1 permitting intervention by these individuals avoids the
2 risk of future litigation were your clients to prevail on
3 the request for expungement of records?

4 MR. BROOKS: Well, Your Honor, in our system
5 there's always a risk, there's so many contexts. There is
6 a risk of future litigation, and obviously adjudication
7 from this Court that either Title IX requires what my
8 clients believe it requires or doesn't require what my
9 clients believe it requires. It's going to be appealed,
10 we're going to get authoritative word from the Second
11 Circuit, and at that point, that's very likely, depending
12 on what the Second Circuit says, that's likely to
13 forestall a follow-up lawsuit or end this lawsuit one way
14 or the other.

15 So I think there's going to be an appeal. I'm
16 not giving away trade secrets here to say that what this
17 Court decides is almost certain to be appealed. And after
18 that authoritative instruction is out there, anybody who
19 chooses to file a follow-on lawsuit is very speculative.

20 THE COURT: All right, then, thank you.

21 Mr. Block, you get the last word on this, and
22 then I'm going to turn to Mr. Roberts.

23 MR. BLOCK: Sure, thank you, Your Honor. I want
24 to respond to this assertion that this is unprecedented in
25 Title IX lawsuits to intervene.

1 I'm not aware of any Title IX lawsuit that has
2 been brought to exclude someone from participating. That,
3 under my understanding, is what's unprecedented here.

4 The Title IX lawsuits that I'm aware of are
5 either people suing to either join a team or people suing
6 to contest the elimination of their team.

7 The Mamaroneck case, the relief they were
8 seeking was to move the girls team to the fall to be
9 treated equally. And there are certainly cases where a
10 school on its own in perceived need to comply with Title
11 IX has eliminated a boys team.

12 Those aren't lawsuits brought by a private
13 individual seeking relief requiring a school to eliminate
14 another team. Those are often suits where the school
15 eliminates a team and then the boys team then sues.

16 So I agree, it's unusual to have intervention in
17 an athletics Title IX lawsuit, but that's because this is
18 a very unusual fact pattern in which the alleged
19 participation of a specific identified individual that is
20 causing the plaintiffs' alleged injury.

21 The second point I just want to make is, I think
22 the constitutional arguments are really central here, that
23 what happens with respect to Title IX or the statute is
24 not even close to being the full ballgame of the arguments
25 that need to be made.

1 And then the third point is, I think that, you
2 know, in this specific context in Brennan and in
3 Bridgeport Guardians, the Second Circuit could not have
4 been clearer about why intervention is necessary in this
5 specific type of fact pattern.

6 This is not a party seeking to intervene to
7 suspend the constitutionality of a law that affects the
8 citizenry at large. This is a unique fact pattern in
9 which the government is an employer, in this case a school
10 district, and I think that the Second Circuit cases,
11 Brennan and Bridgeport Guardians, are directly on point.

12 And similarly in the Ricci case, things went all
13 the way up to the Supreme Court and the Supreme Court
14 ruled in favor of Ricci with really broad language. And
15 the Second Circuit said, even though this case from the
16 Supreme Court, it still didn't find for the other
17 firefighters with their disparate impact suit, because
18 that would be fundamentally inconsistent with the idea
19 that everyone is entitled to their own representation and
20 their own interests aren't virtually represented by
21 someone else.

22 So those are just the brief points on the
23 intervention aspect right.

24 For permissive intervention, I can -- I know
25 many, many cases where intervention, as a right is denied,

1 but then permissive intervention is granted.

2 We are obviously very eager and willing to
3 reduce any added duplicative briefing or any added burden.
4 I think that some sort of formal requirement of separate
5 briefs with discrete issues will add to the burden and
6 complication rather than simplify things.

7 To the extent we have common arguments, we will
8 not be seeking to lay them out differently. I don't know
9 if Your Honor prefers that all the arguments be
10 consolidated into a single brief. But would we are happy
11 to do whatever sort of filing is necessary to reduce
12 burdens.

13 But we just want our clients to be able to have
14 a place at the table in representing their own legal
15 interests here.

16 THE COURT: All right, thank you.

17 Let me turn now to the motion submitted by the
18 CHRO.

19 Let me call on Mr. Roberts at this time to make
20 whatever additional presentation you would like to make in
21 support of that submission.

22 Mr. Roberts.

23 MR. ROBERTS: Good morning, Your Honor, Michael
24 Roberts for the commission.

25 Just briefly, we lay out the substance of all of

1 our points in what we have submitted already.

2 We -- the commission is the state agency that
3 enforces Connecticut antidiscrimination statutes. This
4 lawsuit is making, in essence, a discrimination claim.

5 Among the statutes that the commission enforces
6 are: State statutes that require the quality of
7 opportunity in the education context; that there be full
8 and equal accommodations in places that include public
9 schools; and that those provisions be fulfilled on the
10 basis of both sex and gender identity and expression.

11 The commission enforces Connecticut General
12 Statutes Section 46a-58 which converts deprivations of
13 federal rights into a violation of that statute that the
14 commission enforces.

15 So I think that the commission's interests and
16 our motion for intervention is guided by what occurred in
17 Boy Scouts of America v. Wyman, where -- even though the
18 claims in that case included constitutional arguments, you
19 know, and the commission does not directly enforce the
20 United States Constitution -- we had an interest because
21 our ability to carry out our enforcement mandate and
22 ensure the integrity of our decision-making process would
23 be impacted by the claims that were at issue there.

24 It didn't matter in that case that there were
25 other state entities that were already defendants. The

1 Comptroller's Office, the State of Connecticut, were
2 already present in that case as named defendants and were
3 being ably represented. But the commission had a unique
4 and distinct interest and it was granted the ability to
5 intervene.

6 We have a unique lens through which we view this
7 case that is not otherwise represented by the named
8 defendants who are the other proposed intervenors. My
9 sense is, just from what's been submitted and in
10 discussions with counsel so far, that while we may on
11 those that are -- are seeking to be on the side of the "v"
12 in this case, see a similar final destination for this
13 case that we would hope to achieve.

14 The path by which we would reach that
15 destination varies and that the Commission would approach
16 this case and this argument with the goal of having a
17 cohesive enforcement scheme between Title IX -- that could
18 then be enforced through 46a-58 -- and the state statutory
19 scheme as they all apply to this situation.

20 And so I think that the standards for
21 intervention are met by the commission and that our motion
22 should be granted.

23 THE COURT: Okay, thank you. Let me follow up
24 very briefly.

25 Would your interest in this matter be fully

1 served if you were to participate as an amicus?

2 MR. ROBERTS: I think not, Your Honor, because
3 we --

4 THE COURT: Go ahead.

5 MR. ROBERTS: I think not because we would be
6 largely beholden to the arguments raised by the parties.

7 There have been instances before where the
8 commission has been an amicus and the Connecticut Supreme
9 Court, among other courts, has noted that the commission
10 has raised, in the court's language, very interesting
11 questions but because they were not raised by the parties,
12 the court declined to address them. In other instances,
13 the court has decided to address our questions and then
14 found a way to do so.

15 But, you know, we would be limited in that way.
16 We would be beholden to the arguments raised by parties
17 who do not share our interests in the cohesiveness of the
18 statutory schemes.

19 And so while I think that there are certainly
20 arguments that we could make as an amicus, it would not be
21 the same and our approach to the case and the arguments
22 that we would raise and the way they would be reflected in
23 the proceedings would not be the same.

24 THE COURT: Okay, thank you.

25 Mr. Brooks, this is your opportunity to make any

1 additional points you wish to make with regard to this
2 motion to intervene by the CHRO.

3 MR. BROOKS: Your Honor, thank you.

4 What I've heard is new today. Much of this is
5 new. There's details in our briefing.

6 I do believe CHRO is interested but has no legal
7 interest, and I will call the Court to the case that we've
8 cited in our brief.

9 The Sixth Circuit, *Brewer v. Republic Steel*
10 case, obviously not binding authority by this Court, but
11 it is by far the most on point in the nation which dealt
12 with a very similar situation in the Ohio Civil Rights
13 Commission that wanted to intervene in a Title VII
14 lawsuit, and the Court concluded and explained in some
15 detail that that was not the type of interest -- the
16 Commission didn't have the type of interest contemplated
17 by Rule 24.

18 CHRO simply has no rights, no claims, no
19 obligations under Title IX, and those are the things --
20 and it also doesn't have an interest under the Second
21 Circuit's teaching and tests as articulated in *Our Best*
22 *Produce* case that we cite.

23 And I would emphasize to your court -- to Your
24 Honor, that everything Mr. Roberts said about the nature
25 of their interests which has to do with cohesiveness

1 between the state regime and a federal regime and federal
2 law interpreted the way they would like to interpret it,
3 well, given that federal law is a uniform thing across the
4 country, what CHRO is articulating is an interest that
5 justifies intervention, then representatives of every one
6 of the 50 states has an absolute, equal and identical
7 interest in intervention. And that clearly isn't the law
8 and it's not the right answer. They have no particular
9 interest.

10 The other thing I would just flag, as we pointed
11 out in our brief, that CHRO is a very specific statute
12 created independent commission created with certain and
13 limited authority, and it has statutory authority to
14 conduct administrative proceedings. It has very specific
15 statutory authority about when to bring enforcement
16 actions in Connecticut Superior Court, and it has no
17 statutory authorization to seek to intervene to
18 participate in federal litigation.

19 It is not, in any statutory place, authorized as
20 the voice of the State of Connecticut. It is an
21 independent commission, which is a very different
22 thinking.

23 The general authority to litigate on behalf of
24 Connecticut, it is invested in the Attorney General, who
25 is not here today seeking to intervene.

1 So we do believe, Your Honor, that like any
2 other party that is interested but doesn't have a legal
3 interest, the right solution for CHRO is to file an amicus
4 brief, which certainly an initial statement of their views
5 on the important legal issues here, a request to file that
6 amicus, the plaintiffs would not oppose. And I wouldn't
7 even rule out that there may be later stages in the
8 proceeding where they would seek leave to file a
9 subsequent amicus brief.

10 And we believe that, in general, that's where
11 they should be standing procedurally.

12 THE COURT: All right. Thank you.

13 Mr. Roberts, you get the last word on this one.

14 MR. ROBERTS: Just very briefly, Your Honor.

15 I think in our reply memorandum we dispatched
16 pretty summarily the arguments based on Brewer and the
17 possibility of everyone in the nation being interested in
18 this case simply through 46a-58, which is a unique among
19 state statutes, and the commission's relation to that
20 statute is unique among state civil rights agencies and
21 sets the commission apart, particularly where we are in
22 Connecticut and the commission is the state civil rights
23 agency charged by statute with enforcing Connecticut's
24 civil rights and antidiscrimination protections.

25 To the extent that the plaintiffs have

1 challenged the commission's authority to be here, I would
2 simply say that neither the district courts nor the Second
3 Circuit were -- felt impeded by the commission's
4 intervention in Wyman, which is of course a federal action
5 dealing with constitutional claims.

6 And in that case, there's no indication that the
7 State of Connecticut, the Attorney General's Office, the
8 state defendants that were named separately from the
9 commission were impeded or otherwise objected to the
10 commission's participation as an intervenor.

11 THE COURT: With regard to the option of
12 granting amicus status, I think I probably need to focus
13 very specifically on your point earlier that the CHRO has
14 the freedom to raise issues on its own. It could find
15 itself called on or even sought out on important points
16 during the litigation.

17 So directing that particular concern, why would
18 it be a problem or a risk in that regard if I were to
19 specifically invite the CHRO to submit one or more briefs
20 addressing issues that CHRO could helpfully address in
21 order to provide me with a better understanding of the
22 case?

23 If I were to do that, would you be satisfied to
24 participate as an amicus?

25 MR. ROBERTS: I would have a couple of concerns

1 with that, Your Honor.

2 One would be our access to discovery. We have
3 made clear that we do not intend to notice any depositions
4 or propound the discovery in this case. We have asked for
5 the ability to participate and have access to what comes
6 out of discovery. And in Wyman, that participation led to
7 the commission filing a separate motion for summary
8 judgment, separate from the state defendants.

9 The other concern that I would have, as Your
10 Honor will -- of course we hope, that anything we submit
11 as either an amicus or intervenor would be of help to the
12 Court, I guess I would just be concerned with the specific
13 questions that would be posed to the commission as an
14 amicus.

15 In the sense that there are specific questions
16 that are raised and the commission's participation and
17 briefing as an amicus is limited to the specific questions
18 rather than perhaps, you know, the expertise and
19 experience that we bring to the table, we may see
20 something a little differently or have a specific nuance
21 to particularly our enforcement scheme, the state
22 framework and the potential impact on some of what occurs
23 in this case on that framework, that the ability to make
24 our own motions and submit our own materials or briefing
25 or whatever other arguments that we may raise ourselves to

1 this case may -- you know, we would have more latitude to
2 do that as a party, as an intervenor party, than we would
3 as an amicus.

4 We simply would not wish there to be issues left
5 unaddressed or that we would be impeded from addressing as
6 an amicus that we might be able to based on our own and
7 make sure our presence as an intervenor.

8 THE COURT: Okay, thank you.

9 It's been a long call, I thank Darlene Warner
10 our court reporter.

11 MS. YODER: Your Honor, I'm sorry to interrupt,
12 this is Attorney Yoder.

13 At the risk of not bringing forward information
14 that may be relevant to your decision since we have
15 everybody here on the call, I just wanted to bring to your
16 attention: In addition to CIAC's argument that it is
17 concerned about being sued in multiple forums with
18 multiple outcomes, with different outcomes, the Court has
19 given us a deadline of April 20, I believe, to file a
20 motion to join necessary parties. And CIAC intends to
21 file at this time a motion to join the Department of
22 Education as a necessary party.

23 And I know we're not arguing that today, but I
24 didn't want -- given that it's related to some of the
25 arguments we've heard today, I didn't want today's session

1 to pass without alerting the Court and the other parties
2 of our intent to do so.

3 THE COURT: You're referring to the Federal
4 Department of Education?

5 MS. YODER: Yes.

6 THE COURT: Okay. Well, I appreciate your
7 bringing that to our attention.

8 As I said, it's been a long call, and I know
9 it's not easy for the court reporter even when we're doing
10 things in the courtroom much less when she has to cope
11 with so many people on the phone.

12 So thank you, Darlene.

13 THE COURT REPORTER: You're welcome, Judge.

14 THE COURT: With regard to the timing of this, I
15 know that we have done a tailored scheduling order that
16 requires the existing defendants to submit any request for
17 a prefiling conference in connection with a motion to
18 dismiss on or before a date in the near future. I don't
19 have that date in front of me. Is it next Friday?

20 MR. ZELLNER: It's the 20th, Your Honor; Monday,
21 I believe.

22 THE COURT: Okay. I think what I will do is
23 move that date to the 24th and I will try to have rulings
24 for you on these motions to intervene in the next couple
25 of business days. I want to think about what we have

1 talked about this morning.

2 Not by way of complaint at all, but just so you
3 know, the Court is receiving on a daily basis multiple
4 emergency motions by detained persons, both pretrial
5 detainees and sentenced defendants, seeking immediate
6 release based on their fear of contracting this virus.

7 So it may not be feasible for me to get a ruling
8 to you in the next couple of days, although I will do my
9 very best; and in any case, I will do it next week.

10 I think in the meantime anybody, proposed
11 intervenors included, who might want to file a motion to
12 dismiss should endeavor to prepare a prefiling conference
13 request in connection with any such motion so that in the
14 event intervention is granted and it permits motion
15 practice by intervenors, you'll be in a position to go
16 ahead with that part of this pretrial on or before a week
17 from tomorrow.

18 All right, thank you all very much. We'll
19 adjourn.

20 (Proceedings adjourned at 11:30 a.m..)

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C E R T I F I C A T E

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In Re: SOULE, ET AL vs. CIAC, ET AL

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/ _____

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