

APPEAL NOS. 20-35813, 20-35815
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LINDSAY HECOX and JANE DOE, with her
next friends Jean Doe and John Doe,

Plaintiffs-Appellees,

v.

BRADLEY LITTLE, in his official capacity as Governor of the State of
Idaho, et al.,

Defendants-Appellants,

and

MADISON KENYON and MARY MARSHALL,

Intervenors-Appellants.

On Appeal from the United States District Court
for the District of Idaho
Case No. 1:20-cv-00184-DCN
Hon. David C. Nye

**INTERVENORS-APPELLANTS' MOTION TO SUPPLEMENT
THE RECORD**

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Counsel for Intervenors-Appellants

Pursuant to this Court’s inherent equitable authority, Intervenor Madison Kenyon and Mary Marshall move to supplement the record with the declarations listed below, which they cite in their Supplemental Letter Brief.

- Exhibit A, Declaration of Boise State University Registrar Mandy Nelson.
- Exhibit B, Declaration of Boise State University Associate Athletic Director/Compliance Matthew Brewer.

Intervenor submit that these declarations clarify the facts concerning the Plaintiffs’ assertion that Hecox has taken a “leave of absence” from BSU, Appellees’ Br. 17 n.4, and will be helpful to the Court’s evaluation of the question of the mootness of Hecox’s claims. *Johnson v. Rancho Santiago Comm. Coll. Dist.*, 623 F.3d 1011, 1020 n.3 (9th Cir. 2010) (“[W]e exercise our discretion to supplement the record on appeal so that we may determine whether we have jurisdiction.”); *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (“Consideration of new facts may even be mandatory, for example, when developments render a controversy moot and thus divest us of jurisdiction.” (citing *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.23 (1997))).

Respectfully submitted,

Madison Kenyon and
Mary Marshall,
Intervenor-Appellants

Dated: May 20, 2021

By: /s/ Roger G. Brooks

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2021, I electronically filed the foregoing motion to supplement the record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

/s/ Roger G. Brooks
Roger G. Brooks
Counsel for Intervenor-Appellants

May 20, 2021

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Lindsay Hecox, et al.,

Plaintiffs-Appellees,

v.

Bradley Little, et al.,

Defendants-Appellants,

and

Madison Kenyon, et al.,

Intervenors-Appellants.

Case Nos. 20-35813, 20-35815

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D.C. Case No. 1:20-cv-00184-DCN

Declaration of Mandy Nelson

I, Mandy Nelson, declare as follows:

1. I am over the age of 18 years and competent to testify on the matters herein. I make this declaration based upon my own personal knowledge.
2. I am currently employed at Boise State University ("BSU") as the Registrar. As part of my duties as Registrar, my office maintains student records relating to student registration and enrollment, transcripts and course scheduling.
3. According to the official records database in my office, student Lindsay Hecox utilized the student portal on our website to withdraw from some of her classes at BSU on October 26, 2020.
4. Lindsay Hecox withdrew from the remainder of her classes at BSU using the same portal on October 28, 2020, which effected a complete withdrawal from all classes she was enrolled in at the University.

5. Because Lindsey Hecox withdrew from all of her classes prior to the October 30, 2020, cut-off for withdrawals, she was not required, and did not provide any reason for her withdrawal.
6. Since her complete withdrawal from classes on October 28, 2020, our records indicate Lindsay Hecox has not enrolled in any classes at BSU.
7. Lindsay Hecox never requested a “leave of absence” from BSU, and nothing in our records indicate such a status for her. A “leave of absence” is not a term or phrase that is used by BSU’s Registrar’s Office in relation to students who self-withdraw from classes prior to the deadline for dropping classes.
8. Registration for the Fall 2021 semester opened on March 22, 2021 and Lindsay Hecox had an appointment on April 5, 2021. As of the date of this declaration, Lindsay Hecox has not enrolled in any classes at BSU for the Fall 2021 semester.

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

Executed on May 14, 2021


Mandy Nelson

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Lindsay Hecox, et al.,

Plaintiffs-Appellees,

v.

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Defendants-Appellants,

and

Madison Kenyon, et al.,

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Case Nos. 20-35813, 20-35815

On Appeal from the United States District
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D.C. Case No. 1:20-cv-00184-DCN

Declaration of Matthew Brewer

I, Matthew Brewer, declare as follows:

1. I am over the age of 18 years and competent to testify on the matters herein. I make this declaration based upon my own personal knowledge.
2. I am currently employed at Boise State University ("BSU") as the Associate Athletic Director/Compliance. As part of my work at BSU, I am responsible for working with coaches and student athletes and prospective student athletes to ensure eligibility to try out for athletic teams at BSU and ensuring BSU's athletes are eligible to compete in compliance with National Collegiate Athletic Association (NCAA) requirements.
3. Lindsay Hecox was cleared to try out for out for BSU's women's track and cross-country teams, which according to my records began on October 21, 2020.
4. After day one of the tryout, the coaches cut nine out of twelve of the students trying out for the team, including Lindsay Hecox. According to our records, Lindsay Hecox was notified

on or around October 22, 2020, that she did not make BSU's women's track and cross-country teams.

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

Executed on May 14, 2021



Matthew Brewer