

Appeal Nos. 20-35813, 20-35815

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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LINDSAY HECOX *et al.*,  
*Plaintiffs-Appellees*,

v.

BRADLEY LITTLE, *et al.*,  
*Defendants-Appellants*,

and

MADISON KENYON and MARY MARSHALL,  
*Intervenors-Appellants*.

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

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**PLAINTIFFS-APPELLEES LINDSAY HECOX AND JANE DOE'S MOTION TO  
SUPPLEMENT THE RECORD**

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Chase Strangio  
James D. Esseks  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad St.  
New York, NY 10004  
Telephone: (212) 549-2569  
cstrangio@aclu.org  
jesseks@aclu.org

Richard Eppink  
AMERICAN CIVIL  
LIBERTIES UNION  
OF IDAHO FOUNDATION  
P. O. Box 1897  
Boise, ID 83701  
T: (208) 344-9750 ext. 1202  
REppink@acluidaho.org

*Attorneys for Plaintiffs-Appellees  
Lindsay Hecox and Jane Doe*

Kathleen Hartnett  
COOLEY LLP  
101 California Street, 5th Floor  
San Francisco, CA 94111-5800  
Telephone: (415) 693-2071  
khartnett@cooley.com

Andrew Barr  
COOLEY LLP  
1144 15th Street, Suite 2300  
Denver, CO 80202  
T: (720) 566-4000  
F: (720) 566-4099  
abarr@cooley.com

Catherine West  
LEGAL VOICE  
907 Pine Street, Unit 500  
Seattle, WA 98101  
T: (206) 682-9552  
F: (206) 682-9556  
cwest@legalvoice.org

Pursuant to this Court’s inherent equitable authority, Plaintiffs-Appellees Lindsay Hecox and Jane Doe (Kayden Hulquist) move to supplement the record to include the attached Supplemental Declaration of Lindsay Hecox, which is cited in Plaintiffs-Appellees’ Supplemental Letter Brief filed on May 20, 2021.

Following oral argument in this appeal on May 3, 2021, the panel ordered the parties to address, *inter alia*, whether Lindsay Hecox’s claim is moot because she is not currently enrolled at Boise State University (“BSU”). Dkt. 133. Plaintiffs-Appellees had noted in their Answering Brief that Lindsay Hecox had taken “a temporary leave of absence from BSU to work full time, establish her Idaho residency, and save money for school.” Dkt. 65, at 17 n.4. Because this appeal already had been noticed by the time of Lindsay Hecox’s leave, the District Court record does not contain a declaration on this point. *Compare* Dkt. 2 (stating that the consolidated appeals were filed on September 16, 2020) *with* Suppl. Hecox Decl. ¶ 13 (explaining Lindsay withdrew from her classes in late October 2020).

The Supplemental Declaration illustrates Lindsay Hecox’s clear and definite plans to return to BSU and try out for the women’s cross-

country and track teams, and thus shows that her claim is not moot. Where, as here, the declaration will assist the Court in determining its jurisdiction, supplementing the record on the appeal is permitted. *See Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1020 n.3 (9th Cir. 2010) (permitting supplementation of the record on appeal so that the Court could determine its jurisdiction); *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (permitting supplementation of the record on appeal where “developments [might] render a controversy moot and thus divest [the Court] of jurisdiction”).

Respectfully submitted,

/s/ Kathleen Hartnett  
Kathleen Hartnett

*Counsel for Plaintiffs-Appellees*

Dated: May 21, 2021

By: /s/ Kathleen Hartnett

Chase Strangio  
James D. Esseks  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad St.  
New York, NY 10004  
Telephone: (212) 549-2569  
cstrangio@aclu.org  
jesseks@aclu.org

Richard Eppink  
AMERICAN CIVIL  
LIBERTIES UNION  
OF IDAHO FOUNDATION  
P. O. Box 1897  
Boise, ID 83701  
T: (208) 344-9750 ext. 1202  
REppink@acluidaho.org

Kathleen Hartnett  
COOLEY LLP  
101 California Street, 5th Floor  
San Francisco, CA 94111-5800  
Telephone: (415) 693-2071  
khartnett@cooley.com

Andrew Barr  
COOLEY LLP  
1144 15th Street, Suite 2300  
Denver, CO 80202  
T: (720) 566-4000  
F: (720) 566-4099  
abarr@cooley.com

Catherine West  
LEGAL VOICE  
907 Pine Street, Unit 500  
Seattle, WA 98101  
T: (206) 682-9552  
F: (206) 682-9556  
cwest@legalvoice.org

*Attorneys for Plaintiffs-Appellees  
Lindsay Hecox and Jane Doe*

## CERTIFICATE OF SERVICE

I hereby certify that on May 21, 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/ Kathleen Hartnett*  
*Counsel for Plaintiffs-Appellees*  
May 21, 2021

Appeal Nos. 20-35813, 20-35815

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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LINDSAY HECOX and JANE DOE with her next  
friends Jean Doe and John Doe,  
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On Appeal from the United States District Court for the  
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**DECLARATION OF LINDSAY HECOX**

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Chase Strangio  
James D. Esseks  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad St.  
New York, NY 10004  
T: (212) 549-2569  
[cstrangio@aclu.org](mailto:cstrangio@aclu.org)  
[jesseks@aclu.org](mailto:jesseks@aclu.org)

Richard Eppink  
AMERICAN CIVIL  
LIBERTIES UNION  
OF IDAHO FOUNDATION  
P. O. Box 1897  
Boise, ID 83701  
T: (208) 344-9750 ext. 1202  
[REppink@acluidaho.org](mailto:REppink@acluidaho.org)

Kathleen Hartnett  
COOLEY LLP  
101 California Street, 5th Floor  
San Francisco, CA 94111-5800  
T: (415) 693-2000  
F: (415) 693-2222  
[khartnett@cooley.com](mailto:khartnett@cooley.com)

Andrew Barr  
COOLEY LLP  
1144 15th St., Suite 2300  
Denver, CO 80202-2686  
T: (720) 566-4000  
F: (720) 566-4099  
[abarr@cooley.com](mailto:abarr@cooley.com)

Catherine West  
LEGAL VOICE  
907 Pine Street, Unit 500  
Seattle, WA 98101  
T: (206) 682-9552  
F: (206) 682-9556  
[cwest@legalvoice.org](mailto:cwest@legalvoice.org)

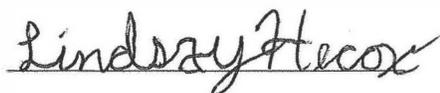
*Attorneys for Plaintiffs-Appellees*

**I, Lindsay Hecox, declare:**

1. I am a plaintiff in this matter. I am twenty years old.
2. In 2019, after high school, I moved from California to Idaho to attend Boise State University.
3. At Boise State University, out-of-state tuition is approximately \$24,980 for two semesters and in-state tuition is \$8,060 for two semesters.
4. I was eligible for slightly reduced out-of-state tuition through the Western Undergraduate Exchange, but it was still a significant amount of money for me and my family to pay.
5. In January 2020, I obtained an Idaho state-issued identification card.
6. Later that year, due to covid-19, Boise State changed its housing, athletic, and instructional offerings. The dormitories were closed, so I had to move from where I was living. The athletics try-outs were postponed. Additionally, all my classes were changed to virtual, online learning.
7. In March, I moved in temporarily with a family friend and in May, I moved into an apartment in Boise with another student. I was taking classes virtually. I was also working part-time to pay for my living expenses.
8. In the fall of 2020, I began my sophomore year. I intended to try out for the track and cross-country teams because I had been on testosterone suppressants for one year, which is required under the NCAA rules.
9. The try-outs were delayed due to covid-19 but occurred in late fall 2020. In October, I ran in a time trial with two other runners who were also trying out for track and cross-country. The next day I received an email informing me that I did not make either team. I was very disappointed but committed to continuing to train athletically and to try out for the teams again.
10. During fall semester, I was really struggling with my schoolwork. I had always done better in school when I was motivated to excel by my athletic teams and virtual learning was difficult for me. I was paying a lot of money to attend school and I was not doing well academically.
11. I met with a woman at Boise State's educational access center. I told her I was struggling with my schoolwork and I was very stressed with my work and school obligations.

12. I knew I would do better academically without the additional stress of working. I had also investigated establishing in-state residency to pay lower tuition. I also felt I needed a break from school.
13. In late October 2020, I withdrew from classes. That month, my mom and I had a Zoom meeting with Boise State University's financial aid department about my situation. The financial aid department laid out the guidelines for establishing in-state residency, including that I had to live in Idaho for twelve consecutive months for purposes other than education and could not be claimed as a dependent on my parents' taxes.
14. I already had an Idaho identification card, was paying rent and working. To establish residency for purposes of in-state tuition, I decided I would work full-time for one year. The next month, in December 2020, I started working full-time.
15. In March 2021, I filed my own income taxes.
16. I will fulfill the residency requirements in December 2021. I will re-enroll at Boise State University in January 2022 at the in-state tuition rate.
17. I continue to run and train athletically. I am training for a half marathon right now. I will again try out for track and cross-country once I am back in school. I remain eligible to compete under the NCAA rules.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 12, 2021.



Lindsay Hecox

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2021, I electronically filed the foregoing declaration 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/ Kathleen Hartnett  
Counsel for Plaintiffs-  
Appellees May 21, 2021*