

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS, JUDGE

**PLAINTIFFS' MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Pursuant to Rules 15(a) and 16(b) of the Federal Rules of Civil Procedure, Plaintiffs Christopher Fain, Shauntae Anderson, and Leanne James respectfully move this Court for leave to file the proposed Second Amended Complaint attached hereto as Exhibit A. Plaintiffs previously represented that they would seek leave to bring claims for Plaintiff Leanne James pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII") after she finished exhausting administrative remedies, ECF No. 109 at 2 n. 2, and they now seek leave to make that amendment. In support of their motion, Plaintiffs state as follows:

1. Plaintiffs initiated this action on November 12, 2020 with the filing of a class action complaint (ECF No. 1), alleging that the exclusion of coverage for gender-confirming healthcare in West Virginia state health insurance plans violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; and the comparability and availability requirements of the federal Medicaid Act, 42 U.S.C. §§ 1396a(a)(10)(A)-(B). Plaintiffs sought declaratory and injunctive relief and, in their individual capacities, damages.

2. The Scheduling Order in this matter set an October 8, 2021 deadline for the amendment of pleadings. ECF No. 75. Plaintiffs timely sought leave to file a First Amended Complaint before that deadline, and Plaintiffs Shauntae Anderson, a Medicaid participant, and Leanne James, a state employee, joined the suit after the Court permitted that amendment. ECF No. 140.

3. At the time Plaintiffs filed their First Amended Complaint, Ms. James was still exhausting administrative remedies for her claims under Title VII. ECF No. 140 ¶¶ 124-25. Ms. James subsequently received notice of her right to sue from the U.S. Equal Employment Opportunity Commission on December 23, 2021, and from the West Virginia Human Rights Commission on January 12, 2022. Decl. of Walt Auvil, Exs. A-D.

4. Plaintiffs now seek leave to add Ms. James' Title VII claims to the complaint against her employer, Kanawha County Board of Education, and the Public Employees Insurance Agency as an agent and joint employer. Ms. James also seeks leave to bring a claim against Kanawha County Board of Education under Title IX. Finally, Plaintiffs have made conforming changes to remove former Plaintiffs Brian McNemar and Zachary Martell, who have settled and dismissed their claims. ECF No. 180.

5. Because Plaintiffs seek to amend their complaint after the deadline in the Scheduling Order, they must satisfy a two-step test. *Wilson v. Appalachian Power Co.*, No. 3:10-cv-0445, 2011 WL 221656, at *1 (S.D.W. Va. Jan. 24, 2011). First, they must meet the good cause standard of Rule 16(b). *Id.* This standard “primarily considers the diligence of the party seeking the amendment ... [and] the focus of the inquiry is upon the moving party’s reasons for seeking modification.” *Stewart v. Coyne Textile Servs.*, 212 F.R.D. 494, 496 (S.D.W.

Va. 2003). Because Plaintiffs promptly have moved the Court for leave to amend after Ms. James' claims were exhausted, they satisfy this standard.

6. Once the "moving party satisfies Rule 16(b), the movant then must pass the tests for amendment under Rule 15(a)." *Wilson*, 2011 WL 221656, at *1. "Generally, leave to amend a pleading should be granted unless it would result in prejudice to the opposing party, the motion was brought in bad faith, or permitting amendment would be futile." *Scott Hutchison Enterprises, Inc. v. Cranberry Pipeline Corp.*, No. CV 3:15-13415, 2016 WL 10789587, at *1 (S.D.W. Va. Sept. 21, 2016).

7. None of the factors that might merit denial of leave to amend are present in this case. There will be no prejudice to the opposing parties, who have been on notice of Plaintiffs' intent to seek this amendment since Plaintiffs' September 23, 2021 motion seeking leave to add Ms. James to the suit. ECF No. 109 at 2 n.2. Plaintiffs have acted in good faith by satisfying the procedural prerequisites for Ms. James' Title VII claims and seeking leave to amend promptly thereafter. Additionally, permitting leave to raise these claims would not be futile for the reasons explained in the accompanying memorandum of law.

8. For all the reasons above, Plaintiffs respectfully request that the Court grant their motion for leave to file a Second Amended Complaint.

* * *

Dated: January 21, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on January 21, 2022 with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

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CHRISTOPHER FAIN; SHAUNTAE
ANDERSON; and LEANNE JAMES,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services; WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES, BUREAU FOR MEDICAL
SERVICES; JASON HAUGHT, in his official
capacity as Director of the West Virginia Public
Employees Insurance Agency; WEST
VIRGINIA PUBLIC EMPLOYEES
INSURANCE AGENCY; and KANAWHA
COUNTY BOARD OF EDUCATION,

Defendants.

Civil Action No.

**SECOND AMENDED CLASS ACTION
COMPLAINT**

INTRODUCTION

1. This case is about discrimination in health care and employment. Plaintiffs bring this suit to challenge discrimination under West Virginia state health insurance plans that deprive transgender people of essential, and sometimes life-saving, health care. These state health plans facially, and categorically, exclude coverage for health care that transgender people require. The exclusions in the state health plans described in paragraphs 65 and 69 use antiquated and improper language, but their targeting of transgender people on explicitly sex-based terms is unmistakable. The exclusions all categorically deny transgender people coverage for gender-

confirming care. Gender-confirming care includes, but is not limited to, counseling, hormone replacement therapy, and surgical care. Accordingly, as used herein, gender-confirming care includes the care denied pursuant to each of those exclusions. While cisgender people¹ receive coverage for those forms of health care as a matter of course, transgender people are targeted for discrimination by exclusions in the state health plans. This kind of discrimination is unlawful under federal constitutional and statutory guarantees of freedom from discrimination based on sex and transgender status. Because these exclusions constitute a sweeping, uniform denial of care for all transgender people, Plaintiffs bring this class action suit on behalf of themselves and those similarly situated.

2. Defendants violate the law in two ways. First, Defendants discriminate against low-income transgender people who are Medicaid participants. Inflicting grave harm on a particularly vulnerable group of people, Defendants deny low-income transgender Medicaid participants the same health coverage others receive, targeting them for discrimination based on their sex and transgender status. This care is for the treatment of gender dysphoria—the clinically significant distress that can result from the dissonance between an individual’s gender identity and sex assigned at birth—and is also known as gender-confirming care. Defendants categorically deny gender-confirming care to transgender Medicaid participants, even though it is medically necessary and can be life-saving, while routinely providing cisgender participants the same treatments.

3. Second, Defendants discriminate against state employees and their dependents by denying coverage for gender-confirming care, even though cisgender people receive the same kinds of treatments as a matter of course. As part of compensation for employment, the State of

¹ “Cisgender” refers to people who are not transgender.

West Virginia provides health care coverage for employees and their eligible dependents through the Public Employees Insurance Agency (“PEIA”). The health plans offered through PEIA deny coverage for gender-confirming care, and unlawfully discriminate against people who either are transgender or have transgender family members who depend on them for health care coverage. In other words, Defendants deny equal compensation for equal work to employees who are transgender or have transgender dependents, and harm employees’ transgender family members who depend on them for health care.

4. The blanket exclusions of gender-confirming care are stated expressly in the health plans offered to Medicaid participants, and to state employees. While phrased in slightly different terms across the plans, the exclusions all single out transgender people for differential treatment and rely explicitly on sex-based considerations. Plaintiffs challenge the exclusions, and any other source of law, regulation, policy, or practice that denies gender-confirming care to West Virginia Medicaid participants, state employees, and eligible dependents of state employees (references herein to the “Exclusions” refer collectively to all such exclusions for gender-confirming care).

5. The Exclusions fly in the face of the medical consensus that gender-confirming care is the only safe and effective medical treatment for gender dysphoria, and wholly disregard the harms of denying transgender people access to critical health care. The Exclusions unlawfully deny medically necessary care to Medicaid participants, and state employees and their dependents, who are transgender. The state’s coverage of the same treatments to address health conditions other than gender dysphoria underscores that West Virginia treats its transgender Medicaid and state health plan participants in an unfair and discriminatory manner. In doing so, Defendants expose a particularly vulnerable group to significant and avoidable

harms to their health and wellbeing, and inflict needless suffering and financial hardship in violation of the U.S. Constitution and federal law.

6. Plaintiffs bring this lawsuit on behalf of themselves and where relevant, other similarly situated Medicaid participants, state employees, and eligible dependents of state employees seeking a declaratory judgment that the Exclusions violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, Section 1557 (“Section 1557”) of the Patient Protection and Affordable Care Act (“ACA” or “Affordable Care Act”), 42 U.S.C. § 18116; the comparability and availability requirements of the federal Medicaid Act, 42 U.S.C. §§ 1396a(a)(10)(A)-(B); Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e, et seq.; and Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681, et seq.; preliminary and permanent injunctions barring Defendants from enforcing the Exclusions to deny gender-confirming care; reasonable attorneys’ fees and costs; and such other relief as the Court deems just and equitable.

7. In their individual capacities, the named Plaintiffs also seek compensatory and consequential damages for the injuries they have suffered as a result of Defendants’ unlawful conduct.

PARTIES

8. Plaintiff Christopher Fain resides in Huntington, West Virginia. Mr. Fain is a 46-year-old transgender man. Mr. Fain has been enrolled for Medicaid coverage at all times material to this complaint.

9. Plaintiff Shauntae Anderson² resides in Charleston, West Virginia. Ms. Anderson

² Ms. Anderson changed her legal name after filing the First Amended Complaint. This change is reflected in the caption of this Second Amended Complaint.

is a 45-year-old transgender woman. Ms. Anderson has been enrolled for Medicaid coverage at all times material to this complaint.

10. Plaintiff Leanne James resides in Hurricane, West Virginia. Ms. James is a 45-year-old transgender woman. Ms. James is a public employee who works for the Kanawaha County Board of Education as a Systems Administrator. Ms. James has been enrolled for public employee health coverage at all times material to this complaint.

11. Defendant William Crouch is sued in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources. As Cabinet Secretary, Mr. Crouch is responsible for “[d]evelop[ing] a managed care system to monitor the services provided by the [M]edicaid program to individual clients.” W. Va. Code § 9-2-9(a)(1). Mr. Crouch is authorized to “[p]repare and submit state plans which ... meet the requirements of federal laws, rules governing federal-state assistance.” W. Va. Code § 9-2-6(12). Additionally, Mr. Crouch is responsible for preparing recommendations “to be submitted to the joint committee on government and finance,” and in developing these recommendations Mr. Crouch may “[r]eview ... [M]edicaid services which are optional under federal [M]edicaid law and identif[y] ... services to be retained, reduced or eliminated.” W. Va. Code § 9-2-9(b)(1). Mr. Crouch exercises his authority as Cabinet Secretary to ensure that gender-confirming care is designated as an excluded service in the state Medicaid program—targeting transgender Medicaid participants for discriminatory treatment on the basis of their sex and transgender status. Defendant Crouch is a “person” within the meaning of 42 U.S.C. § 1983 and is, and was, acting under the color of state law at all times relevant to this complaint.

12. Defendant Cynthia Beane is sued in her official capacity as Commissioner for the Bureau for Medical Services. As Commissioner, Ms. Beane’s duties include managing and

overseeing project development, implementation of health policies, and assuring compliance with federal laws and regulations. Ms. Beane also led policy implementation for changes to bring West Virginia's Medicaid coverage into compliance with the Affordable Care Act.

Despite having the authority to implement health policies to assure compliance with federal law, including the Affordable Care Act, Ms. Beane exercises her authority to ensure that gender-confirming care is designated as a noncovered service for Medicaid participants, thus targeting transgender people for discriminatory treatment on the basis of their sex and transgender status. Defendant Beane is a "person" within the meaning of 42 U.S.C. § 1983 and is, and was, acting under the color of state law at all times relevant to this complaint.

13. Defendant West Virginia Department of Health and Human Resources, Bureau for Medical Services ("BMS") is the "single state agency" charged with the responsibility of administering "the [M]edicaid program" in West Virginia. W. Va. Code §§ 9-1-2(n), 9-2-13(a)(3). BMS establishes eligibility standards for Medicaid providers, determines benefits, sets payment rates, and reimburses providers. Additionally, BMS maintains the West Virginia Medicaid State Plan and files amendments to the plan with the appropriate regulatory authorities. West Virginia Medicaid is jointly funded by the state of West Virginia and the federal government. BMS is a recipient of federal funds from the U.S. Department of Health and Human Services ("HHS"), including Medicaid funding. The federal assistance BMS receives makes BMS a "covered entity" subject to the nondiscrimination requirements of Section 1557 of the ACA, which prohibit discrimination on the basis of sex and other protected characteristics.

14. Defendant Jason Haught is sued in his official capacity as Director of PEIA. As Director, Mr. Haught is the Chief Administrative Officer of PEIA and is responsible for the "administration and management of the Public Employees Insurance Agency." W. Va. Code

§ 5-16-3(c). This responsibility includes, but is not limited to, “manag[ing] on a day-to-day basis the group insurance plans” for state employees through “administrative contracting, studies, analyses and audits, ... provider negotiations, provider contracting and payment, *designation of covered and noncovered services*, [and] offering of additional coverage options or cost containment incentives.” *Id.* (emphasis added). Mr. Haught has authority to “make all rules necessary to effectuate” his responsibilities under the statute. *Id.* Mr. Haught exercises this authority to ensure that gender-confirming care is designated as a noncovered service in health plans available to state employees and their dependents, thus targeting them for discriminatory treatment on the basis of their, or their dependent’s, sex and transgender status. Defendant Haught is a “person” within the meaning of 42 U.S.C. § 1983 and is, and was, acting under the color of state law at all times relevant to this complaint.

15. Defendant West Virginia Public Employees Insurance Agency (“PEIA”) is the state agency responsible for administering health benefit plans to eligible employees of “the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law.” W. Va. Code § 5-16-2(4). PEIA’s statutory duties include establishing and maintaining group health coverage for eligible employees including but not limited to medical care, hospital care, surgical care, and prescription medication. W. Va. Code § 5-16-7(a). These statutory duties include designating covered and noncovered services, which PEIA has exercised to ensure that gender-confirming care is designated as a noncovered service in health plans available to state employees and their dependents. Defendant PEIA has knowingly and

intentionally offered health care coverage to Plaintiffs that discriminates on the basis of their sex and transgender status.

16. In establishing the scope of insurance coverage for public employees, PEIA acts as an agent for public employers who participate in PEIA, including but not limited to the Kanawha County Board of Education, for purposes of determining components of public employees' "compensation, terms, conditions, or privileges of employment" under Title VII. PEIA was created so that participating public employers can delegate responsibility for the benefits provided to their employees, as its enacting statute makes clear. W. Va. Code § 5-16-7 provides that PEIA "shall establish" group health plans "for those employees herein made eligible," which includes employees of the public employers specified in W. Va. Code § 5-16-2(4). Public employers that participate in the PEIA, including the County Board, delegate significant control over employee health benefits to the PEIA.

17. Additionally, PEIA acts as an agent of participating public employers, including Kanawha County Board of Education, because it provides benefits in the form of health care coverage to those employees and thus exercises control over an important aspect of Ms. James' employment, her health benefits. PEIA exercises this control by, for example, choosing whether to include or exclude gender-confirming health care in its coverage. PEIA's discriminatory denial of access to gender-confirming health care has thus significantly affected Ms. James' access to equal employment opportunities.

18. Additionally, PEIA is a joint employer with participating public employers under Title VII. Those public employers contract with PEIA for the provision of health coverage to their employees and, by determining whether to exclude gender-confirming health care, PEIA shares responsibility for essential terms and conditions of employment for those employees.

PEIA thus exercises significant control over the same employees who are employed by public entities, such as Kanawha County Board of Education, by determining components of those employees' "compensation, terms, conditions, or privileges of employment" under Title VII, including but not limited to determining their access to gender-confirming health care.

19. Defendant Kanawha County Board of Education ("County Board") is an education program or activity receiving federal financial assistance. The County Board also qualifies as an employer within the meaning of Title VII because, as a county board of education, the County Board is engaged in an industry affecting commerce and has 15 or more employees. As an employer, the County Board provides health care coverage to its employees through PEIA. W. Va. Code Ann. § 5-16-2.

20. Defendants, through their respective duties and obligations, are responsible for the discriminatory Exclusions of gender-confirming health care to Medicaid participants, state employees, and dependents who are transgender. Each Defendant, and those subject to their direction, supervision, or control, has or intentionally will perform, participate in, aid and/or abet in some manner the acts alleged in this complaint, has or will proximately cause the harm alleged herein, and has or will continue to injure the plaintiffs irreparably if not enjoined. Accordingly, the relief requested herein is sought against each Defendant and their successors, as well as all persons under their supervision, direction, or control, including, but not limited to, their officers, employees, and agents.

JURISDICTION AND VENUE

21. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution; Section 1557 of the ACA, 42 U.S.C. § 18116; the Medicaid Act's availability and comparability requirements, 42 U.S.C.

§§ 1396a(a)(10)(A), 1396a(a)(10)(B); Title VII of the Civil Rights Act of 1964, 42 U.S.C.

§ 2000e, et seq.; and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq.

22. The Court has jurisdiction over the claims asserted herein under 28 U.S.C. § 1331 because the matters in controversy arise under the Constitution and laws of the United States; and pursuant to 28 U.S.C. § 1343(a)(3) and (4) because the action is brought to redress deprivations, under color of state authority, of rights, privileges, and immunities secured by the U.S. Constitution and seeks to secure damages and equitable relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights.

23. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

24. Under 28 U.S.C. § 1391(b)(1) and (2), venue is proper in the Southern District of West Virginia because Defendants reside there and all Defendants are residents of West Virginia in which the district is located; and in this district and division because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred herein.

25. This Court has personal jurisdiction over Defendants because they are all domiciled within the State of West Virginia.

FACTS

A. Sex, Gender Identity, and Gender Dysphoria

26. Every individual's sex is multifaceted, and comprised of a number of characteristics, including but not limited to chromosomal makeup, hormones, internal and external reproductive organs, secondary sex characteristics, and most importantly, gender identity.

27. Gender identity is a person's internal sense of their sex. It is an essential element of human identity that everyone possesses, and a well-established concept in medicine. Gender

identity is innate, immutable, and has biological underpinnings, such as the sex differentiation of the brain that takes place during prenatal development.

28. For everyone, gender identity is the most important determinant of a person's sex and a fundamental component of human identity.

29. A person's sex is generally assigned at birth based solely on a visual assessment of external genitalia at the time of birth. External genitalia are only one of several sex-related characteristics and are not always indicative of a person's sex.

30. For most people, these sex-related characteristics are all aligned, and the visual assessment performed at birth serves as an accurate proxy for that person's gender.

31. Where a person's gender identity does not match that person's sex assigned at birth, however, gender identity is the critical determinant of that person's sex.

32. The ability to live in a manner consistent with one's gender identity is vital to the health and wellbeing of transgender people.

33. Scientific consensus recognizes that attempts to change an individual's gender identity to bring their gender identity into alignment with the sex assigned at birth are ineffective and harmful.

34. Attempts to force transgender people to live in accordance with their sex assigned at birth, a practice often described as "conversion therapy," is known to cause profound harm. Such efforts are now widely considered unethical and, in many places, are unlawful.

35. For transgender people, an incongruence between their gender identity and sex assigned at birth can result in a feeling of clinically significant stress and discomfort known as gender dysphoria. Gender dysphoria is a serious medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition;

the World Health Organization's International Classification of Diseases, which is the diagnostic and coding compendia for medical professionals; and by other leading medical and mental health professional groups, including the American Medical Association ("AMA") and the American Psychological Association ("APA").

36. In addition to clinically significant distress, untreated gender dysphoria can result in severe anxiety, depression, or even suicidality.

37. Untreated gender dysphoria often intensifies with time. The longer an individual goes without or is denied adequate treatment for gender dysphoria, the greater the risk of severe harms to the individual's health.

38. Gender dysphoria can be treated in accordance with internationally recognized Standards of Care formulated by the World Professional Association for Transgender Health ("WPATH"). WPATH is an international, multidisciplinary, professional association whose mission is to promote evidence-based health care protocols for transgender people. WPATH publishes Standards of Care that are based on the best available science and expert professional consensus, and which are widely accepted as best practices for treating gender dysphoria.

39. Under the WPATH Standards of Care, medically necessary treatments may include, among other things, "[h]ormone therapy" and "[s]urgery to change primary and/or secondary sex characteristics (*e.g.*, breasts/chest, external and/or internal genitalia, facial features, body contouring)."

40. The Standards of Care are recognized as authoritative by national medical and behavioral health organizations such as the AMA and APA, which have both called for an end to exclusions of gender-confirming care from health insurance plans.

41. The individualized steps that many transgender people take to live in a manner consistent with their gender, rather than the sex they were assigned at birth, are known as transitioning.

42. Transitioning is particular to the individual but typically includes social, legal, and medical transition.

43. Social transition entails a transgender individual living in accordance with their gender identity in all aspects of life. For example, social transition can include wearing attire, following grooming practices, and using pronouns consistent with that person's gender identity. The steps a transgender person can take as part of their social transition help align their gender identity with all aspects of everyday life.

44. Legal transition involves steps to formally align an individual's legal identity with their gender identity, such as legally changing one's name and updating the name and gender marker on their driver's license, birth certificate, and other forms of identification.

45. Medical transition, a critical part of transitioning for many transgender people, includes gender-confirming care that brings the sex-specific characteristics of a transgender person's body into alignment with their sense of their gender. Gender-confirming care can involve counseling to obtain a diagnosis of gender dysphoria, hormone replacement therapy, surgical care, or other medically necessary treatments for gender dysphoria.

46. Hormone replacement therapy involves taking hormones for the purpose of bringing one's secondary sex characteristics into typical alignment with one's gender identity. Secondary sex characteristics are bodily features not associated with external and internal reproductive genitalia (primary sex characteristics). Secondary sex characteristics include, for example, hair growth patterns, body fat distribution, and muscle mass development. Hormone

replacement therapy can have significant masculinizing or feminizing effects and can assist in bringing transgender individuals' secondary sex characteristics into alignment with their gender identity, and therefore is medically necessary care for transgender people who need it to treat their gender dysphoria.

47. Gender-confirming surgical care might be sought by transgender people to better align primary or secondary sex characteristics with their gender identity. Surgical care can include, but is not limited to, hysterectomies, gonadectomies, mammoplasties, mastectomies, orchiectomies, vaginoplasties, and phalloplasties. These treatments are for the purpose of treating gender dysphoria.

48. These various components associated with transition—social, legal, and medical transition—do not change an individual's gender, as that is already established by gender identity, but instead bring the individual's appearance, legal identity, and sex-related characteristics into greater alignment with the individual's gender identity and lived experience.

49. The consequences of untreated, or inadequately treated, gender dysphoria are dire. Symptoms of untreated gender dysphoria include intense emotional suffering, anxiety, depression, suicidality, and other attendant mental health issues. Untreated gender dysphoria is associated with higher levels of stigmatization, discrimination, and victimization, contributing to negative self-image and the inability to function effectively in daily life. When transgender people are provided with access to appropriate and individualized gender-confirming care in connection with treatment of gender dysphoria, these symptoms can be alleviated and even prevented.

50. The AMA, APA, American Psychiatric Association, Endocrine Society, American College of Obstetricians and Gynecologists, American Academy of Family

Physicians, and other major medical organizations have recognized that gender-confirming care is medically necessary, safe, and effective treatment for gender dysphoria—and that access to such treatment improves the health and well-being of transgender people. Each of these groups has publicly opposed exclusions of insurance coverage by private and public health insurers, like the Exclusions at issue here.

51. WPATH has stated that, like hormone replacement therapy and other gender-confirming treatments, the “medical procedures attendant to sex reassignment are not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient,” but instead are “medically necessary for the treatment of the diagnosed condition.” Nor are they experimental, because “decades of both clinical research and medical research show that they are essential to achieving well-being for the patient.”

B. Defendants’ Targeted and Discriminatory Exclusion of Gender-Confirming Care

1. Medicaid health coverage

52. Authorized under Title XIX of the Social Security Act of 1965, Medicaid is a joint federal-state program that provides access to health care for Medicaid-eligible individuals. 42 U.S.C. § 1396-1396w-5 (“Medicaid Act”). The purpose of Medicaid is to enable states to “furnish [] medical assistance” to individuals “whose income and resources are insufficient to meet the cost of necessary medical services.” 42 U.S.C. § 1396-1.

53. States are not required to participate in the Medicaid program—but all states do. States that choose to participate must comply with the Medicaid Act and its implementing regulations.

54. The Medicaid Act requires each participating state to establish or designate a single state agency charged with administering or supervising the state’s Medicaid program. 42

U.S.C. § 1396a(a)(5). Additionally, each participating state must maintain a comprehensive state plan (“Medicaid Plan”) for medical assistance, approved by the Secretary of the U.S. Department of Health and Human Services. 42 U.S.C. § 1396a.

55. The Medicaid Plan must describe how the state will administer its Medicaid program and affirm the state’s commitment to comply with the Medicaid Act and its implementing regulations. Additionally, the Medicaid Plan “sets out groups of individuals to be covered, services to be provided, methodologies for providers to be reimbursed and the administrative activities that are underway in the state.”

56. The federal government reimburses participating states for a substantial portion of the cost of providing medical assistance.

57. Under the Medicaid Act, “the medical assistance made available to any individual ... shall not be less in amount, duration or scope than the medical assistance made available to any other such individual.” 42 U.S.C. § 1396a(a)(10)(B)(i).

58. Additionally, a state “Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service ... to an otherwise eligible recipient solely because of the diagnosis, type of illness, or condition.” 42 C.F.R. § 440.230(c).

59. States must ensure that “[e]ach service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.” 42 C.F.R. § 440.230(b). Moreover, state Medicaid programs must provide medical assistance “in a manner consistent with ... the best interests of the recipients.” 42 U.S.C. § 1396a(a)(19).

60. The State of West Virginia participates in the federal Medicaid program.

61. Defendant BMS is the designated single state agency charged with the responsibility of administering the Medicaid program in West Virginia. W. Va. Code §§ 9-1-

2(n); 9-2-13(a)(3).

62. Defendant BMS maintains the state's Medicaid Plan and files amendments to the Medicaid Plan with the appropriate regulatory authorities. Additionally, Defendant BMS determines benefits, sets payment rates, and reimburses providers.

63. Mountain Health Trust is West Virginia's Medicaid managed care program, which is administered by the BMS. BMS contracts with several managed care organizations ("MCO"), which are health plans that coordinate services to provide health coverage to Medicaid participants. As part of the Mountain Health Trust program, eligible Medicaid participants may select a primary care provider and one of three MCOs: (1) UniCare Health Plan of West Virginia, Inc., (2) The Health Plan, and (3) Aetna Better Health of West Virginia.

64. Each MCO provides Medicaid participants with Medicaid-covered health services through their defined network of providers and hospitals. These MCO networks are monitored by Defendant BMS.

65. Although Defendant BMS, in its administration of the state's Medicaid program, "strives to assure access to appropriate, medically necessary and quality health care services for all members," the Medicaid Policy Manual provides that the Medicaid Plan does not cover "[t]ranssexual surgery." Additionally, each MCO contains a similar exclusion of gender-confirming care in each of their managed care plans: (1) UniCare excludes coverage for "[s]ex transformation procedures and hormone therapy for sex transformation procedures;" (2) The Health Plan provides that "[s]ex change, hormone therapy for sex transformation, and gender transition procedures/expenses will not be paid for by The Health Plan;" and (3) Aetna Better Health excludes coverage for "[s]ex transformation procedures and hormone therapy for sex transformation procedures."

66. At all relevant times, the state’s Medicaid Plan and managed care plans have categorically excluded coverage for gender-confirming care, through the exclusions in paragraph 65, even though the same treatments are covered for cisgender people who are Medicaid participants.

2. State employee health coverage

67. Qualifying state and public employees and their eligible dependents can choose from multiple health plan options. Covered services under the state employee health plans generally include coverage of medically necessary prescriptions, counseling, and surgical care at inpatient and outpatient facilities. These plans are distinguished primarily by coverage ratios, deductible amounts, and general costs to the insured employee and their eligible dependent enrollees.

68. State and public employees can choose from among several health insurance plans. These options include four preferred provider benefit plan options through PEIA provided by Defendant Haught.

69. **Four preferred provider benefit plan options through PEIA provided by Defendant Haught:** State and public employees can enroll for health coverage through four Preferred Provider Benefit plans: (1) “PEIA PPB Plan A,” a comprehensive health plan; (2) “PEIA PPB Plan B,” which offers lower premiums but higher deductibles and other costs; (3) “PEIA PPB Plan C,” an IRS-qualified high-deductible health plan; and (4) “PEIA PPB Plan D,” which offers no out-of-state benefits with limited exceptions. All handbooks for these plans contain an identical exclusion for “[s]urgical or pharmaceutical treatments associated with gender dysphoria or any physical, psychiatric, or psychological examinations, testing, treatments or services provided or performed in preparation for, or as a result of, sex transformation

surgery.” That exclusion appears in the 2020 through 2022 plan year handbooks. Member handbooks for plan years 2013 through 2019 similarly excluded “[s]ex transformation operations and associated services and expenses.”

70. At all relevant times, the four preferred provider benefit plan options through PEIA offered to state and public employees have contained categorical exclusions of coverage for gender-confirming care, even though the same care is covered for cisgender people.

71. Transgender people may require varying forms of gender-confirming care. The blanket Exclusions, however, unilaterally and uniformly prevent transgender people from receiving coverage for gender-confirming care regardless of their need. As a result, the Exclusions maintained across the four preferred provider benefit plans offered through PEIA discriminatorily target transgender people, denying coverage for medically necessary gender-confirming care. Cisgender enrollees receive coverage for medically necessary mental health, prescription drug, and surgical needs; whereas, transgender enrollees do not because of the Exclusions and based on their sex and transgender status.

C. The Denial of Care to Plaintiffs

1. Plaintiff Christopher Fain (Medicaid)

72. Mr. Fain is 46 years old. Mr. Fain was born in West Virginia and has resided in West Virginia for the vast majority of his life.

73. Mr. Fain is an adjunct professor at Mountwest Community and Technical College (“Mountwest College”).

74. Mr. Fain is a man.

75. Mr. Fain is also transgender. Although his sex assigned at birth was female, his gender identity is male.

76. Mr. Fain experiences dysphoria related to the distress arising from the incongruence between his gender identity and his sex assigned at birth.

77. Mr. Fain has been aware of his gender identity since he was six years old, and since that first awareness has identified as male. Mr. Fain delayed his transition for many years, however, for fear that discrimination and stigma against transgender people would prevent him from being able to support his family.

78. Delaying this vital care took an enormous toll on Mr. Fain, and he eventually came out to his family. Mr. Fain's children are very supportive of Mr. Fain's transition.

79. Mr. Fain began counseling to help address his gender dysphoria, and was diagnosed with gender dysphoria in or around December 2018.

80. Mr. Fain obtained a legal name change to reflect his gender identity through a West Virginia court order on April 6, 2018.

81. Mr. Fain updated his name to reflect his male gender identity on his Social Security account in April 2018 and, updated his West Virginia driver's license with his new name in May 2018 and correct sex designation in August 2021.

82. Mr. Fain lives in all ways in accordance with his male gender identity and is recognized as male by his family, his friends, his classmates, and his professors.

83. Mr. Fain has been enrolled as a Medicaid participant for most of his adult life.

84. Mr. Fain receives coverage through the MCO UniCare Health Plan of West Virginia, Inc., an Anthem Company.

85. In or around February 2019, Mr. Fain's mental health provider recommended that he begin hormone therapy to alleviate his gender dysphoria by aligning his physical characteristics with his gender identity. Mr. Fain began hormone care on or around March 2019.

86. In order to avoid being incorrectly identified as female and to reduce the severe distress and embarrassment over the presence of typically female-appearing breasts on his body, Mr. Fain often wears a “binder,” which is a compression garment that flattens or reduces the profile of a person’s chest, which is an ongoing source of his gender dysphoria.

87. Mr. Fain experiences intense discomfort with prolonged use of a binder, which often chafes his skin, and sometimes creates sores and leads to difficulty breathing. Nonetheless, to help manage his gender dysphoria, he sometimes wears the binder for 16 hours at a time.

88. Mr. Fain requires a bilateral mastectomy as medically necessary care to treat his gender dysphoria and eliminate the need for the ongoing use of a binder. This surgical procedure is a widely accepted and effective treatment for gender dysphoria. However, the blanket exclusion in the Medicaid Plan bars him from receiving this medically necessary care to treat his gender dysphoria. Mr. Fain accordingly is forced to delay this urgently-needed procedure as a direct and proximate result of Defendants’ continuing refusal to cover medically necessary gender-confirming care. As a result, Mr. Fain’s symptoms of gender dysphoria and related distress have increased.

89. The Medicaid Plan’s exclusion of coverage for Mr. Fain’s medically necessary care has caused Mr. Fain economic hardship, emotional distress, lowered self-esteem, embarrassment, humiliation, and stigma.

2. Plaintiff Shauntae Anderson (Medicaid)

90. Ms. Anderson is 45 years old. Ms. Anderson was born in West Virginia and has resided in West Virginia for the vast majority of her life.

91. Ms. Anderson is a woman.

92. Ms. Anderson is also transgender. Although her sex assigned at birth was male, her gender identity is female.

93. Ms. Anderson experiences gender dysphoria related to the disconnect between her primary and secondary sex characteristics and her gender identity.

94. For much of Ms. Anderson's younger years and into early adulthood, Ms. Anderson was forced to suppress her gender identity due to family disapproval and societal stigma. As a child, Ms. Anderson never felt "right" in her body. Ms. Anderson was incredibly shy and was uncomfortable being raised and socialized as a boy.

95. Around the age of six years old, Ms. Anderson started using her mother's makeup and playing with her sister's toys. In or around ninth grade, Ms. Anderson attempted to socially transition at school by dressing in a more typically feminine manner and wearing makeup.

96. In 2010, Ms. Anderson began to medically transition. Ms. Anderson lacked access to health coverage for this care, but her need to transition was so urgent that she was forced to self-treat. Ms. Anderson began taking estrogen in the form of birth control pills to help feminize her appearance. While birth control pills are not remotely adequate as a substitute for hormone therapy, Ms. Anderson's gender dysphoria was so severe that even a modest feminizing effect helped relieve some of her gender dysphoria.

97. Ms. Anderson subsequently served time in federal prison. While incarcerated, Ms. Anderson continued the process of socially transitioning, and formally began to medically transition in consultation with and under the care of medical professionals.

98. During her time in the Bureau of Prisons, Ms. Anderson updated her name to not only reflect her gender identity but also ensure that she would be recognized and treated as a transgender woman for the purpose of security checks. Additionally, Ms. Anderson was evaluated by medical professionals and received approval to wear typically feminine underwear as part of her transition.

99. Ms. Anderson began counseling to help address her gender dysphoria, and was diagnosed with gender dysphoria.

100. In or around 2019, Ms. Anderson's health care providers recommended that she begin hormone therapy to alleviate her gender dysphoria by further aligning her physical characteristics with her gender identity. Ms. Anderson began hormone therapy in or around May 2019.

101. Ms. Anderson has been enrolled as a Medicaid participant since 2020.

102. Ms. Anderson receives coverage through the MCO Aetna Better Health of West Virginia.

103. Surgical treatment is medically necessary for treatment of Ms. Anderson's gender dysphoria.

104. Ms. Anderson experiences significant distress related to her genitalia and breasts that negatively impact her daily life. She particularly experiences such distress when she gets dressed and when she is using the restroom. For example, when Ms. Anderson is using the bathroom, she is often reminded of the fact that there are aspects of her physical body that do not feel right.

105. In order to avoid being incorrectly identified as male and to reduce the severe distress and embarrassment over the presence of her typically male-appearing features, Ms. Anderson often employs the use of shapewear, like push-up bras, to help with further feminizing her body. These coping techniques, however, are not adequate to treat her gender dysphoria and do not alleviate her need for medical care.

106. Ms. Anderson requires gender-confirming surgery, including but not limited to vaginoplasty and breast reconstruction surgery. These surgical procedures are medically

necessary care to treat her gender dysphoria and, are widely accepted and effective treatments for gender dysphoria.

107. However, the blanket exclusion in the Medicaid Plan bars her from receiving this medically necessary care. Ms. Anderson, accordingly, is forced to delay this urgently-needed care as a direct and proximate result of Defendants' continuing refusal to cover medically necessary gender-confirming care. As a result, Ms. Anderson's symptoms of gender dysphoria and related distress have increased.

108. The Medicaid Plan's exclusion of coverage for Ms. Anderson's medically necessary care has caused Ms. Anderson emotional distress, lowered self-esteem, embarrassment, and stigma.

3. Plaintiff Leanne James (PEIA)

109. Ms. James is 45 years old. Ms. James was born in West Virginia and has resided in West Virginia for her entire life.

110. Ms. James is currently employed as a Systems Administrator for the Kanawha County Board of Education. She began working for the Kanawha County Board of Education on February 5, 2008.

111. As part of the terms, conditions, privileges, and status of her employment with the Kanawha County Board of Education, Ms. James is and, at all relevant times, has been enrolled in a health plan through PEIA and relies on that plan for health care coverage. Ms. James is enrolled in the PPB Plan A approved and offered by Defendants Haught and PEIA.

112. Ms. James is a woman.

113. Ms. James is also transgender. Although her sex assigned at birth was male, her gender identity is female.

114. Ms. James experiences gender dysphoria related to the disconnect between her primary and secondary sex characteristics and her gender identity.

115. Ms. James ultimately came to terms with her female gender identity in adulthood after realizing she could no longer ignore or suppress it.

116. In 2011, Ms. James began her social transition. However, due to concerns regarding Ms. James' ability to retain employment, which is necessary for ensuring the ongoing care of her daughter, Ms. James delayed certain aspects of her transition. Ms. James was concerned that transitioning on the job might subject her to stigma and discrimination.

117. In January 2019, Ms. James was diagnosed with gender dysphoria.

118. After realizing she could no longer delay her transition, in 2019 Ms. James began hormone therapy to alleviate her gender dysphoria by aligning her physical characteristics with her gender identity.

119. Ms. James changed her legal name by West Virginia court order on July 23, 2021. She also updated the name on her West Virginia driver's license and birth certificate. Ms. James is recognized as female by her family, friends, and colleagues.

120. As part of her treatment plan, Ms. James requires routine appointments for bloodwork. Ms. James has been, and continues to be, denied coverage for her bloodwork appointments pursuant to the Exclusion. Because of this, Ms. James is forced to pay out-of-pocket for her bloodwork, which typically costs her \$354.00.

121. Additionally, Ms. James is forced to pay out-of-pocket for her routine visits with her OB-GYN, Dr. Patton, because of the categorical Exclusion in her health plan for such medical care. Ms. James is typically required to pay upwards of \$110.00 per visit for her examinations.

122. Surgical treatment is medically necessary for treatment of Ms. James' gender dysphoria.

123. Ms. James experiences significant distress related to her genitalia and breasts that negatively impact her daily life.

124. In order to reduce the severe distress and embarrassment over the presence of her typically male-appearing features, Ms. James often employs the use of breast prosthetics to help feminize her body. This coping technique, however, is not adequate to treat her gender dysphoria and does not alleviate her need for medical care.

125. Ms. James requires gender-confirming surgery, including but not limited to vaginoplasty and breast reconstruction surgery. These surgical procedures are medically necessary care to treat her gender dysphoria and are widely accepted and effective treatments for gender dysphoria.

126. However, the categorical Exclusion in Defendant Haught's and PEIA's PPB Plan A bars her from receiving this medically necessary care. Ms. James is forced to delay this urgently-needed care as a direct and proximate result of Defendant Haught's and PEIA's continuing refusal to cover medically necessary gender-confirming care.

127. The blanket exclusion of gender-confirming care sends a deeply stigmatizing message to Ms. James that her worth as a public employee is lesser than others, since the exclusion deprives her of compensation that cisgender employees receive. Additionally, the exclusion is particularly humiliating and degrading because PEIA provides coverage for the same medically necessary gender-confirming care for state employees and their dependents who are not transgender.

128. Ms. James timely exhausted administrative remedies by dual-filing charges

against Defendant County Board and Defendant PEIA with the U.S. Equal Employment Opportunity Commission and the West Virginia Human Rights Commission. Ms. James has received Notice of Dismissals and Right to Sue letters from both agencies, and timely brings her Title VII claims in this suit.

129. Because of the Exclusions of coverage for gender-confirming health care in the state health plans, the named Plaintiffs have suffered emotional distress, humiliation, degradation, embarrassment, emotional pain and anguish, violation of their dignity, loss of enjoyment of life, and other compensatory damages, in an amount to be established at trial.

CLASS ACTION ALLEGATIONS

130. Plaintiffs, on behalf of themselves and all similarly situated individuals, bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

131. Plaintiffs assert their claims against all Defendants on behalf of the following Classes, collectively, “the Classes”).

Medicaid Class

132. The proposed Medicaid Class is defined as: All transgender people who are or will be enrolled in West Virginia Medicaid and who are seeking or will seek gender-confirming care barred by the Exclusions.

State Employee Health Plan Class

133. The proposed State Employee Health Plan Class is defined as: All people who are enrolled in a State Employee Health Plan and who are either transgender and have sought or will seek gender-confirming care, and/or people whose transgender dependents have sought or will seek gender-confirming care, barred by the Exclusions.

134. Plaintiffs and the proposed Classes have been equally affected by Defendants' violations of law.

135. The persons in the proposed Classes are so numerous that joinder of all members is impracticable. While the precise number of class members has not been determined at this time, upon information and belief, there are more than 40 individuals in the proposed Classes and/or the class members are so numerous that joinder would be impractical.

136. The common questions of law and fact include, but are not limited to:

A. Whether Defendants' Exclusions, facially and as applied to members of the proposed Classes, violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;

B. Whether Defendants' Exclusions, facially and as applied to members of the proposed Medicaid Class, violate the prohibitions on sex discrimination under Section 1557 of the Affordable Care Act;

C. Whether Defendants' Exclusions, facially and as applied to members of the proposed Medicaid Class, violate the availability and comparability provisions of the Medicaid Act;

D. Whether the Exclusions in Defendant PEIA's plans, offered by public employers such as Defendant County Board to their employees, violate Title VII facially and as applied to members of the proposed State Health Plan Class; and

E. Whether Defendants should be enjoined from enforcing the Exclusions and denying Plaintiffs coverage for and access to gender-confirming care.

137. The questions of law and fact listed above will yield common answers for Plaintiffs and the proposed Classes.

138. Plaintiffs' claims are typical of those members of the proposed Classes. Mr. Fain and Ms. Anderson are both transgender, are participants in West Virginia Medicaid, and are denied coverage for gender-confirming care because of an Exclusion. Ms. James is transgender, a public employee, and is denied access to medically necessary gender-confirming care because of an Exclusion. Mr. Fain and Ms. Anderson, representing the Medicaid Class and members of the proposed Medicaid Class, share the same legal claims under the Equal Protection Clause, Section 1557, and the availability and comparability provisions of the Medicaid Act. Ms. James, representing the State Employee Health Plan Class, and members of the proposed State Employee Health Plan Class, share the same legal claims under the Equal Protection Clause, and Title VII.

139. Plaintiffs will fairly and adequately represent the interests of the proposed Classes and have retained counsel experienced in complex class action litigation. Plaintiffs are represented by Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal"), the nation's oldest and largest legal organization dedicated to the rights of lesbian, gay, bisexual, and transgender ("LGBT") people and everyone living with HIV. Lambda Legal has extensive federal court experience litigating on behalf of LGBT people, including regarding transgender people's access to health care, and has served as class counsel and putative class counsel in a number of LGBT-related cases. Plaintiffs are also represented by Nichols Kaster, PLLP, a leading law firm with significant expertise representing plaintiffs across the country in employment and class action matters, and Walt Auvil of The Employment Law Center, PLLC ("The Employment Law Center"). Mr. Auvil is a West Virginia-based litigator with more than 30 years of experience protecting workers' rights, including through complex class action litigation.

140. Class treatment is appropriate under Fed. R. Civ. P. 23(b)(2) because Defendants have acted on grounds that apply generally to the proposed Classes, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the proposed Classes as a whole.

CLAIMS FOR RELIEF

COUNT I

**Deprivation of Equal Protection
U.S. Const. Amend. XIV**

Plaintiffs Christopher Fain and Shauntae Anderson on Behalf of the Medicaid Class, Against Defendants Crouch and Beane for Declaratory and Injunctive Relief

Plaintiff Leanne James on Behalf of the State Employee Health Plan Class Against Defendant Haught for Declaratory and Injunctive Relief

141. Plaintiffs re-allege and incorporate by reference the allegations in each of the preceding paragraphs of this complaint, as though fully set forth herein.

142. Plaintiffs state this cause of action on behalf of themselves and members of the proposed Classes against Defendant Crouch, Defendant Beane, and Defendant Haught in their official capacity, for purposes of seeking declaratory and injunctive relief, and challenge Defendants' enforcement of the discriminatory sex-based classifications in the Exclusions both facially and as applied to Plaintiffs and the proposed Classes.

143. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

144. Defendant Crouch is a person acting, at all relevant times, under color of state law for purposes of 42 U.S.C. § 1983 and has acted intentionally in denying Plaintiffs Fain, Anderson, and the proposed Medicaid Class equal protection of the law. Through his duties and actions to develop a managed care program that excludes coverage for gender-confirming care,

Defendant Crouch has unlawfully discriminated, and continues to discriminate, against Plaintiffs Fain, Anderson, and the members of the proposed Medicaid Class based on sex-related considerations.

145. Defendant Beane is a person acting, at all relevant times, under color of state law for purposes of 42 U.S.C. § 1983 and has acted intentionally in denying Plaintiffs Fain, Anderson, and the proposed Medicaid Class equal protection of the law. Through her duties and actions to implement health policies for BMS which exclude gender-confirming care, Defendant Beane has unlawfully discriminated, and continues to discriminate, against Plaintiffs Fain, Anderson, and the members of the proposed Medicaid Class based on sex-related considerations.

146. Defendant Haught is a person acting, at all relevant times, under color of state law for purposes of 42 U.S.C. § 1983 and has acted intentionally in denying Plaintiff James and the proposed State Employee Health Plan Class equal protection of the law. Through his duties and actions to administer and manage the group insurance plans for state employees and dependents—which includes authority and responsibility for designating noncovered services such as the Exclusions of gender-confirming care—Defendant Haught has unlawfully discriminated, and continues to discriminate, against Plaintiff James and the members of the proposed State Employee Health Plan Class based on sex-related considerations.

147. The Exclusions, on their face and as applied to Plaintiffs and the proposed Classes, impermissibly discriminate on the basis of sex, and on the basis of transgender status, and violate their right to equal protection of the laws under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

148. The Exclusions treat Plaintiffs and members of the proposed Classes differently from other persons who are similarly situated. Under the Exclusions, transgender Medicaid and

state health plan participants who require gender-confirming care are denied coverage for that medically necessary care, while cisgender Medicaid and state health plan participants can access the same kinds of treatments, including when related to their sex. Similarly, state health plan enrollees with a transgender dependent are denied coverage for that medically necessary care, while enrollees with a cisgender dependent are not denied coverage for the same kinds of treatments, including when related to their sex.

A. Discrimination on the Basis of Sex

149. By maintaining and enforcing the categorical Exclusions of gender-confirming care in the Medicaid and state employee health plans, Defendant Crouch, Defendant Beane, and Defendant Haught respectively engage in constitutionally impermissible discrimination on the basis of sex.

150. Discrimination on the basis of transgender status, sex characteristics, gender, gender identity, sex assigned at birth, nonconformity with sex stereotypes, and gender transition constitutes discrimination on the basis of sex.

151. Under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

152. By ensuring that coverage for gender-confirming care is categorically excluded regardless of medical necessity in all health coverage options for Medicaid and state employee health plan participants, Defendants Crouch, Beane, and Haught engage in constitutionally impermissible sex-based discrimination against Plaintiffs and members of the proposed Classes, and violate their right to equal protection of the laws under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

B. Discrimination on the Basis of Transgender Status

153. By maintaining and enforcing the categorical Exclusions of gender-confirming care, Defendants Crouch, Beane, and Haught engage in constitutionally impermissible discrimination on the basis of transgender status.

154. As the Fourth Circuit recently confirmed, under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on transgender status is presumptively unconstitutional and subject to “at least” heightened scrutiny. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. Aug. 26, 2020), *as amended* (Aug. 28, 2020). That is because:

A. Transgender people have suffered a long history of discrimination and continue to suffer such discrimination to this day.

B. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure explicit state and federal protections to protect them against discrimination through the legislative process.

C. A person’s transgender status bears no relation to a person’s ability to contribute to society.

D. Gender identity is a core, defining trait and is so fundamental to one’s identity and conscience that a person cannot be required to abandon it as a condition of equal treatment. Gender identity generally is highly resistant to change through intervention.

155. Because the Exclusions on their face and as applied to Plaintiffs and the proposed Classes deprive transgender Medicaid and state employee health plan enrollees of their right to equal dignity, liberty, and autonomy by stigmatizing them and branding them as inferior to cisgender health plan enrollees, Defendants Crouch, Beane, and Haught deny transgender persons equal protection of the laws, in violation of the Equal Protection Clause of the

Fourteenth Amendment. The categorical Exclusions similarly serve to stigmatize state health plan enrollees whose dependents are transgender, depriving them of their equal treatment and dignity.

156. Defendants' enforcement of the Exclusions has not, and does not serve even a legitimate state interest, let alone one that is important, or compelling. Nor are the Exclusions adequately tailored to any such state interest. Rather, the Exclusions serve only to prevent Plaintiffs and members of the proposed Classes from obtaining gender-confirming care when cisgender enrollees are able to receive the same care as long as it is not required for purposes of treating gender dysphoria. In effect, the Exclusions punish vulnerable transgender people for being transgender and taking necessary—and sometimes life-saving—steps to live in accordance with their gender identity.

157. Without injunctive relief from the Exclusions of coverage for gender-confirming care, Plaintiffs will continue to suffer irreparable harm in the future.

COUNT TWO
Violation of Section 1557 of the
Patient Protection and Affordable Care Act
42 U.S.C. § 18116

Plaintiffs Christopher Fain and Shauntae Anderson on Behalf of the Medicaid Class, Against Defendant BMS, Defendant Crouch, and Defendant Beane for Declaratory and Injunctive Relief, and Individually Against Defendant BMS for Compensatory Damages

158. Plaintiffs re-allege and incorporate each and every foregoing allegation contained in the preceding paragraphs of this complaint, as though fully set forth herein.

159. Plaintiffs state this cause of action on behalf of themselves and members of the proposed Medicaid Class for purposes of seeking declaratory and injunctive relief, and challenge the discriminatory sex-based classifications in the Exclusions both facially and as applied to Plaintiffs and the proposed Medicaid Class. Named Plaintiffs also state this cause of action for

compensatory damages, including but not limited to out-of-pocket damages, and consequential damages.

160. Under Section 1557 of the Affordable Care Act, “an individual shall not ... be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments)” on the basis of sex. 42 U.S.C. § 18116.

161. **“[A]ny health program or activity”**: Defendant BMS, which administers and supervises the state’s Medicaid Plan, constitutes a health program or activity within the meaning of the statute.

162. **“[A]ny part of which is receiving Federal financial assistance”**: Defendant BMS receives federal financial assistance such that it is a “covered entity” for purposes of Section 1557 of the ACA. The Centers for Medicare & Medicaid Services (“CMS”), operating within HHS, provide federal financial assistance to BMS for the state’s participation in the Medicaid Program.

163. The categorical Exclusions maintained by Defendants BMS, Crouch, and Beane, on their face and as applied to Plaintiffs and members of the proposed Medicaid Class, violate Section 1557’s prohibition against discrimination on the basis of sex in a health program or activity receiving federal financial assistance.

164. Defendants Crouch and Beane’s actions under color of state law to maintain the categorical Exclusions deprive Plaintiffs and members of the proposed Medicaid Class of the protection from sex discrimination secured by Section 1557.

165. Discrimination on the basis of transgender status, sex characteristics, gender, gender identity, sex assigned at birth, nonconformity with sex stereotypes, and gender transition are all encompassed by the prohibition of discrimination on the basis of sex under Section 1557.

166. By categorically excluding gender-confirming care regardless of medical necessity, Defendants BMS, Crouch, and Beane have drawn a classification that has and continues to unlawfully discriminate against Plaintiffs and members of the proposed Medicaid Class based on sex, in violation of Section 1557.

167. Because Defendant BMS receives federal funding that flows to health programs or activities, Plaintiffs and the proposed Medicaid Class have a right under Section 1557 to receive health insurance through BMS free from discrimination on the basis of transgender status, sex, sex characteristics, gender, gender identity, sex assigned at birth, nonconformity with sex stereotypes, and gender transition.

168. Defendants BMS, Crouch, and Beane have discriminated against Plaintiffs and the proposed Medicaid Class on the basis of sex in violation of Section 1557 and have thereby denied Plaintiffs and the proposed Medicaid Class the full and equal participation in, benefits of, and right to be free from discrimination in a health program or activity.

169. Plaintiffs and the proposed Medicaid Class have been and continue to be injured by the application of the Exclusion by Defendants BMS, Crouch, and Beane to deny coverage for gender-confirming care and have suffered harm as a result.

170. The named Plaintiffs have also suffered emotional distress, stigmatization, humiliation, and a loss of dignity because of BMS' targeted discrimination against transgender Medicaid participants, which wrongly deems their health care needs as unworthy of equal coverage. By knowingly and intentionally offering health care coverage to Plaintiffs that

discriminates on the basis of sex, Defendant BMS have intentionally violated the ACA, for which named Plaintiffs are entitled to compensatory damages, including but not limited to out-of-pocket damages, and consequential damages.

171. Without injunctive relief from the Exclusions of coverage for gender-confirming care, Plaintiffs and the proposed Medicaid Class will continue to suffer irreparable harm in the future.

COUNT THREE
Violation of the Medicaid Act's Availability Requirements
42 U.S.C. § 1396a(a)(10)(A)

Plaintiffs Christopher Fain and Shauntae Anderson on Behalf of the Medicaid Class, Against Defendants Crouch and Beane for Declaratory and Injunctive Relief

172. Plaintiffs re-allege and incorporate by reference the allegations in each of the preceding paragraphs of this complaint, as though fully set forth herein.

173. Plaintiffs Fain and Anderson state this cause of action on behalf of themselves and members of the proposed Medicaid Class against Defendants Crouch and Beane in their official capacity, for purposes of seeking declaratory and injunctive relief, and challenge Defendants' enforcement of the Exclusions both facially and as applied to Mr. Fain and Ms. Anderson, and the proposed Medicaid Class.

174. The Medicaid Act's Availability Requirements, 42 U.S.C. § 1396a(a)(10)(A), require that a state plan must "provide for making medical assistance available ... to" eligible individuals.

175. The categorical Exclusions maintained and enforced by Defendants Crouch and Beane eliminate mandatory Medicaid coverage of medically necessary services and render them unavailable to Plaintiffs Fain, Anderson, and members of the proposed Medicaid Class,

thereby violating Medicaid's availability requirement, 42 U.S.C. § 1396a(a)(10)(A), which is enforceable by Plaintiffs Fain and Anderson under 42 U.S.C. § 1983.

COUNT FOUR
Violation of the Medicaid Act's Comparability Requirements
42 U.S.C. § 1396a(a)(10)(B)

Plaintiffs Christopher Fain and Shauntae Anderson on Behalf of the Medicaid Class, Against Defendants Crouch and Beane for Declaratory and Injunctive Relief

176. Plaintiffs re-allege and incorporate by reference the allegations in each of the preceding paragraphs of this complaint, as though fully set forth herein.

177. Plaintiff Fain and Anderson state this cause of action on behalf of themselves and members of the proposed Medicaid Class against Defendants Crouch and Beane in their official capacity, for purposes of seeking declaratory and injunctive relief, and challenges Defendants' enforcement of the Exclusions both facially and as applied to Mr. Fain, Ms. Anderson, and the proposed Medicaid Class.

178. The Medicaid Act's Comparability Requirements, 42 U.S.C. § 1396a(a)(10)(B), require that the "medical assistance made available to [eligible individuals] shall not be less in amount, duration, or scope than the medical assistance made available to" other eligible or ineligible individuals.

179. The categorical Exclusions maintained and enforced by Defendants Crouch and Beane, and the denial of medically necessary services and treatments to Plaintiffs Fain, Anderson, and members of the proposed Medicaid Class, while the same or similar services and treatments are covered for cisgender Medicaid beneficiaries, violates Medicaid's comparability requirement, 42 U.S.C. § 1396a(a)(10)(B), which is enforceable by Plaintiffs Fain and Anderson under 42 U.S.C. § 1983.

COUNT FIVE
Violation of Title VII of the Civil Rights Act of 1964
42 U.S.C. § 2000e, et seq.

Plaintiff Leanne James on Behalf of the State Employee Health Plan Class, Against Defendants PEIA and County Board for Declaratory and Injunctive Relief, and Individually Against Defendants PEIA and County Board for Compensatory Damages

180. Plaintiffs re-allege and incorporate by reference each allegation of the prior paragraphs as though fully set forth herein.

181. Title VII provides that it is “an unlawful employment practice for an employer” to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s ... sex” or to “limit, segregate, or classify [its] employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s ... sex.” 42 U.S.C. § 2000e-2(a).

182. Plaintiff James is an “employee” within the meaning of Title VII. Plaintiff James timely brings this claim after exhausting administrative remedies with the U.S. Equal Employment Opportunity Commission and West Virginia Human Rights Commission and receiving notice of her right to sue.

183. Defendants County Board and PEIA are each an “employer” within the meaning of Title VII.

184. State and public employers that participate in the PEIA, including the County Board, have delegated significant control over employee benefits—including health care coverage—to the PEIA.

185. In establishing the scope of insurance coverage and administering that coverage, the PEIA is an agent of all employers under Title VII who participate in the PEIA, including but not limited to the County Board.

186. Additionally, PEIA is a joint employer with participating state and public employers under Title VII, including but not limited to the County Board. Those state and public employers contract with PEIA for the provision of health care coverage to their employees. By excluding gender-confirming health care, PEIA shares responsibility for essential terms and conditions of employment for those employees, and exercises significant control over those employees by determining components of their “compensation, terms, conditions, or privileges of employment” under Title VII.

187. An employer-sponsored health plan is part of the “compensation, terms, conditions, or privileges of employment.” 42 U.S.C. § 2000e-2(a)(1).

188. The denial of medically necessary health care coverage also “adversely affects [one’s] status as an employee.” 42 U.S.C. § 2000e-2(a)(2).

189. Under Title VII, discrimination “because of ... sex” includes discrimination on the basis of transgender status, gender nonconformity, gender identity, and gender transition.

190. Plaintiff James and the proposed State Employee Health Plan Class have a right under Title VII to compensation, terms, conditions, or privileges of employment, including an employer-sponsored health plan, free from discrimination because of their sex, transgender status, gender nonconformity, gender identity, or gender transition.

191. By offering coverage that excludes “[p]sychological assessment and psychotherapy treatment in conjunction with proposed gender transformation” and “[t]reatment or studies leading to or in connection with sex changes or modifications and related care,”

Defendants subject Plaintiff James and the proposed State Employee Health Plan Class to discrimination because of sex in the compensation, terms, conditions, and privileges of their employment.

192. As a result of the Exclusion, Plaintiff James and the proposed State Employee Health Plan Class have suffered harm, including but not limited to financial and emotional harm. By knowingly and intentionally offering health care coverage to Plaintiff that discriminates because of their sex, Defendants have intentionally violated Title VII, for which named Plaintiff Leanne James is entitled to compensatory damages, including but not limited to out-of-pocket damages, and consequential damages.

193. Without injunctive relief from Defendants' discriminatory Exclusion of coverage for gender-confirming care, Plaintiff James and the proposed State Employee Health Plan Class will continue to suffer irreparable harm in the future.

COUNT SIX
Violation of Title IX of the Education Amendments of 1972
20 U.S.C. § 1681, et seq.

Plaintiff Leanne James Individually Against Defendant County Board for Declaratory and Injunctive Relief, and Compensatory Damages

194. Plaintiffs re-allege and incorporate by reference each allegation of the prior paragraphs as though fully set forth herein.

195. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681.

196. Under Title IX, discrimination on the basis of sex includes, but is not limited to, discrimination based on sex characteristics, gender, nonconformity with sex stereotypes, transgender status, and gender transition.

197. Defendant County Board is a recipient of federal financial assistance from the Department of Education, and is therefore subject to Title IX.

198. By offering health plans to its employees with categorical Exclusions for gender-confirming care, Defendant County Board has and continues to discriminate on the basis of sex against Plaintiff James. The County Board also denies Plaintiff James the benefits of, and subjects her to discrimination in, educational programs and activities based on sex, including sex characteristics, nonconformity with sex stereotypes, transgender status, and gender transition in violation of Title IX.

199. By knowingly and intentionally offering health insurance that denies coverage to transgender employees such as Plaintiff James on the basis of sex, Defendant County Board harms her by: stigmatizing her; treating her as a secondary class compared to other non-transgender employees who have access to the same care denied by the Exclusion; and causing Ms. James and transgender health plan participants mental and physical health complications due to their inability to access medically necessary health care.

200. By knowingly and intentionally offering a compensation package that denies fringe benefits to Plaintiff James on the basis of sex, Defendant County Board has intentionally violated Title IX, for which Plaintiff James is entitled to compensatory damages, including but not limited to out-of-pocket damages, and consequential damages.

201. Defendant County Board funds the health plans offered through PEIA by making direct financial contributions for covered employees.

202. Without injunctive relief from Defendant County Board's discriminatory Exclusion of coverage for gender-confirming care, Ms. James will continue to suffer irreparable harm in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs as class representatives, on behalf of themselves and the proposed Classes, respectfully request that this Court enter judgment in their favor and against Defendants on all claims, as follows:

- A. Certification of a class action pursuant to Fed. R. Civ. P. 23 on behalf of the proposed Classes;
- B. Appointment of Plaintiffs as class representatives and their counsel as class counsel;
- C. Issuance of a preliminary and permanent injunction enjoining any further enforcement or application of the Exclusions, and directing Defendants and their agents to provide access to coverage for all gender-confirming care without regard to the Exclusions;
- D. Declaratory judgment that the Exclusions, facially and as applied to Plaintiffs and members of the proposed Classes:
 1. Violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex (including transgender status, sex characteristics, gender, gender identity, sex assigned at birth, nonconformity with sex stereotypes, and gender transition), and on the basis of transgender status;
 2. Violate Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex

(including transgender status, sex characteristics, gender, gender identity, sex assigned at birth, nonconformity with sex stereotypes, and gender transition);

3. Violate the Medicaid Act's availability requirement, 42 U.S.C.

§ 1396a(a)(10)(A);

4. Violate the Medicaid Act's comparability requirement, 42 U.S.C.

§ 1396a(a)(10)(B);

5. Violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex (including transgender status, sex characteristics, gender, gender identity, sex assigned at birth, nonconformity with sex stereotypes, and gender transition); and,

6. Violate Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq., by discriminating against Plaintiff James on the basis of sex (including transgender status, sex characteristics, gender, gender identity, sex assigned at birth, nonconformity with sex stereotypes, and gender transition).

E. An award of the declaratory and injunctive relief requested in this action against Defendants' officers, agents, servants, employees, and attorneys, as well as any other persons who are in active concert or participation with them;

F. An award of compensatory and consequential damages to the individual Plaintiffs in an amount that would fully compensate Plaintiffs for their financial harm, emotional distress and suffering, embarrassment, humiliation, pain and anguish, violations of their dignity, and other damages that have been caused by the conduct of Defendant BMS in violation of the ACA; and Defendants PEIA and County Board in violation of Title VII and Title IX;

G. An award of reasonable attorneys' fees, costs, and expenses under 42 U.S.C. § 1988 and all other applicable statutes; and

H. Such other and further relief as the Court may deem just and proper.

* * *

Dated: January 21, 2022

Respectfully submitted,

/s/ Walt Auvil
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on January 21, 2022 with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

Lou Ann S. Cyrus (WVSB # 6558)
Roberta F. Green (WVSB #6598)
Caleb B. David (WVSB #12732)
Kimberly M. Bandy (WVSB #10081)
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Bureau for Medical Services*

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Attorneys for Defendant Jason Haught

Dated: January 21, 2022

s/ Walt Auvil
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS, JUDGE

DECLARATION OF WALT AUVIL

I, Walt Auvil, hereby declare:

1. I am an attorney at The Employment Law Center, PLLC. I represent Plaintiffs in the above-referenced matter. I have personal knowledge of the facts set forth in this declaration.

2. Attached as Exhibit A is a true and correct copy of the U.S. Equal Employment Opportunity Commission's Dismissal and Notice of Rights in *Leanne James adv. West Virginia Public Employees Insurance Agency*, Charge No. 533-2021-02155.

3. Attached as Exhibit B is a true and correct copy of the U.S. Equal Employment Opportunity Commission's Dismissal and Notice of Rights in *Leanne James adv. Kanawha County Board of Education*, Charge No. 533-2021-02156.

4. Attached as Exhibit C is a true and correct copy of the West Virginia Human Rights Commission's Notice of Right to Sue in *Leanne James adv. West Virginia Public Employees Insurance Agency*, Charge No. 533-2021-02155.

5. Attached as Exhibit D is a true and correct copy of the West Virginia Human Rights Commission's Notice of Right to Sue in *Leanne James adv. Kanawha County Board of Education*, Charge No. 533-2021-02156.

6. All exhibits have been redacted to remove personal identifying information that is not relevant to the accompanying motion for leave to file a second amended complaint.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 21, 2022

/s/ Walt Auvil
Walt Auvil

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on January 21, 2022 with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

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*Attorneys for Defendants William Crouch;
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Attorneys for Defendant Jason Haught

Dated: January 21, 2022

s/ Walt Auvil
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Exhibit A

EEOC Form 161 (11/2020)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Leanne James
(Redacted)**

From: **Pittsburgh Area Office
1000 Liberty Avenue
Room 1112
Pittsburgh, PA 15222**

*On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

533-2021-02155

**Philadelphia Legal Unit,
Legal Technician**

(267) 589-9700

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (*briefly state*)

No employer/employee relationship between Charging Party and Respondent

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



12-23-2021

Enclosures(s)

**Deborah A. Kane,
Director**

(Date Issued)

cc:

**William B. Hicks
WEST VIRGINIA PEIA
601 57th ST SE, STE 2
Charleston, WV 25304**

**Nicole J. Schladt
NICHOLS KASTER PLLP
4700 IDS Center
80 South Eighth Street
Minneapolis, MN 55402**

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was issued to you** (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 – not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Enclosures(s)

cc:

Exhibit B

EEOC Form 161 (11/2020)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Leanne James
(Redacted)**

From: **Pittsburgh Area Office
1000 Liberty Avenue
Room 1112
Pittsburgh, PA 15222**

*On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
533-2021-02156	Philadelphia Legal Unit, Legal Technician	(267) 589-9700

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

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On behalf of the Commission



**Deborah A. Kane,
Director**

12/23/2021

(Date Issued)

Enclosures(s)

cc: **Lindsey McIntosh
KANAWHA COUNTY BOARD OF EDUCATION
200 Elizabeth Street
Charleston, WV 25311**

**Nicole J. Schladt
NICHOLS KASTER PLLP
4700 IDS Center
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Minneapolis, MN 55402**

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
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the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was issued to you** (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** – not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Enclosures(s)

cc:

Exhibit C

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

**Leanne James
Complainant,**

v.

EEOC Number: 533-2021-02155

**WV Public Employees Insurance Agency
Respondent.**

NOTICE OF RIGHT TO SUE

<u>COMPLAINANT</u>	<u>ATTORNEY/CONTACT PERSON</u>
Leanne James (Redacted)	Tara L. Borelli, Senior Counsel Lambda Legal Southern Regional Office 158 West Ponce De Leon Ave., Ste 105 Decatur GA 30030 Walt Auvil Employment Law Center

This is your **NOTICE OF RIGHT TO SUE**. It is issued pursuant to the requirements of West Virginia Code §5-11-13(b), as amended, which provides that a Notice of Right to Sue be issued upon the dismissal of a complaint for any reason other than an adjudication of the merits of the case.

Your complaint was originally filed with the United States Equal Employment Opportunity Commission (EEOC), and you elected not to proceed with your complaint at the Commission. The Commission has confirmed that the EEOC dismissed your complaint and issued a federal Right to Sue on or about December 23, 2021.

Pursuant to W. Va. Code §5-11-13 (b) and this letter, you are authorized to institute a civil action based upon your Human Rights claim against the responding entity, at any time within **ninety (90) days** following the mailing date of this notice (postmark), or, **if the statute of limitations on your claim has not expired at the end of that ninety-day period**, at any time until the statute of limitations runs out on your claim. Your civil action should be filed in the circuit court of the county where the Respondent resides or transacts business.

If you have any questions about your rights under this Notice, please contact James A. Spenia, Lead Investigator, West Virginia Human Rights Commission, Room 108A, 1321 Plaza East, Charleston, West Virginia 25301-1400, telephone: (304) 558-2616, facsimile: (304) 558-0085.

Entered this 12th day of January 2022.

WV HUMAN RIGHTS COMMISSION

BY: 
Tia L. Welch
Executive Director

TLW/lrb

**CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

Exhibit D

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

**Leanne James
Complainant,**

v.

EEOC Number: 533-2021-02156

**Kanawha County Board of Education
Respondent.**

NOTICE OF RIGHT TO SUE

<u>COMPLAINANT</u>	<u>ATTORNEY/CONTACT PERSON</u>
Leanne James (Redacted)	Tara L. Borelli, Senior Counsel Lambda Legal Southern Regional Office 158 West Ponce De Leon Ave., Ste 105 Decatur GA 30030 Walt Auvil Employment Law Center

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Entered this 12th day of January 2022.

WV HUMAN RIGHTS COMMISSION

BY: 
Tia L. Welch
Executive Director

TLW/lrb

**CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS, JUDGE

**ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT**

This matter comes before the Court on motion by the Plaintiffs for leave to file a Second Amended Complaint. For good cause appearing, it is ORDERED that Plaintiffs' motion is GRANTED. Plaintiffs shall file their Second Amended Complaint within five business days of this Order.

Dated: _____

Honorable Robert C. Chambers
U.S. District Court Judge