

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

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, and DORA STUTLER in her official capacity as Harrison County Superintendent,

Defendants.

Civil Action No. 2:21-cv-00316

Hon.

COMPLAINT

INTRODUCTION

1. B.P.J. is an 11-year-old girl who will start middle school this fall. While in elementary school, B.P.J. participated on a cheerleading team, where she enjoyed the camaraderie of practicing, playing, and competing alongside a team comprised entirely of girls. This fall, B.P.J. wants to continue playing sports in middle school by participating on the girls' cross-country and track teams. B.P.J. comes from a family of runners, and she is excited for her chance to try out and compete.

2. But without this Court's intervention, B.P.J. will be denied that opportunity simply because she is transgender. As part of a wave of similar legislation introduced across the country, West Virginia passed a new law in April 2021 that categorically bans B.P.J. and all other girls who are transgender in West Virginia from participating in school sports consistent with their

gender identity. The new statute, which was passed by the legislature as H.B. 3293, is codified at W. Va. Code § 18-2-25d (“H.B. 3293”).¹

3. H.B. 3293 was prompted by unfounded stereotypes, false scientific claims, and baseless fear and misunderstanding of girls who are transgender. Proponents of H.B. 3293 made clear that its purpose is to exclude what they referred to as “transgenderers”² from girls’ sports teams. Yet, as H.B. 3293’s sponsors and the Governor have acknowledged, there is no evidence of any “problem” caused by girls who are transgender participating on sports teams in West Virginia.

4. By barring B.P.J. and other girls who are transgender from participating in school athletics, H.B. 3293 discriminates on the basis of sex and transgender status in violation of the United States Constitution and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (“Title IX”). If allowed to go into effect, H.B. 3293 will cause severe and entirely unnecessary harms and distress to B.P.J. and other girls who are transgender—an already vulnerable group of people subject to a history of discrimination that continues to this day.

5. B.P.J. seeks declaratory and injunctive relief from this Court to allow her to experience the benefits of athletic participation consistent with her gender identity and without being singled out from other girls for different treatment simply because she is transgender.

PARTIES

Plaintiff

6. B.P.J. is an 11-year-old girl who lives in Harrison County, West Virginia. She will attend Bridgeport Middle School in the fall and intends to try out for the girls’ cross-country and track teams. Team practices leading to the Bridgeport Middle School cross-country team tryouts

¹ The enacted version of H.B. 3293 is attached as Exhibit A to the Declaration of Loree Stark (“Stark Declaration”) that is filed contemporaneously with this Complaint.

² See Stark Declaration, Exhibit E (April 8, 2021 West Virginia Senate Hearing).

for the 2021-2022 school year are expected to begin in July 2021. She brings this suit through her next friend and mother, Heather Jackson.

Defendants

7. Defendant West Virginia State Board of Education (“State Board of Education”), located in Kanawha County, supervises the public-school system and is responsible for implementing education policies and programs in West Virginia. W. Va. Const. art. XII, § 2; W. Va. Code § 18-2-5. The State Board of Education’s supervisory role includes extracurricular activities such as interscholastic athletics. W. Va. Code § 18-2-25. The State Board of Education is authorized to delegate its power to control, supervise, and regulate interscholastic athletics to county boards or the West Virginia Secondary School Activities Commission. *Id.*

8. Defendant West Virginia Secondary School Activities Commission (“School Activities Commission”), located in Wood County, controls, supervises, and regulates interscholastic athletics for secondary schools pursuant to the State Board of Education’s power under West Virginia Code § 18-2-25. Such powers may be limited and supervised by the State Board of Education. *Id.*

9. Defendant Harrison County Board of Education (“County Board of Education”) is the governing body of Harrison County’s public education system, which includes Bridgeport Middle School. W. Va. Code § 18-5-1. The County Board of Education exercises control, supervision, and regulation over Bridgeport Middle School’s interscholastic athletics unless and until it delegates such control, supervision, and regulation to the School Activities Commission. W. Va. Code § 18-5-13; W. Va. Code § 18-2-25. On information and belief, the County Board of Education has delegated its control, supervision, and regulation of Bridgeport Middle School’s interscholastic athletics to the School Activities Commission.

10. Defendant State Superintendent W. Clayton Burch is the Chief Executive Officer of the State Board of Education. Defendant Burch executes his official duties in Wood County. Defendant Burch oversees all public schools, county superintendents, and county boards of education in West Virginia. W. Va. Code § 18-3-3. He is sued in his official capacity.

11. Defendant Superintendent Dora Stutler is the Chief Executive Officer of the County Board of Education. Defendant Stutler executes her official duties in Harrison County. Defendant Stutler is responsible for executing educational policies under the direction of the State Board of Education and the County Board of Education. W. Va. Code § 18-4-10. This includes interscholastic athletics. She is sued in her official capacity.

JURISDICTION AND VENUE

12. This action arises under the United States Constitution, 42 U.S.C. § 1983, and Title IX.

13. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under laws of the United States, including laws providing for the protection of civil rights, and because this suit seeks redress for the deprivation, under color of state law, for rights secured by the United States Constitution.

14. Venue is proper in the Charleston Division of the Southern District of West Virginia under 28 U.S.C. § 1391(b)(1) and (2) because Defendants the State Board of Education, the School Activities Commission, and Burch reside in this Division and District and because a substantial part of the events or omissions giving rise to the claims occurred in this Division and District.

15. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

16. This Court has personal jurisdiction over Defendants because they are domiciled in West Virginia and because West Virginia is the location of their denial of Plaintiff's rights under the United States Constitution and the laws of the United States.

FACTUAL ALLEGATIONS

A. Gender Identity and Gender Dysphoria.

17. Every individual's sex is multifaceted and comprised of many distinct biological characteristics, including, but not limited to, chromosomal makeup, hormones, internal and external reproductive organs, secondary sex characteristics, and gender identity.

18. Everyone has a gender identity. Although the detailed mechanisms are unknown, there is a medical consensus that there is a significant biologic component underlying gender identity.

19. A person's gender identity is a fundamental component of their identity that is durable and deeply rooted. It cannot be changed by social or medical intervention.

20. When a child is born, a sex designation usually occurs at birth based on a visual assessment of the infant's external genitalia. Most people are cisgender, meaning that their gender identity aligns with the sex they were assigned at birth.

21. But not everyone's gender identity aligns with the sex they are assigned at birth. A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.

22. When a person experiences sustained and clinically significant distress caused by the incongruence between their gender identity and their sex-assigned at birth, they may be diagnosed with “gender dysphoria.” *See* American Psychiatric Association’s Diagnostic & Statistical Manual of Mental Disorders (“DSM-V”).

23. Under the widely accepted standards of care developed by The Endocrine Society and the World Professional Association for Transgender Health, the only treatment for gender dysphoria before puberty is “social transition.” Preventing transgender youth from social transition can result in severe anxiety and depression, self-harm, and suicidality.

24. Moreover, for transgender people of all ages (both pre- and post-puberty), being able to socially transition and live and express themselves consistent with their gender identity is critical to their health and well-being.

25. As part of the medically necessary social transition, before transgender children reach puberty they have the option to receive puberty-delaying medical treatment. The puberty-delaying treatment helps pre-pubertal transgender children live in alignment with their gender identity and treats the symptoms of gender dysphoria.

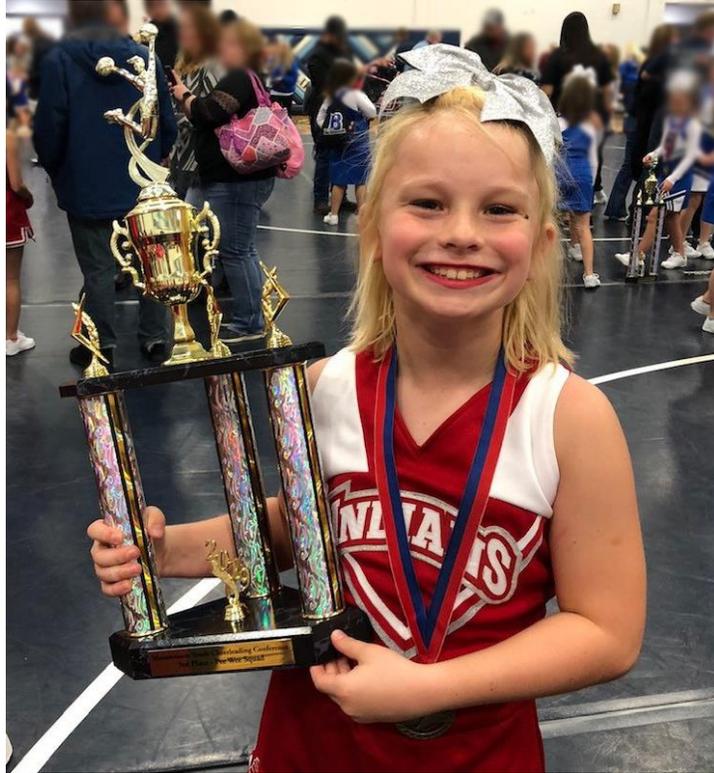
26. Puberty-delaying treatment pauses endogenous puberty at whatever stage it is at when the treatment begins. This has the impact of limiting the influence of a person’s endogenous hormones on their body. For example, a girl who is transgender who undergoes puberty-delaying treatment before her endogenous puberty begins will experience none of the impacts of testosterone that would be typical if she underwent her endogenous puberty.

27. Because puberty-delaying treatment allows transgender youth to avoid going through their endogenous puberty, it helps mitigate gender dysphoria and prevents them from

experiencing permanent physical changes that would otherwise accompany their endogenous puberty.

B. B.P.J.’s Gender, Medical Treatment, and Participation in Sports.

28. B.P.J. is a girl who is transgender, which means she is a girl who was assigned the sex of male at birth. A recent picture of B.P.J. is included below:



29. B.P.J. knew from a very young age that she is a girl. By the time she was in the third grade, B.P.J. was living as a girl at home. At the end of the school year, she informed her mother and father that she did not want to continue going to school “dressed as a boy” and that she wanted to go by the first name B. (a name commonly associated with girls).

30. B.P.J.’s family supported (and continues to support) B.P.J. living authentically as the girl that she is.

31. B.P.J. was diagnosed with gender dysphoria in 2019, and she began puberty-delaying treatment on June 15, 2020. B.P.J. had been receiving this treatment for almost one year at the time West Virginia passed H.B. 3293.

32. B.P.J. comes from a family of runners, and she plans to try out for the girls' cross-country and track teams at Bridgeport Middle School. The team practices leading to the girls' cross-country team tryouts are expected to begin in July 2021.

33. At a young age, B.P.J.'s mother would run with B.P.J. through local parks, which contributed to B.P.J.'s love of running. B.P.J. has wanted to run on a team since she was in kindergarten. She has grown up watching her older brothers run on their school teams and her mother compete in organized races.

34. B.P.J. also likes being on a team and playing sports with other girls. When B.P.J. competed in cheerleading while in elementary school, she enjoyed the camaraderie of being on a team of girls with her friends and working together as a team to succeed.

35. Now, just like any other middle school student, B.P.J. wants the chance to explore her athletic interests and try out for the teams that interest her.

C. Participation of B.P.J. and Other Transgender Youth in School-Sponsored Athletics.

36. For children and young adults, school-sponsored athletics offer a range of benefits that they continue to experience throughout life. For example, students who participate in high school sports are more likely to finish college and more likely to be actively engaged in planning for their future. Athletics provide an opportunity to gain confidence, to develop important social, emotional, and coping skills, and to build social connections. By contrast, when young people are excluded from participating in youth sports, or do not feel accepted or respected, they do not have the opportunity to reap these benefits.

37. Girls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams. The only way for a girl who is transgender to experience the benefits associated with sex-separated school athletics—or to participate in school athletics at all—is for her to participate on the same teams as other girls.

38. Girls who are transgender are also not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance. There is scientific consensus that sex chromosomes and genitals alone—*i.e.*, independent of circulating testosterone—do not meaningfully affect athletic performance. Rather, any population-level performance differences between cisgender boys and cisgender girls in athletic competition are due to circulating testosterone levels that typically diverge significantly starting at puberty.

39. Girls who are transgender and who receive puberty-delaying treatment followed by gender-affirming hormone therapy never go through their endogenous puberty and thus do not experience physiological changes caused by testosterone. They experience a hormonal puberty typical of cisgender girls and not cisgender boys.

40. Girls who are transgender and who *do* go through some or all of their endogenous puberty can receive gender-affirming hormone therapy that reduces their circulating testosterone levels and mitigates and often eliminates any athletic benefit from having gone through endogenous puberty. The National Collegiate Athletic Association (“NCAA”), World Athletics, and the International Olympic Committee (the “Olympics”) all allow women who are transgender to play in women’s athletic events after suppressing their levels of testosterone for particular periods of time (*e.g.*, one year) and (for World Athletics or the Olympics) below a particular threshold.

D. H.B. 3293.

1. H.B. 3293's Introduction, Debate, Amendment, and Enactment

41. Before H.B. 3293 was enacted, a student's eligibility to participate in athletics at the secondary school level in West Virginia was governed by rules promulgated by the School Activities Commission, the executive body with expertise governing scholastic sports. These rules provided separate teams for boys and girls. W. Va. Admin. Code § 127-2-3 (3.8).

42. Prior to H.B. 3293, West Virginia had no public or formal prohibition on the participation of transgender students in school sports.

43. On March 18, 2021, H.B. 3293 was introduced in the West Virginia House by Delegate Caleb Hanna. H.B. 3293 was part of a concerted, nationwide effort to target transgender youth for unequal treatment with state legislation.

44. The operative language of H.B. 3293 as introduced would have required students to provide copies of their birth certificates reflecting their "sex at time of birth" in order to be admitted to public school at any level in West Virginia. *See* W. Va. Leg. Originating H.B. 3293 (Mar. 16, 2021) § 18-2-5c.³ If a student were unable to provide a birth certificate that reflected their "sex at time of birth," the student would have been required to submit an affidavit as well as "[a] signed physician's statement indicating the pupil's sex based solely on the pupil's unaltered internal and external reproductive anatomy." *Id.* § 18-2-5c(a)(2).

45. The introduced version of H.B. 3293 further provided that, for purposes of participating in athletics at the secondary level, "[t]he sex identified in subsection (a) above shall be the pupil's sex for the purposes of participating in single-sex secondary school interscholastic

³ The introduced version of H.B. 3293 is available on the legislature's website: https://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=HB3293%20ORG.htm&yr=2021&sess_type=RS&i=3293.

athletic events under the control, supervision, and regulation of the West Virginia Secondary Schools Activities Commission.” *Id.* § 18-2-5c(e).

46. The introduced version of H.B. 3293 also would have required the School Activities Commission to “verify with each county board that each student participating in single-sex interscholastic events [at the secondary level] is participating according to the student’s sex at the time of the student’s birth.” *Id.* § 18-2-25(f).

47. On March 18, 2021, the West Virginia House Education Committee held a hearing on H.B. 3293. From the outset, proponents of H.B. 3293 made clear that H.B. 3293 was targeted at, and intended only to affect, girls who are transgender. When asked how H.B. 3293 would change the status quo in West Virginia—which already had sex separation in sports—counsel for H.B. 3293 replied that the bill “would affect those that changed their sex after birth” and further explained that H.B. 3293 “would not affect” a man who was assigned a male sex at birth.⁴

48. During the hearing, Sarah Stewart from the West Virginia Department of Education testified that her office had never received any calls or complaints about transgender students participating in athletics. Another witness testified that there had been no instances of girls who are transgender “dominating” sports in West Virginia. In fact, during the hearing, there was no evidence provided that any girl who is transgender had ever played on a girls’ athletic team in West Virginia.

49. H.B. 3293 passed out of the Education Committee and was heard by the Judiciary Committee on March 18, 2021. The Judiciary Committee amended H.B. 3293 to state that, for purposes of participating in athletics at the secondary level, if a birth certificate were not provided

⁴ See Stark Declaration, Exhibit B (March 18, 2021 West Virginia House of Delegates Education Committee).

or did not indicate a student's sex assigned at birth, then a "signed physician's statement indicating the pupil's sex based solely on the pupil's unaltered internal and external reproductive anatomy must be submitted." *See* W. Va. Leg. Amended H.B. 3293 (Mar. 18, 2021) § 18-2-5c.⁵

50. As with the first hearing, testimony in the Judiciary Committee focused on students who are transgender. Opponents of H.B. 3293 again drew attention to the fact that there had been no issues regarding transgender students participating in sports in West Virginia. As one witness relayed: while there is "no harm" being addressed by H.B. 3293, "there is harm perpetrated by it."⁶ Nevertheless, H.B. 3293 passed out of the Judiciary Committee, as amended, on March 18, 2021.

51. On March 23, 2021, the West Virginia Delegates debated H.B. 3293 on the House floor. When asked at this hearing about the number of complaints that the School Activities Commission had received regarding transgender athletes in West Virginia, Delegate Joe Ellington ("Del. Ellington"), a sponsor of H.B. 3293, admitted that he did not know of any complaints in West Virginia.

52. Again, during the House floor debate, the sponsors of H.B. 3293 made clear that H.B. 3293 is targeted at, and is intended to exclude, girls who are transgender. Delegate Margitta Mazzochi, a co-sponsor of H.B. 3293, suggested that she did not "want all this mixing and matching" of "transgender children" with non-transgender children in "locker rooms." Likewise, when closing the debate, Del. Ellington described the "issue" solved by H.B. 3293 as

⁵ The Education Committee's amendment to H.B. 3293 is available here: https://www.wvlegislature.gov/Bill_Text_HTML/2021_SESSIONS/RS/bills/HB3293%20SUB.pdf.

⁶ *See* Stark Declaration, Exhibit C (March 18, 2021 West Virginia House of Delegates Judiciary Committee).

being “two transgender girls” who “were allowed to compete in state track and field meets in Connecticut.”⁷

53. During the House floor debate, opponents of H.B. 3293 emphasized that H.B. 3293 was simply “creat[ing] problems where they don’t exist.” Others emphasized the negative impact that H.B. 3293 would have on West Virginia’s transgender population: as one Delegate put it, “West Virginia, a place to live, work, raise a family if you choose, only if you’re not transgender.”⁸

54. H.B. 3293 was passed out of the House without further amendment on March 25, 2021.

55. On April 1, 2021, H.B. 3293 was heard in the Senate Education Committee. The Education Committee amended the House version of the bill, including to make it a new section of the Code (§ 18-2-25d). The Senate Education Committee’s amendment removed the birth certificate provisions and defined “[b]iological sex” as “an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth.” § 18-2-25d(b)(1). The Senate Education Committee added a cause of action provision allowing “any student” “aggrieved” by a violation of H.B. 3293 to sue the respective county board of education. *Id.* at (d). In addition, whereas previous iterations of H.B. 3293 had encompassed only secondary school athletics, the Senate Education Committee expanded the breadth of H.B. 3293’s scope to encompass collegiate athletics as well. *Id.* at (c)(1). This amended version of H.B. 3293 was passed out of the Senate Education Committee to the full Senate.

56. The Senate debated H.B. 3293 on April 8, 2021. During the debate, proponents of H.B. 3293 again made clear that H.B. 3293 was targeted towards and intended to affect only

⁷ See Stark Declaration, Exhibit D (March 25, 2021 West Virginia House of Delegates).

⁸ See Stark Declaration, Exhibit D (March 25, 2021 West Virginia House of Delegates).

transgender youth. One senator who supported H.B. 3293 explicitly noted that “the bill” is “about transgenders.” Another senator quoted from a letter which described the “trans movement” as “an attack upon womanhood.”⁹

57. Opponents of H.B. 3293 noted that multiple groups of medical professionals, including the West Virginia Chapter of the American Academy of Pediatrics, opposed H.B. 3293, calling attention to statistics on suicide and self-harm among transgender youth.

58. H.B. 3293, as amended by the Senate Education Committee, passed the Senate floor on April 9, 2021.

59. On April 28, 2021, Governor Justice signed H.B. 3293 into law.

60. In an interview on April 30, Governor Justice was asked if he could provide “one example of a transgender child trying to get an unfair advantage.” In response, Governor Justice replied: “No, I can’t really tell you one.”¹⁰ He further indicated that the issue purportedly addressed by H.B. 3293 was not a priority for him, stating, “I didn’t make it a priority. It wasn’t my bill. . . . This is not like it’s a big priority to me. . . . I think we only have 12 kids maybe in our state that are transgender-type kids. I mean, for crying out loud . . . I sign hundreds of bills, hundreds of bills. This is not a priority to me.”

2. H.B. 3293 As Enacted

61. H.B. 3293 becomes effective on July 8, 2021.

62. H.B. 3293 as enacted categorically excludes participation in school sports in West Virginia at the middle school, high school, and collegiate level by all girls who are transgender. §§ 18-2-25d(a)-(c).

⁹ See Stark Declaration, Exhibit E (April 8, 2021 West Virginia Senate Hearing).

¹⁰ <https://twitter.com/MSNBC/status/1388132937707802629>.

63. It does so notwithstanding the statute's purported finding that "Classifications based on gender identity serve no legitimate relationship to the State of West Virginia's interest in promoting equal athletic opportunities for the female sex." § 18-2-25d(a)(4).

64. Specifically, H.B. 3293 requires that all "[i]nterscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public secondary school or a state institution of higher education, including a state institution that is a member of the National Collegiate Athletic Association (NCAA)" are "expressly designated" as either "males," "females," or "co-ed" based solely on a student's "biological sex." §§ 18-2-25d(b), (c).

65. H.B. 3293 further provides that "[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." *Id.* at (c)(2). There is no parallel provision for boys' teams.

66. H.B. 3293 defines "[b]iological sex" as "an individual's physical form as a male or female ***based solely on the individual's reproductive biology and genetics at birth.***" *Id.* at (b)(1) (emphasis added). Girls who are transgender necessarily cannot show that they are girls under this definition.

67. H.B. 3293 also provides a cause of action for "[a]ny student" "aggrieved" by a violation of H.B. 3293 to sue for "injunctive relief and actual damages, as well as reasonable attorney's fee and court costs." *Id.* at (d).

68. H.B. 3293 does not define (or set any limits on) what a "violation" under H.B. 3293 may be and delegates authority to other bodies to establish rules and regulations.

69. H.B. 3293 thus exposes female athletes to the risk of having to subject themselves to sex-based challenges in order to participate on a school-sponsored girls' athletic team. The

medical history form that the School Activities Commission requires students wishing to participate in school athletics to complete does not refer to sex or gender, or require students to report their reproductive biology or genetics. As a result, girls whose sex is disputed will be unable to rely on their regular sports exam to make the appropriate showing of “biological sex” under H.B. 3293 and thus may be subject to embarrassing, invasive, and/or costly exams to be allowed to play on the girls’ team. There is no parallel burden placed on boys.

3. H.B. 3293 Excludes Girls Who Are Transgender Based on Their Transgender Status—Not Based on Purported Athletic Advantages

70. H.B. 3293 excludes girls who are transgender from girls’ sports teams based on their transgender status, not on any feature tied to a purported physiological athletic advantage.

71. Specifically, H.B. 3293 requires that athletic teams be separated based solely on genetics and reproductive anatomy at birth. W. Va. Code § 18-2-25d(b)(1). H.B. 3293 precludes consideration of circulating testosterone in determining “biological sex”—the only sex-related characteristic with any documented relationship to athletic ability.

72. H.B. 3293 thus categorically bars *any* girl who is transgender from participating in girls’ sports without considering factors that have any correlation with athletic ability. Under H.B. 3293, even girls like B.P.J., who receive puberty-delaying treatment and never go through endogenous puberty, are prohibited from participating on girls’ sports teams.

73. By contrast, H.B. 3293 would allow a boy who is transgender to play on the girls’ sports team, even if the boy had received hormone replacement therapy, including exogenous testosterone as part of his treatment for gender dysphoria.

E. H.B. 3293 Harms B.P.J. and Other Girls Who Are Transgender.

74. B.P.J. was angry and sad when she learned about H.B. 3293 and how it would impact her. Although B.P.J. is a girl, under H.B. 3293's definition of "biological sex," B.P.J. will be excluded from joining a girls' sports team at school. W. Va. Code 18-2-25d(b)(1).

75. If H.B. 3293 is in effect at the start of the Fall 2021 athletic season, B.P.J. will not be able to participate in any activity involving "competitive skill."

76. Upon information and belief, cross-country running, track, and presumably any other school-sponsored sport of interest to B.P.J. fit that descriptor.

77. Indeed, on May 18, 2021, the Principal of Bridgeport Middle School—the school that B.P.J. will attend in fall 2021—informed B.P.J.'s mother that B.P.J. will not be permitted to join the girls' cross-country or track teams due to H.B. 3293. The Principal further stated that if B.P.J. attempted to participate on the boys' team, it would be "confusing" for the cross-country coaches because B.P.J. looks and presents as female, like any other girl. The Principal said he thus would have to inform the coaches for both the girls' and boys' cross-country teams that B.P.J. is transgender.

78. The reality is that B.P.J. cannot—and does not want to—participate on the boys' team because she is a girl, not a cisgender boy. Doing so would be embarrassing and would undermine her medical treatment for gender dysphoria, which includes living and expressing herself as a girl in all aspects of her life. Forcing her onto a boys' team would undermine this core part of her identity and medical care.

79. Barring B.P.J. from participating in school sports prevents her from experiencing the motivation, challenge, camaraderie, and joy that sport has brought her in the past, as well as opportunity to be teammates with other girls participating in athletics.

80. West Virginia's attempt to force B.P.J. to compete on the boys' team also is a clear sign to her and others that West Virginia does not see or accept her as the girl that she is.

81. Excluding girls who are transgender from participating in athletics alongside their female peers increases shame and stigma and contributes to negative physical and emotional health outcomes for the girls who are transgender who are excluded.

82. H.B. 3293 also limits (or eliminates) the benefits of athletics for *all* girls. Exclusionary policies such as that embodied in H.B. 3293 discourage, rather than encourage, participation in athletics.

83. Moreover, because H.B. 3293 impacts girls and not boys, it puts all girls at risk of having their sex disputed.

CLAIMS FOR RELIEF

COUNT I

Violation of Title IX

20 U.S.C. § 1681, *et seq.*

Plaintiff against the State Board of Education, the County Board of Education, and the School Activities Commission

84. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein. Plaintiff brings this Count against the State Board of Education, the County Board of Education, and the School Activities Commission.

85. 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(a).

86. The State Board of Education and the County Board of Education are educational programs receiving federal financial assistance.

87. The School Activities Commission receives federal financial assistance directly and/or indirectly through *inter alia* dues paid by its federal-fund-receiving members.

88. Because secondary school athletics are of a unique nature that require cooperation and a common administration between the various federal-fund-receiving members, these federal-fund-receiving members have ceded controlling authority to the School Activities Commission over secondary school athletics.

89. The School Activities Commission's existence and purpose is merely a consequence of the inherent need for a centralized body to manage, coordinate, schedule, or otherwise administer secondary school sports in West Virginia. It thus is a controlling authority over a federally funded program, namely, athletic opportunities for federal-fund-receiving educational institutions in West Virginia.

90. Under Title IX, discriminating against transgender students is discrimination "on the basis of sex."

91. The statutory language of Title IX does not exempt athletic programs from the broad prohibition on discrimination. The implementing regulations for Title IX permit sports teams to be separated by sex, but do not mandate such separation.

92. Neither Title IX, nor its regulations, purport to define "sex" based on reproductive anatomy or genetics at birth. These authorities also do not specify what constitutes separation of sex for purposes of athletic activities, should a school choose to separate certain sports teams by sex.

93. H.B. 3293 discriminates against B.P.J. and other girls who are transgender by singling them out for different treatment from cisgender girls and—as a result—preventing them

from accessing the benefits of participation in school athletics on an equal basis as other students, in violation of their rights under Title IX.

94. H.B. 3293 also discriminates against B.P.J. and other girls as compared to boys. H.B. 3293 places girls, but not boys, at risk of having their “biological sex” challenged and accordingly being the focus of an action contending that they do not satisfy the law’s definition of female “biological sex.” As a result, H.B. 3293 prevents girls from accessing the benefits of participation in school athletics on an equal basis vis-à-vis boys in violation of their rights under Title IX.

95. B.P.J. is irreparably harmed by Defendants’ illegal conduct in violation of Title IX.

COUNT II
Deprivation of Equal Protection
U.S. Const. Amend. XIV
Plaintiff against All Defendants

96. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein. Plaintiff brings this Count against Defendants the State Board of Education, the County Board of Education, the School Activities Commission, State Superintendent W. Clayton Burch in his official capacity, and Harrison County Superintendent Dora Stutler in her official capacity.

97. The Equal Protection Clause of the Fourteenth Amendment, 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.

98. Defendants are all governmental actors acting under color of state law for purposes of 42 U.S.C. § 1983 and the Fourteenth Amendment.

99. Under the Equal Protection Clause, discrimination based both on sex and transgender status is subject to heightened scrutiny and is therefore presumptively unconstitutional

absent a showing by the state that the discrimination is substantially related to an important state interest.

100. H.B. 3293 discriminates against girls who are transgender by singling them out for different treatment from cisgender girls and—as a result—prevents them from accessing the benefits of participation in school athletics on an equal basis as other students based both on sex and transgender status.

101. Excluding girls who are transgender from participating on girls' sports teams based solely on their “reproductive anatomy and genetics at birth” is not substantially related to any important state interest.

102. West Virginia passed H.B. 3293 for the impermissible purpose of excluding all girls who are transgender from school athletics. H.B. 3293's sweeping exclusion of girls who are transgender from participation in school athletics is so disconnected from H.B. 3293's purported justifications that it is impossible to credit them.

103. H.B. 3293 is based on unfounded stereotypes, false scientific claims, and baseless fear and misunderstanding of girls who are transgender, which are insufficient to justify discriminatory treatment under any level of scrutiny.

104. H.B. 3293 also discriminates against B.P.J. and other girls as compared to boys. H.B. 3293 places girls, but not boys, at risk of having their “biological sex” challenged and accordingly being the focus of an action contending that they do not satisfy the law's definition of female “biological sex.” As a result, H.B. 3293 prevents girls from accessing the benefits of participation in school athletics on an equal basis vis-à-vis boys in violation of their rights under the Equal Protection Clause.

105. As a result, Defendants have violated the Equal Protection Clause, enforceable pursuant to 42 U.S.C. § 1983.

106. B.P.J. is irreparably harmed by Defendants' illegal conduct in violation of the Equal Protection Clause, enforceable pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an order and judgment as follows:

A. Declaring that the provisions of and enforcement by Defendants of H.B. 3293 as discussed above violate Plaintiff's rights under Title IX;

B. Declaring that the provisions of and enforcement by Defendants of H.B. 3293 as discussed above violate Plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment;

C. Preliminarily and permanently enjoining Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from enforcing H.B. 3293 and any other law, custom, or policy that precludes Plaintiff's participation on girls' school sports teams in West Virginia;

D. Waiving the requirement for the posting of a bond as security for entry of temporary or preliminary injunctive relief;

E. Awarding Plaintiff nominal damages, as well as her costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

F. Granting such other and further relief as the Court deems just and proper.

Dated: May 26, 2021

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Respectfully submitted,

/s/ Loree Stark

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**Statements of Visiting Attorneys
Forthcoming*

Attorneys for Plaintiff

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

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, and DORA STUTLER in her official capacity as Harrison County Superintendent,

Defendants.

Civil Action No. 2:21-cv-00316

Hon.

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 26th day of May, 2021, I electronically filed a true and exact copy of *Plaintiff's Complaint* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

West Virginia Bar No. 12936

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

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, and DORA STUTLER in her official capacity as Harrison County Superintendent,

Defendants.

Civil Action No. 2:21-cv-00316

Hon.

DECLARATION OF LOREE STARK

I, Loree Stark, declare under penalty of perjury of the laws of the United States of America that the following is true and correct, and state:

1. I am the Legal Director of the ACLU of West Virginia, counsel of record for Plaintiff B.P.J, with her next friend and mother, Heather Jackson. The following is true of my own personal knowledge, and, if called as a witness, I would and could testify competently thereto.

2. As set forth below, I have reviewed audio recordings and transcript excerpts of the West Virginia Legislature's testimony regarding H.B. 3293. Each excerpt that I reviewed is accurately described in the respective Exhibit using the timestamp of testimony as available on the West Virginia Legislature's public recordings, or in the audio files provided below. I have also provided hyperlinks where the recordings are available for review. As of the date of this filing, each of the hyperlinks is in working order.

3. Attached hereto as Exhibit A is a true and correct copy of the enacted version of H.B. 3293 (codified at § 18-2-25d). The bill's text can also be accessed on the West Virginia Legislature's website at:

https://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=HB3293%20SUB%20ENR.htm&yr=2021&sesstype=RS&i=3293.

4. Attached hereto as Exhibit B is a true and correct transcription of excerpts from testimony heard during the West Virginia House of Delegates Education Committee Meeting on or around March 18, 2021. A recording of the testimony is available for download at:

<https://liquidfiles.cooley.com/link/02OaNuDHjag73hII87u1bQ> (last accessed May 21, 2021).

5. Attached hereto as Exhibit C is a true and correct transcription of excerpts from testimony heard during the West Virginia House of Delegates Judiciary Committee Meeting on or around March 18, 2021. A recording of the testimony is available at:

<https://liquidfiles.cooley.com/link/IBA66jDqugGj5EM04cqf2Q> (last accessed May 21, 2021).

6. Attached hereto as Exhibit D is a true and correct transcription of excerpts from testimony heard during the West Virginia House of Delegates Hearing on or around March 25, 2021. A recording of the testimony is available at:

https://www.youtube.com/watch?app=desktop&v=af_ikMx-PJU (last accessed May 21, 2021).

7. Attached hereto as Exhibit E is a true and correct transcription of excerpts from testimony heard during the West Virginia Senate Hearing on or around April 8, 2021. A recording of the testimony is available at: <http://bit.ly/3bWYZVf> (accessed May 21, 2021).

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

Executed on May 26, 2021

/s/ Loree Stark

Loree Stark, Esq.

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

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, and DORA STUTLER in her official capacity as Harrison County Superintendent,

Defendants.

Civil Action No. 2:21-cv-00316

Hon.

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 26th day of May, 2021, I electronically filed a true and exact copy of the *Declaration of Loree Stark* with the Clerk of Court and all parties using the CM/ECF System. A copy of this declaration will also be served to the Defendants with the Complaint.

/s/ Loree Stark

West Virginia Bar No. 12936

EXHIBIT A

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3293

BY DELEGATES HANNA, BRIDGES, CLARK, ELLINGTON,
HORST, JENNINGS, LONGANACRE, MAZZOCCHI, TULLY,

PHILLIPS AND BURKHAMMER

[Passed April 9, 2021; in effect ninety days from
passage.]

Enr CS for HB 3293

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18-2-25d, relating to designation of athletic teams or sports sponsored by
3 any public secondary school or state institution of higher education according to biological
4 sex; providing legislative findings; defining “biological sex”, “female”, and “male”; providing
5 for designation of athletic teams as “males, men, or boys”, “females, women, or girls”, or
6 “coed or mixed”; prohibiting biological males from participating on athletic teams or sports
7 designated for biological females where competitive skill or contact is involved; clarifying
8 that eligibility of any student to participate on athletic teams or sports designated for
9 biological males is not restricted; providing cause of action for student aggrieved by
10 violation of this section; requiring identity of minor student related to such action to remain
11 anonymous; requiring promulgation of rules by the State Board of Education; and requiring
12 proposal of legislative rules by the Higher Education Policy Commission and Council for
13 Community and Technical College Education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25d. Clarifying participation for sports events to be based on biological sex of the athlete at birth.

1 (a) The Legislature hereby finds:

2 (1) There are inherent differences between biological males and biological females, and
3 that these differences are cause for celebration, as determined by the Supreme Court of the
4 United States in *United States v. Virginia* (1996);

5 (2) These inherent differences are not a valid justification for sex-based classifications that
6 make overbroad generalizations or perpetuate the legal, social, and economic inferiority of either
7 sex. Rather, these inherent differences are a valid justification for sex-based classifications when
8 they realistically reflect the fact that the sexes are not similarly situated in certain circumstances,
9 as recognized by the Supreme Court of the United States in *Michael M. v. Sonoma County*,

Enr CS for HB 3293

10 *Superior Court* (1981) and the Supreme Court of Appeals of West Virginia in *Israel v. Secondary*
11 *Schools Act. Com'n* (1989);

12 (3) In the context of sports involving competitive skill or contact, biological males and
13 biological females are not in fact similarly situated. Biological males would displace females to a
14 substantial extent if permitted to compete on teams designated for biological females, as
15 recognized in *Clark v. Ariz. Interscholastic Ass'n* (9th Cir. 1982);

16 (4) Although necessarily related, as concluded by the United States Supreme Court in
17 *Bostock v. Clayton County* (2020), gender identity is separate and distinct from biological sex to
18 the extent that an individual's biological sex is not determinative or indicative of the individual's
19 gender identity. Classifications based on gender identity serve no legitimate relationship to the
20 State of West Virginia's interest in promoting equal athletic opportunities for the female sex; and

21 (5) Classification of teams according to biological sex is necessary to promote equal
22 athletic opportunities for the female sex.

23 (b) Definitions. - As used in this section, the following words have the meanings ascribed
24 to them unless the context clearly implies a different meaning:

25 (1) "Biological sex" means an individual's physical form as a male or female based solely
26 on the individual's reproductive biology and genetics at birth.

27 (2) "Female" means an individual whose biological sex determined at birth is female. As
28 used in this section, "women" or "girls" refers to biological females.

29 (3) "Male" means an individual whose biological sex determined at birth is male. As used
30 in this section, "men" or "boys" refers to biological males.

31 (c) Designation of Athletic Teams. —

32 (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are
33 sponsored by any public secondary school or a state institution of higher education, including a
34 state institution that is a member of the National Collegiate Athletic Association (NCAA), National

Enr CS for HB 3293

35 Association of Intercollegiate Athletics (NAIA), or National Junior College Athletic Association
36 (NJCAA), shall be expressly designated as one of the following based on biological sex:

37 (A) Males, men, or boys;

38 (B) Females, women, or girls; or

39 (C) Coed or mixed.

40 (2) Athletic teams or sports designated for females, women, or girls shall not be open to
41 students of the male sex where selection for such teams is based upon competitive skill or the
42 activity involved is a contact sport.

43 (3) Nothing in this section shall be construed to restrict the eligibility of any student to
44 participate in any interscholastic, intercollegiate, or intramural athletic teams or sports designated
45 as “males,” “men,” or “boys” or designated as “coed” or “mixed”: *Provided*, That selection for a
46 team may still be based on those who try out and possess the requisite skill to make the team.

47 (d) Cause of Action. —

48 (1) Any student aggrieved by a violation of this section may bring an action against a
49 county board of education or state institution of higher education alleged to be responsible for the
50 alleged violation. The aggrieved student may seek injunctive relief and actual damages, as well
51 as reasonable attorney’s fee and court costs, if the student substantially prevails.

52 (2) In any private action brought pursuant to this section, the identity of a minor student
53 shall remain private and anonymous.

54 (e) The State Board of Education shall promulgate rules, including emergency rules,
55 pursuant to §29A-3B-1 *et. seq.* of this code to implement the provisions of this section. The Higher
56 Education Policy Commission and the Council for Community and Technical College Education
57 shall promulgate emergency rules and propose rules for legislative approval pursuant to §29A-
58 3A-1 *et. seq.* of this code to implement the provisions of this section.

Enr CS for HB 3293

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2021.

.....
Governor

EXHIBIT B

West Virginia House of Delegates Education Committee

DATE: Thursday, March 18, 2021

MEMBERS: Chairman Ellington, Vice-Chairman Higginbotham, Minority Chair Hornbuckle, Minority Vice-Chair Thompson, Delegates Bridges, Clark, Doyle, Evans, Griffith, Hamrick, Hanna, Horst, Jennings, Kelly, J., Kessinger, Kimble, Longanacre, Martin, Mazzocchi, Smith, Statler, Toney, Tully, Walker, Wamsley

Excerpts of testimony on House Bill 3293:

Time Stamp	Testimony
00:17:46-18:31	<p>[Delegate Evans]: I believe there definitely are. I stood on the football field this year against a team that definitely had a girl on the football field. We went to Webster County at one time, Webster County had a kicker female. So, I guess it is true that girls can play male sports.</p> <p>[Counsel representing H.B. 3293]: Yes.</p> <p>[Delegate Evans]: But males cannot play female sports?</p> <p>[Counsel representing H.B. 3293]: That's currently the way, the current law-</p> <p>[Delegate Evans]: So how does this, how does this bill then affect them, or does it affect it at all?</p> <p>[Counsel representing H.B. 3293]: This bill would affect those that changed their sex after birth.</p> <p>[Delegate Evans]: Okay. So it has nothing to do with current sex or like, like I'm a guy, I'm not going to change that. So it would not affect me?</p> <p>[Counsel representing H.B. 3293] It would not affect you.</p>
00:22:00-00:22:20	<p>[Delegate Thompson]: Okay. Has, has your office received calls, concerns, complaints regarding anything remotely related to this</p>

	<p>about students participating in, in sports or extracurricular activities that you know, that they're...?</p> <p>[Sarah Stewart, West Virginia Department of Education]: Surrounding the conversation today, no, we have not.</p>
00:26:46-00:27:18	<p>[Delegate Walker]: Can you tell me if any trans women have dominated any sporting events?</p> <p>[Andrew Schneider, Executive Director of Fairness West Virginia]: Not one athlete who has transitioned has been successful at the highest levels of sport. The lack of success is a strong indication of the fairness of permitting transgender women to compete against cisgender women. In fact, the problem with these bills is that they, they say that all bills, all boys are stronger than all girls. And that is just incorrect.</p>

EXHIBIT C

West Virginia House of Delegates Judiciary Committee

DATE: Thursday, March 18, 2021

MEMBERS: Chairman Capito, Vice-Chair Fast, Delegates Lovejoy, Brown, Bruce, Burkhammer, Fluharty, Garcia, Haynes, Keaton, Kelly, D., Kessinger, Kimble McGeehan, Nestor, Pack, L., Phillips, Pinson, Pritt, Pushkin, Queen, Ward, B., Westfall, Zatezalo, Zukoff

Excerpts of testimony on House Bill 3293:

Time Stamp	Testimony
03:11-03:27	<p>[Delegate Zukoff]: Okay. Have we had this come up before the Department of Education? Have we had any issues around this, this bill that, transgender students participating in sports come before the Department of Education as a concern?</p> <p>[Counsel representing H.B. 3293]: It is my understanding that there have been no problems on the county level.</p>
23:10-23:21	<p>[Delegate Pushkin]: Okay. Have you, there was asked of Counsel and, and she didn't know of anybody. Do, do you know of any cases in West Virginia?</p> <p>[Cathryn Oakley, State Legislative Director and Senior Counsel at the Human Rights Campaign]: I do not know of any cases in West Virginia.</p>
27:24-28:00	<p>[Cathryn Oakley]: The rhetoric around those bills can be extremely harmful to transgender youth who are hearing them at home.</p> <p>[Delegate Pushkin]: So even though it's unlikely that, that there's going to be participation from transgender girls in sports because we haven't seen it in a whole lot of places, the bill itself could be harmful just for a group that's already extremely alienated, is what you're saying, right?</p> <p>[Cathryn Oakley]: That's exactly what I'm saying. It's that there's actually no harm here that's being addressed by a piece of legislation like this . . . But there is harm perpetrated by it.</p>

EXHIBIT D

West Virginia House of Delegates

DATE: Thursday, March 25, 2021

SPEAKERS REFERENCED: Speaker Hanshaw, Clerk Harrison, Delegates Fluharty, Ellington, Garcia, Walker, Mazzochi

HOUSE ROSTER: <https://www.wvlegislature.gov/house/roster.cfm>

Excerpts of testimony on House Bill 3293:

Time Stamp	Testimony
03:04:56-03:05:19	<p>[Delegate Fluharty]: So, you know, you've heard, I'm sure you took some testimony up there in committee. Have you had, did you have any testimony of the number of complaints that SSAC has received regarding anybody taking advantage of the single-sex sport system we currently have?</p> <p>[Delegate Ellington]: Not in West Virginia.</p> <p>[Delegate Fluharty]: So not a single complaint received in West Virginia?</p> <p>[Delegate Ellington]: Not at this point in time.</p>
03:17:52-03:18:58	<p>[Delegate Garcia]: Thank you Mr. Speaker. Each of us, when we put our name on the ballot, first question we were asked is, why do you want to go to Charleston? I didn't come to Charleston to create problems where they don't exist. We've heard that there's no complaints about this in the state of West Virginia, about this issue about some type of advantage, competitive advantage that, that, that individuals, that kids are making this decision just so they can do better at sports. That's not happening. But we are creating a problem. And I, I've talked to a lot of people, and last week was, was talking to somebody about infrastructure and they said, "Infrastructure, who cares? How can I stay in a state like West Virginia when you pass bills like this? When you take up bills like this? How can we get our young people to stay, and how can we ever attract somebody to our state?"</p>
03:26:32-03:31:33	<p>[Delegate Walker]: Thank you. I appreciate it. Colleagues. We just debated. Freedom. [inaudible 03:26:49] Same difference. I'm not the parent. I don't have a child who is transgender. And not all of us practice the same religion. And we need to be mindful of that while we share our truths,</p>

	<p>respectfully. But what is so disheartening about this bill is that a child can play a sport until they get to secondary education, where their classmates may not see their differences at all. Where that child may not have been bullied before, we're opening up an opportunity.</p> <p>This flag sits on my desk for all the children and adults who are thankful to be alive, and for those who have died. Transgender people, especially transgender black people, are killed at high numbers. If we're going to talk about the rules and the respect and the good book, let's think about those individuals. If we're going to pass judgment, and this is your truth and this is your conviction, what are we saying to the children? This is not about adults. These, this is about children. Those numbers couldn't be answered but I have them. 1.0% of West Virginians at age 13 to 17 years old identify as transgender. 1%. That's 1% that we're not going to allow in team sports, while we build team leadership and we build a bond. And we build athleticism, and we tell them right here, at secondary education, "You don't matter. You're not good enough."</p> <p>Once again, I have to go back to when I went through my first year of being here. Cause we had a lot of truths today, and it shakes my soul. You called them butch, you called them the F word. You called them creatures, you called them a disgrace of God. You called them demons, you called them the devil. Well guess what I call them? Love.</p> <p>I call them children. I call them future leaders. I call them trendsetters. I call them change makers. I call them to lead. I call them to use their voices. I call them to speak their pain. And I sit, uncomfortable in those moments, so they can have their own movement. Who is this bill helping, and who is it hurting? West Virginia, a place to live, work, raise a family if you choose, only if you're not transgender. Thank you, Mr. Speaker Pro-Tem.</p>
<p>04:01:48-04:03:40</p>	<p>[Delegate Mazzochi]: Thank you Speaker of Pro-Tem. This is not about freedom. This is about protection. To protect our little girls that are in school. I don't mind everybody playing together in a league. If there are the parents there and everybody, the parents can take, can take care of their children, can watch them. That is all beautiful. But in school at that age when they start at what? 11 or 12, 13, they are at a very important age. And they feel very, as a girl, they feel</p>

	<p>very conscious about their bodies. Not to say that those transgender children are not, but to be honest, I don't want all this mixing and matching and whatever in our, in these locker rooms, I'm sorry.</p> <p>The, there is no adult there to supervise. I don't want all this, this, this, whatever you're saying there. You're making a big problem out of nothing. I am sorry. This is not—we have boys and we have girls and we have some that are somewhere in between, and it's a very small minority. And why are we making this a big, huge deal? It is not a big, huge deal that everybody can play in a league. If you have ever played soccer, and I'm telling you, we have our, my family brought soccer into Logan County and my little girl played with the boys and played against the boys.</p>
04:19:33-04:20:26	<p>[Delegate Ellington]: Thank you, Mr. Speaker. This issue came to the surface in the United States regarding transgenders a few years ago, when two transgender girls were allowed to compete in state track and field meets in Connecticut. They won a combined 15 girls' state indoor and outdoor championship races from 2017 to '19. That's one of the things that started the national debate. As I mentioned, there are 27 states that have put in legislation regarding this. And yes, there are 17 states and the District of Columbia that require inclusion. However, there are six states that have no policy regarding gender identity, or sports, regarding sports whatsoever, and we're one of those.</p>

EXHIBIT E

West Virginia Senate**DATE:** Thursday, April 8, 2021**SPEAKERS REFERENCED:** Senators Romano, Stollings, Maroney, Roberts**SENATE ROSTER:** <https://www.wvlegislature.gov/Senate1/roster.cfm>

Excerpts of Testimony on House Bill 3293:

Time Stamp	Testimony
12:42:27-12:43:01	[Senator Romano]: Well Senator, this isn't about opportunity for girls to play without interference from boys 'cause we've never had one of those cases. We've never had any boy try to play on a girls' team. The—the question is, how would you have felt when you were a tomboy growing up if somebody had challenged your gender, what would that have done to your self-esteem, what would that have done to your psychological outlook because there's nothing in this bill that says it has to be a serious concern, it just says that you have a cause of action if you've been aggrieved by a violation.
01:06:07-01:09:16	[Senator Stollings]: Thank you, Mr. President. I'm not sure if this body is concerned about what this bill does or could do to a transgender person in West Virginia. But the West Virginia State Medical Association, the West Virginia Chapter of the American Academy of Pediatrics, the West Virginia Psychological Association and the West Virginia School Psychologist Association and the American Academy of Pediatrics on a national level are very concerned about what this would do to a transgender person, student, in West Virginia. They say many trans youth already face an uphill battle in nearly every part of their lives. 84% of transgender youth feel unsafe at school. Nearly half trans youth attempt suicide, think about that. And the trans community is increasingly the target of violence and harassment. This bill will further ostracize young transgender people from their peers. The West Virginia Chapter of the American Academy of Pediatrics opposes House Bill 3293. Their organization works toward all children and adolescents regardless of gender identity or expression.

	<p>Receiving care to promote optimal physical, mental and social wellbeing. Any discrimination based on gender identity or expression damages the socio-emotional health of children, families and society. Again, transgender youth in West Virginia are high at risk—higher risk of suicide than their cisgender peers and this bill will only further the discrimination transgender youth experience. They again ask us to reject this—this bill. Transgender already face higher risk of suicide and depression and again it would further harm too many of West Virginia’s most vulnerable.</p> <p>So whether we are concerned about the unintended consequences of this bill, the people that are specialists and people that are on the frontline clearly, clearly have an issue. So it is with that regard and the fact that I think the SSAC does cover and does have a policy, should this ever become an issue. So we’re creating legislation for a problem that doesn’t exist and it does have unintended negative consequences. I urge a no-vote.</p>
<p>01:36:54-01:37:13</p>	<p>[Senator Maroney]: Thank you Mr. President. This bill has nothing to do with gay people or those that are gay, and to imply that is, I think, misleading. The bill, the bill it talks about, it’s about transgenders. It’s about, there’s a safety issue involved here in sports.</p>
<p>01:50:18-01:51:59</p>	<p>[Senator Roberts]: Thank you, Mr. President. I think that the narrative shifts around from the actual bill itself. The bill is designed to protect girls in women’s sports. It is not something that is designed to hurt people, it’s designed to protect people. I received a couple of emails that kind of lay it out and people should understand. These are actually both from Raleigh County. The first one says, “I am a lesbian in favor of the sports bill. Dear West Virginia legislators. I am a US citizen originally from the Philippines, living in West Virginia with my wife and child. I am urging you today to vote for the sports bill and uphold one aspect of what it is to be born female.</p> <p>There are too many groups on both sides of the aisle, trying to politicize a subject that should be 100% science and common sense. Due to the trans movement, what it is to be a female and to be safe in</p>

	<p>this country is being erased. The entire trans movement is an attack upon womanhood. I urge you to save our young women from allowing biological males into sports locker rooms, et cetera with our girls.”</p>
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Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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Additional information regarding attempted service, etc:

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Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff(s)

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

West Virginia Secondary School Activities Commission
c/o Executive Director Bernie Dolan
2875 Staunton Turnpike
Parkersburg, WV 26104

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Loree Stark
ACLU of West Virginia
P.O. Box 3952
Charleston, WV 25339-3952

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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_____ on *(date)* _____ ; or

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I returned the summons unexecuted because _____ ; or

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff(s)

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

West Virginia State Board of Education
c/o Superintendent W. Clayton Burch
1900 Kanawha Boulevard East
Charleston, WV 25305

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Loree Stark
ACLU of West Virginia
P.O. Box 3952
Charleston, WV 25339-3952

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

Court Name: US District Court/SDWV
Division: 2
Receipt Number: CHAR019069
Cashier ID: yberger
Transaction Date: 05/26/2021
Payer Name: AMERICAN CIVIL LIBERTIES UNI
ON

CIVIL FILING FEE- NON-PRISONER
For: AMERICAN CIVIL LIBERTIES UNION
Case/Party: D-WVS-2-21-CV-000316-001
Amount: \$402.00

CREDIT CARD
Amt Tendered: \$402.00

Total Due: \$402.00
Total Tendered: \$402.00
Change Amt: \$0.00

ATTN: LOREE STARK

Only when bank clears the check,
money order, or verifies credit of
funds is the fee or debt officially
paid or discharged. A \$53 fee will
be charged for a returned check.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
B.P.J., by her next friend and mother, HEATHER JACKSON
(b) County of Residence of First Listed Plaintiff Harrison
(c) Attorneys (Firm Name, Address, and Telephone Number)
Loree Stark, ACLU of West Virginia, P.O. Box 3952
Charleston, WV 25339-3952, 914-393-4614 (see attachment)

DEFENDANTS
WEST VIRGINIA STATE BOARD OF EDUCATION, et al.
(see attachment)
County of Residence of First Listed Defendant Kanawha
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes for various legal claims like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
20 U.S.C. § 1681, et seq.; U.S. Const. Amend. XIV
Brief description of cause:
Violation of Title IX of the Education Amendments of 1972 and deprivation of rights guaranteed by the Equal Protection Clause of the U.S. Const.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE: May 26, 2021
SIGNATURE OF ATTORNEY OF RECORD: /s/ Loree Stark

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

B.P.J v. West Virginia State Board of Education, et al.
PLAINTIFF'S ATTORNEYS

Loree Stark (WV Bar No. 12936)
AMERICAN CIVIL LIBERTIES UNION OF WEST VIRGINIA FOUNDATION
P.O. Box 3952
Charleston, WV 25339-3952
Phone: 914-393-4614
Email: lstark@acluwv.org

Joshua Block*
Taylor Brown*
Chase Strangio*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004
Phone: (212) 549-2569
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3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
Phone: (214) 219-8585
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abarr@cooley.com

Elizabeth Reinhardt*
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
Phone: (617) 937-2305
ereinhardt@cooley.com

**Statements of Visiting Attorneys Forthcoming*

B.P.J v. West Virginia State Board of Education, et al.
DEFENDANT LIST

West Virginia State Board of Education
Harrison County Board of Education
West Virginia Secondary School Activities Commission
W. Clayton Burch, in his official capacity as State Superintendent
Dora Stutler, in her official capacity as Harrison County Superintendent