

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

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, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF VALERIA M. PELET DEL TORO

I, Valeria M. Pelet del Toro, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney at the law firm Cooley LLP and 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. I submit this declaration in support of Plaintiff's Memorandum of Law in Support of Motion to Reconsider the Grant of Lainey Armistead's Permissive Intervention.
3. Attached to this declaration is a true and correct copy of the document listed in the table below.

Exhibit	Description
A	Lainey Armistead's First Set of Requests for Admission to Plaintiff (January 7, 2022)

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

Executed on May 26, 2022

/s/ Valeria M. Pelet del Toro
Valeria M. Pelet del Toro

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,

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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, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 26th day of May, 2022, I electronically filed a true and exact copy of the foregoing document with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark
West Virginia Bar No. 12936

Exhibit A

**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, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants

and

LAINY ARMISTEAD,

Intervenor-Defendant.

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

LAINY ARMISTEAD’S FIRST SET OF REQUESTS FOR ADMISSION TO PLAINTIFF

Under Rule 36 of the Federal Rules of Civil Procedure, Intervenor-Defendant Lainy Armistead serves this First Set of Requests for Admission to Plaintiff. Intervenor-Defendant requests that sworn answers to these requests be electronically served on counsel for Intervenor-Defendant no later than 30 days after service.

DEFINITIONS

For purposes of these Requests for Admission, the following terms have the following meanings:

1. The terms “you” and “your” refer to Plaintiff B.P.J. and her mother and next friend, Heather Jackson, and their respective agents.
2. The term “any” includes and encompasses “all.”

3. The term “and” means and/or.

4. The term “or” means and/or.

5. The term “sex” or “biological sex” is as defined in the Diagnostic & Statistical Manual of Mental Disorders (DSM-V): the biological indication of male and female (understood in the context of reproductive capacity), such as sex chromosomes, gonads, sex hormones, and non-ambiguous internal and external genitalia.

6. The term “male” or “biological male” means an individual born of the sex that is capable of producing small, usually motile gametes for reproduction with the eggs of a female. The term “male” or “biological male” is used herein to describe a person who is born with the chromosomal makeup, hormonal makeup, and internal and external reproductive organs characteristic of the male sex, regardless of any later pharmaceutical or surgical intervention.

7. The term “female” or “biological female” means an individual born of the sex that is capable of producing eggs and bearing offspring. The term “biological female” is used herein to describe a person who is born with the chromosomal makeup, hormonal makeup, and internal and external reproductive organs characteristic of the female sex, regardless of any later pharmaceutical or surgical intervention.

8. “Male-identifying” describes a person who identifies as male regardless of the person’s biological sex and regardless of the presence or absence of any pharmaceutical or surgical intervention.

9. “Female-identifying” describes a person who identifies as female regardless of the person’s biological sex and regardless of the presence or absence of any pharmaceutical or surgical intervention.

10. The term “gender identity” is synonymous with the meaning and equal in scope as the term is used in Plaintiff’s First Amended Complaint, paragraphs 19-21.

11. H.B. 3293 refers to the legislation passed in April 2021 that prohibits biological males from competing on sports teams designated for females, women, or girls and is codified at W.Va. Code § 18-2-25d.

REQUESTS FOR ADMISSION

1. Admit that B.P.J. has chromosomes characteristic of the male sex (i.e. XY chromosomes).
2. Admit that, but for the Histrelin-pharmaceutical intervention B.P.J. has received, B.P.J. would have hormones—including testosterone levels—characteristic of the male sex.
3. Admit that B.P.J.’s internal and external reproductive organs are characteristic of the male sex.
4. Admit that B.P.J. is a biological male.
5. Admit there are “benefits associated with sex-separated school athletics.” (First Am. Compl. ¶ 39).
6. Admit that one of the “benefits associated with sex-separated school athletics” (First Am. Compl. ¶ 39) is separation based on sex-related “physiological characteristics associated with athletic performance” (*Id.* ¶ 40).
7. Admit there are post-pubescent, high-school-aged male-identifying biological males who cannot run a 5,000 meter track race as quickly as some post-pubescent, high-school-aged female-identifying biological females.
8. You have alleged that “[g]irls 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.” First Am. Compl. ¶ 42. Admit that such “gender-affirming hormone therapy that reduces circulating testosterone levels” to the levels typical of cisgender females does not necessarily completely “eliminate[] any athletic benefit from having gone through endogenous [male] puberty.”
9. You have alleged that “[g]irls 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.” First Am. Compl. ¶ 42. Admit that female-

identifying biological males who go through endogenous puberty and do not receive pharmaceutical or surgical intervention have, at the “population level” (as this term is used in First Am. Compl. ¶ 40), athletic performance advantages over female-identifying biological females of the same age who have received no pharmaceutical or surgical intervention.

10. You have alleged that “[g]irls 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.” First Am. Compl. ¶ 42. Admit that female-identifying biological males who go through endogenous puberty and do not receive pharmaceutical or surgical intervention have, at the “population level” (as this term is used in First Am. Compl. ¶ 40), athletic advantages relevant to performance in track and cross-country events over female-identifying biological females of the same age who have received no pharmaceutical or surgical intervention.

11. You have alleged that “[g]irls 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.” First Am. Compl. ¶ 42. Admit that female-identifying biological males who go through endogenous puberty and do not receive pharmaceutical or surgical intervention more often than not have athletic performance advantages over female-identifying biological females of the same age who have received no pharmaceutical or surgical intervention.

12. You have alleged that “[g]irls 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.” First Am. Compl. ¶ 42. Admit that female-identifying biological males who go through endogenous puberty and do not receive pharmaceutical or surgical intervention more often than not have athletic advantages relevant to

performance in track and cross-country events over female-identifying biological females of the same age who have received no pharmaceutical or surgical intervention.

13. Admit there are biological males who experience central precocious puberty.

14. Admit that Histrelin is a medically accepted treatment for central precocious puberty.

15. Admit that Histrelin is used to treat biological males with idiopathic short stature.

16. Admit that Histrelin is used to treat biological males with growth hormone deficiency.

17. Admit there are biological males who experience delayed puberty.

18. Admit there are biological males who experience hypogonadism.

19. Admit there are biological males with medical conditions that inhibit testosterone production.

20. Admit there are middle-school-aged biological males who, because of delayed puberty, have circulating testosterone comparable to that of biological females of their same age.

21. Admit there are high-school-aged biological males who, because of delayed puberty, have circulating testosterone comparable to that of biological females of their same age.

22. Admit there are middle-school-aged biological males who, because of hypogonadism, have circulating testosterone comparable to that of biological females of their same age.

23. Admit there are high-school-aged biological males who, because of hypogonadism, have circulating testosterone comparable to that of biological females of their same age.

24. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is similarly situated to male-identifying biological males of the same age who have received the same puberty blocking treatment as B.P.J.

25. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, B.P.J. is similarly situated to male-identifying biological males of the same age who have received the same puberty blocking treatment as B.P.J.

26. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is similarly situated to biological male students of the same age who have received the same puberty blocking treatment as B.P.J., regardless of the students’ gender identity.

27. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, B.P.J. is similarly situated to biological male students of the same age who have received the same puberty blocking treatment as B.P.J., regardless of the students’ gender identity.

28. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, middle school male-identifying biological male students who received puberty blocking treatment that effectively delayed male puberty are similarly situated to middle school female-identifying biological females of the same age who received no puberty blocking treatment.

29. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic

performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, middle school male-identifying male students who received puberty blocking treatment that effectively delayed male puberty are similarly situated to middle school female-identifying females of the same age who received no puberty blocking treatment.

30. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, biological male middle school students, regardless of gender identity, who received puberty blocking treatment that effectively delayed male puberty are similarly situated to middle school female-identifying females of the same age who received no puberty blocking treatment.

31. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, biological male middle school students, regardless of gender identity, who received puberty blocking treatment that effectively delayed male puberty are similarly situated to female-identifying females of the same age who received no puberty blocking treatment.

32. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, high school male-identifying male students who received puberty blocking treatment that effectively delayed male puberty are similarly situated to high school female-identifying females of the same age who received no puberty blocking or other hormone therapy.

33. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, high school male-identifying male students who received puberty blocking treatment that effectively delayed male puberty are similarly situated to high school female-identifying females of the same age who received no puberty blocking or other hormone therapy.

34. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, biological male high school students, regardless of gender identity, who received puberty blocking treatment that effectively delayed male puberty are similarly situated to high school female-identifying females of the same age who received no puberty blocking or other hormone therapy.

35. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, biological male high school students, regardless of gender identity, who received puberty blocking treatment that effectively delayed male puberty are similarly situated to high school female-identifying females of the same age who received no puberty blocking or other hormone therapy.

36. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is not similarly situated to female-identifying biological

male students of the same age who have not received any form of puberty blocking or other hormone therapy

37. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, B.P.J. is not similarly situated to female-identifying biological males of the same age who have not received any form of puberty blocking or other hormone therapy.

38. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is not similarly situated to biological male students of the same age who have not received any form of puberty blocking or other hormone therapy, regardless of the students’ gender identity.

39. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any “physiological characteristics associated with athletic performance” relevant to running track or cross-country, B.P.J. is not similarly situated to biological male students of the same age who have not received any form of puberty blocking or other hormone therapy, regardless of the students’ gender identity.

40. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, high school male-identifying biological males who experienced endogenous male puberty but have since received hormone therapy sufficient to bring their circulating testosterone down into the range typical for biological females of their same age are

similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

41. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, high school male-identifying biological males who experienced endogenous male puberty but have since received hormone therapy sufficient to bring their circulating testosterone down into the range typical for biological females of their same age are similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

42. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, biological male middle school students, regardless of gender identity, who experienced endogenous male puberty but have since received hormone therapy sufficient to bring their circulating testosterone down into the range typical for biological females of their age are similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

43. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to sex-related “physiological characteristics associated with athletic performance” relevant to running track and cross-country, biological male middle school students, regardless of gender identity, who experienced endogenous male puberty but have since received hormone therapy sufficient to bring their circulating testosterone down into the range typical for biological females of their same age are

similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

44. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, biological male high school students, regardless of gender identity, who experienced endogenous male puberty but have since received hormone therapy sufficient to bring their circulating testosterone down into the range typical for biological females of their same age, are similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

45. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to sex-related “physiological characteristics associated with athletic performance” relevant to running track and cross-country, biological male high school students, regardless of gender identity, who experienced endogenous male puberty but have since received hormone therapy sufficient to bring their circulating testosterone down into the range typical for biological females of their same age are similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

46. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is not similarly situated to female-identifying biological females of the same age who have received hormone therapy to delay female puberty or produce masculinizing effects.

47. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic

performance.” First Am. Compl. ¶ 40. Admit that with respect to sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, B.P.J. is not similarly situated to female-identifying biological females of the same age who have received puberty blocking treatment to delay female puberty or produce masculinizing effects.

48. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is not similarly situated to biological female students of the same age who have received puberty blocking treatment to delay female puberty or produce masculinizing effects, regardless of the students’ gender identity.

49. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, B.P.J. is not similarly situated to biological female students of the same age who have received puberty blocking treatment to delay female puberty or produce masculinizing effects, regardless of the students’ gender identity.

50. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is similarly situated to male-identifying biological females of the same age who have not received any form of puberty blocking or other hormone therapy.

51. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross country,

B.P.J. is similarly situated to male-identifying biological females of the same age who have not received any form of puberty blocking or other hormone therapy.

52. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, B.P.J. is similarly situated to biological female students of the same age who have not received any form of puberty blocking or other hormone therapy, regardless of the students’ gender identity.

53. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, B.P.J. is similarly situated to biological female students of the same age who have not received any form of puberty blocking or other hormone therapy, regardless of the students’ gender identity.

54. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, female-identifying biological male middle school students who have not received any form of puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

55. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, female-identifying biological male middle school students who have not received any form of

puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

56. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, female-identifying biological male high school students who have not received any form of puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

57. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, female-identifying biological male high school students who have not received any form of puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

58. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, biological male middle school students, regardless of gender identity, who have not received any form of puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

59. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic

performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance” relevant to running track or cross-country, biological male middle school students, regardless of gender identity, who have not received any form of puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

60. You have alleged that “[g]irls who are transgender are similarly situated to cisgender girls (as opposed to cisgender boys) for purposes of participating on sex-separated school athletic teams.” First Am. Compl. ¶ 39. Admit that for purposes of participating on sex-separated school athletic teams, biological male high school students, regardless of gender identity, who have not received any form of puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

61. You have alleged that “[g]irls who are transgender are . . . not similarly situated to cisgender boys with respect to physiological characteristics associated with athletic performance.” First Am. Compl. ¶ 40. Admit that with respect to any sex-related “physiological characteristics associated with athletic performance,” Am. Compl. ¶ 40, relevant to running track or cross-country, biological male high school students, regardless of gender identity, who have not received any form of puberty blocking or other hormone therapy are not similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.

62. Admit that a person’s gender identity may be neither male nor female.

63. Admit that a person’s gender identity may change over time.

64. Admit that under H.B. 3293, a male-identifying biological male athlete is precluded from participating on sex-separated female sports teams regardless of the quantity of circulating testosterone in this individual’s body.

65. Admit that under H.B. 3293, a male-identifying biological male athlete is precluded from participating on sex-separated female sports teams regardless of the extent to which he has (or has not) experienced endogenous male puberty.

66. Admit that under H.B. 3293, a male-identifying biological male athlete is precluded from participating on sex-separated female sports teams regardless of athletic ability.

67. Admit that in the absence of medical intervention, endogenous male puberty provides, at the “population level” (as this term is used in First Am. Compl. ¶ 40), benefits in athletic performance not obtained by people who do not experience male puberty.

68. Admit that the State of West Virginia has a significant governmental interest in promoting equal athletic opportunities for people born with the physiological characteristics associated with the female sex.

69. Admit that gender identity, divorced from all forms of hormone therapy or other pharmacological treatment, has no independent effect on athletic ability.

Respectfully submitted this 7th day of January, 2022.

/s/ Christiana Holcomb

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**Visiting Attorneys*

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