

**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.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

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

And

**LAINIEY ARMISTEAD,
Defendant-Intervenor.**

**WVSSAC’S REPLY IN SUPPORT OF MOTION
IN LIMINE TO EXCLUDE BLATT EXHIBIT 21**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and replies to Plaintiff’s Opposition to Defendant West Virginia Secondary School Activities Commission’s Motion *in Limine* to Exclude Blatt Exhibit 21 (Plaintiff’s Response), as follows.

In Plaintiff’s Response, Plaintiff reports for the first time that Exhibit 21 will not be submitted for the ‘truth of the matter asserted therein’ but rather as evidence of the State Board’s “review and knowledge of the contents of H.B. 3293 . . . to provide context for the State Board’s

position that it does not support H.B. 3293.”¹ Further, Plaintiff asserts that Exhibit 21 will not be used “as evidence that Mr. Dolan has any specialized knowledge about H.B. 3293 or that WVSSAC is ‘align[ed] with the legislation of the state.’”²

Plaintiff does not dispute WVSSAC’s analysis of unfair prejudice to WVSSAC of Mr. Dolan’s name appearing in the Green Book without any evidence of his knowledge, let alone ‘specialized knowledge’ of the legislation. Conversely, it appears that Plaintiff has no interest in tying WVSSAC to the Green Book. Given the use of Exhibit 21 to date and WVSSAC’s presumptions relative to Plaintiff’s interest and use (as demonstrated at deposition and in motions practice), it would be reasonable to assume that Mr. Dolan’s name there could lead to confusion. It certainly would result in waste of time, as WVSSAC will question the State Board, by and through Michele Blatt, relative to the significance of Mr. Dolan’s name there, as demonstrated, once again, at deposition and in motions practice.³

Therefore, WVSSAC moves the Court for an Order *in limine* precluding use of the Green Book other than with Mr. Dolan’s name redacted therefrom. For all of the reasons set forth here, WVSSAC moves this Honorable Court for an order *in limine*, prohibiting the use of Exhibit 21 the Green Book at the trial of this matter as long as Bernie Dolan’s name appears therein.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/S/ Roberta F. Green

Roberta F. Green, Esquire (WVSB #6598)
Kimberly M. Bandy (WVSB #10081)
Shannon M. Rogers (WVSB # 13920)
SHUMAN MCCUSKEY SLICER PLLC
Post Office Box 3953 (25339)

¹ ECF No. 439 at 2-3.

² ECF No. 439 at 2.

³ ECF No. at 391.

1411 Virginia Street East, Suite 200 (25301)
Charleston, WV 25339
(304) 345-1400
(304) 343-1826 FAX
rgreen@shumanlaw.com
kbandy@shumanlaw.com
srogers@shumanlaw.com

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CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this day, the 11th day of July, 2022, served a true and exact copy of the foregoing with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

Loree Beth Stark
Nicholas Ward
ACLU of WV FOUNDATION
1614 Kanawha Boulevard, East
Charleston, WV 25311
lstark@acluwv.org
nward@acluwv.org

Kathleen R. Hartnett
Julie Veroff
COOLEY LLP
101 California St. – 5th Floor
San Francisco, CA 94111-5800
khartnett@cooley.com
jveroff@cooley.com

Katelyn Kang
COOLEY LLP
55 Hudson Yards
New York, NY 10001-2157
kkang@cooley.com

Elizabeth Reinhardt
COOLEY LLP
500 Boylston St., 14th Floor
Boston, MA 02116-3736
ereinhardt@cooley.com

Andrew Barr
COOLEY LLP
1144 15th St., Suite 2300
Denver, CO 80202-5686
abarr@cooley.com

Avatara Smith-Carrington
LAMBDA LEGAL
3500 Oak Lawn Ave., Suite 500
Dallas, TX 75219
asmithcarrington@lambdalegal.org

Joshua Block
Chase Strangio
ACLU FOUNDATION
125 Broad Street
New York, NY 10004
jblock@aclu.org

Carl Charles
LAMBDA LEGAL
1 West Court Square, Suite 105
Decatur, GA 30030
ccharles@lambdalegal.org

Sruti Swaminathan
LAMBDA LEGAL
120 Wall St., 19th Floor
New York, NY 10005
sswaminathan@lambdalegal.org

Susan Llewellyn Deniker
Jeffrey M. Cropp
STEPTOE and JOHNSON, LLC
400 White Oaks Boulevard
Bridgeport, WV 26330
susan.deniker@steptoe-johnson.com
jeffrey.cropp@steptoe-johnson.com

Kelly C. Morgan
Michael W. Taylor
Kristen Vickers Hammond
BAILEY & WYANT, PLLC
500 Virginia St., East, Suite 600
Charleston, WV 25301
kmorgan@baileywyant.com
mtaylor@baileywyant.com
khammond@baileywyant.com

Tara Borelli
LAMBDA LEGAL
1 West Court Square, Suite 105
Decatur, GA 30030
tborelli@lambdalegal.org

Douglas P. Buffington, II
Curtis R.A. Capehart
Jessica A. Lee
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305-0220
Curtis.R.A.Capehart@wvago.gov

David C. Tryon
West Virginia Atty. General's Office
1900 Kanawha Blvd., E.
Bldg. 1, Rm 26E
Charleston, WV 25305
David.C.Tryon@wvago.gov

Taylor Brown
American Civil Liberties Union
125 Broad St., 18th Floor
New York, NY 10004
tbrown@aclu.org

Jonathan Scruggs
Roger Greenwood Brooks
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
jscruggs@adflegal.org
rbrooks@adflegal.org

Timothy D. Ducar
Law Offices of Timothy D. Ducar, PLC
7430 E. Butherus Drive, Suite E
Scottsdale, AZ 85260
tducar@azlawyers.com

Anthony E. Nortz
Kesner & Kesner
112 Capitol Street
Charleston, WV 25301
anortz@kesnerlaw.com

Aria S. Vaughan
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., NW
4CON, 10th Floor
Washington, DC 20530
aria.vaughan@usdoj.gov

Brandon S. Steele
Joshua D. Brown
Law Offices of Brandon S. Steele
3049 Robert C. Byrd Drive, Ste 100
Beckley, WV 25801
bstelelawoffice@gmail.com
joshua_brown05@hotmail.com

Christiana Holcomb
Rachel Csutoros
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
cholcomb@adflegal.org
rcsutoros@adflegal.org

Meredith Taylor Brown
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
tbrown@aclu.org

Michael W. Taylor
BAILEY & WYANT PLLC
500 Virginia St., E. – Suite 600
Charleston, WV 25301
mtaylor@baileywyant.com

Fred B. Westfall, Jr.
Jennifer M. Mankins
United States Attorney's Office
300 Virginia Street, East – Rm. 400
Charleston, WV 25301
fred.westfall@usdoj.gov
jennifer.mankins@usdoj.gov

/S/ Roberta F. Green

Roberta F. Green, Esquire (WVSB #6598)
SHUMAN MCCUSKEY SLICER PLLC
Post Office Box 3953 (25339)
1411 Virginia Street E., Suite 200 (25301)
Charleston, West Virginia
(304) 345-1400; FAX: (304) 343-1826
Counsel for Defendant WVSSAC
rgreen@shumanlaw.com