

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

L.E., by his next friends and parents,  
SHELLEY ESQUIVEL and MARIO  
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.  
Magistrate Judge Alistair E. Newbern

---

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

---

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.01, Plaintiff L.E., by his next friends and parents, Shelley Esquivel and Mario Esquivel, respectfully moves for summary judgment on all counts to be entered against Defendants Bill Lee, in his official capacity as Governor of Tennessee; Penny Schwinn, in her official capacity as the Tennessee Education Commissioner; the Tennessee State Board of Education; Sara Heyburn Morrison, in her official capacity as the Executive Director of the Tennessee State Board of Education; the individual members of the Tennessee State Board of Education, in their official capacity as members of the Tennessee State Board of Education; the Knox County Board of Education a/k/a Knox County Schools a/k/a Knox County School District; and Dr. Jon Rysewyk, in his official capacity as Director of Knox County Schools.\*

---

\* The individual members of the Tennessee State Board of Education are: Nick Darnell, Jordan Mollenhauer, Robert Eby, Warren Wells, Ryan Holt, Lillian Hartgrove, Nate Morrow, Larry Jensen, and Darrell Cobbins.

In support of this motion, L.E. contemporaneously files a memorandum of law, a statement of undisputed facts, and the declaration of Stella Yarbrough, counsel for Plaintiff, with exhibits attached. In support of his motion, L.E. states the following:

1. L.E. is a fifteen-year-old boy who is transgender (i.e., he was assigned the sex of female at birth but has a male gender identity). L.E. attends Farragut High School, a public school in Knoxville, Tennessee. L.E. wants to play golf on the Farragut High School boys' golf team.
2. In March 2021, Tennessee enacted Senate Bill 228 ("SB 228"), which amended Tennessee Code Annotated § 49-6-310(a). The amended code requires public middle and high schools throughout the State to allow students to participate on only sex-segregated interscholastic athletic teams consistent "with the student's sex at the time of the student's birth, as indicated on the student's original birth certificate."
  - a. SB 228 also directed "the state board of education, each local board of education, and each governing body of a public charter school [to] adopt and enforce policies to ensure compliance with" the law.
  - b. In January 2022, a follow-on bill to SB 228 called Senate Bill 1861 ("SB 1861") was introduced in the Tennessee Senate. SB 1861 permits the Tennessee Department of Education Commissioner to "withhold a portion of the state education finance funds" if a school does not comply with SB 228. SB 1861's operative provision is now codified at Tenn. Code. Ann. §49-6-310(b)(1).

3. The stated rationales for SB 228 relate to physiological differences between boys and girls providing transgender girls (i.e., individuals assigned male at birth who have a female gender identity) a purported competitive advantage over, and posing a safety risk to, cisgender girls. The claimed justifications for SB 228 do not address transgender boys playing on boys' sports teams.
4. Prior to the passage of SB 228, none of the Tennessee State Board of Education, the Tennessee Department of Education, the Knox County Board of Education, or Farragut High School had policies in place that prevented transgender students from playing on a sports team that aligns with their gender identity.
5. After SB 228 was passed, the Tennessee State Board of Education, the Tennessee Department of Education, and the Knox County Board of Education all implemented policies that adopted the restrictions laid out in SB 228.
6. Defendants acknowledge that as a result of SB 228, L.E. is not able to play on the Farragut High School boys' golf team because L.E. was assigned female at birth.
7. SB 228, as applied to L.E., violates L.E.'s rights under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.
  - a. The Fourteenth Amendment requires that all similarly situated individuals be treated alike.
  - b. SB 228 discriminates against L.E. on the bases of sex and transgender status by excluding him from the Farragut High School boys' golf team solely because he was not assigned male at birth, even though cisgender boys with whom L.E. is similarly situated are eligible to compete on the boys' golf team.

- c. Laws that discriminate on the bases of sex and transgender status are subject to intermediate scrutiny, meaning that the law must be substantially related to an important governmental interest.
  - d. SB 228 has no adequate justification for this disparate treatment, and there is no government interest that is substantially furthered by it. Indeed, SB 228 does not rationally further any legitimate government interest.
  - e. Therefore, SB 228 as applied to L.E. is unconstitutional as a matter of law.
8. SB 228 also violates L.E.’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a).
- a. 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).
  - b. The Tennessee State Board of Education and the Knox County Board of Education both constitute recipients of federal financial assistance.
  - c. The Farragut High School boys’ golf team is an education program or activity.
  - d. SB 228 discriminates against L.E. This discrimination is on the basis of sex because L.E.’s exclusion from the boys’ golf team is solely on the basis of his transgender status, i.e., that he was assigned female at birth.

- e. This exclusion harms L.E. by discriminating against him and denying him the myriad physical, social, and psychological benefits that come from participating in interscholastic athletics.
- f. Therefore, SB 228 as applied to L.E. also violates Title IX as a matter of law.

Accordingly, based on the undisputed facts, L.E. respectfully asks this Court to grant summary judgment in his favor on all counts and to enter the following relief: (1) a permanent injunction, restraining Defendants, their employees, agents and successors in office from enforcing against L.E. SB 228 and any other law, custom, or policy that precludes L.E.'s participation on a boys' school sports team in Tennessee; (2) a judgment declaring that SB 228 is unlawful under the Fourteenth Amendment to the United States Constitution and Title IX as applied to L.E.; and (3) a judgment awarding L.E. his reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988.

Dated: October 7, 2022

Leslie Cooper (*pro hac vice*)  
L. Nowlin-Sohl (*pro hac vice*)  
Taylor Brown (*pro hac vice*)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad St.  
New York, NY 10004  
Tel: (212) 549-2584  
lcooper@aclu.org  
lnowlin-sohl@aclu.org  
tbrown@aclu.org

Thomas F. Costello-Vega (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
350 South Grand Avenue, Suite 2400  
Los Angeles, CA 90071  
Tel: (213) 443-5300  
thomas.costello@wilmerhale.com

Tara L. Borelli (*pro hac vice*)  
Carl S. Charles (*pro hac vice*)  
LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND INC.  
1 West Court Square, Suite 105  
Decatur, GA 30030-2556  
Tel: (404) 897-1880  
Fax: (404) 506-9320  
tborelli@lambdalegal.org  
ccharles@lambdalegal.org

Sasha Buchert (*pro hac vice*)  
LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND INC.  
1776 K Street NW, 8th Floor  
Washington, DC 20006-5500  
Tel: (202) 804-6245  
sbuchert@lambdalegal.org

Respectfully submitted,

/s/ Alan Schoenfeld  
Alan Schoenfeld (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
7 World Trade Center  
250 Greenwich Street, 45th Floor  
New York, NY 10007  
Tel: (212) 937-7294  
alan.schoenfeld@wilmerhale.com

Stella Yarbrough (No. 33637)  
Lucas Cameron-Vaughn (*pro hac vice*  
forthcoming)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF TENNESSEE  
P.O. Box 120160  
Nashville, TN 37212  
Tel: (615) 320-7142  
syarbrough@aclu-tn.org  
lucas@aclu-tn.org

Jennifer Milici (*pro hac vice*)  
Emily L. Stark (*pro hac vice*)  
Samuel M. Strongin (*pro hac vice*)  
John W. O'Toole (*pro hac vice*)  
Britany Riley-Swanbeck (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
1875 Pennsylvania Ave. NW  
Washington, DC 20006  
Tel: (202) 663-6000  
jennifer.milici@wilmerhale.com  
emily.stark@wilmerhale.com  
samuel.strongin@wilmerhale.com  
john.o'toole@wilmerhale.com  
britany.riley-swanbeck@wilmerhale.com

***Attorneys for Plaintiff L.E., by his next  
friends and parents, Shelley Esquivel and  
Mario Esquivel***

## CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022, a true and correct copy of the foregoing Joint Motion for Protective Order was served on the below counsel for Defendants, via the Court's ECF/CM system.

Stephanie A. Bergmeyer  
Senior Assistant Attorney General  
Office of Tennessee Attorney General  
P.O. Box 20207  
Nashville, Tennessee 37202  
Stephanie.Bergmeyer@ag.tn.gov  
(615) 741-6828

Clark L. Hildabrand  
Assistant Solicitor General  
Office of Tennessee Attorney General and  
Reporter  
P.O. Box 20207  
Nashville, Tennessee 37202  
Clark.Hildabrand@ag.tn.gov  
(615) 253-5642

David M. Sanders  
Senior Deputy Law Director, Knox County  
Suite 612, City-County Building  
400 Main Street  
Knoxville, TN 37902  
David.Sanders@knoxcounty.org  
(865) 215-2327

Jessica Jernigan-Johnson  
Deputy Law Director, Knox County  
Suite 612, City-County Building  
400 Main Street  
Knoxville, TN 37902  
Jessica.Johnson@knoxcounty.org  
(865) 215-2327

/s/ Alan Schoenfeld  
Alan Schoenfeld