

# EXHIBIT 1

**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

**DECLARATION OF PLAINTIFF L.E.**

I, L.E., pursuant to 28 U.S.C. §1746, declare as follows:

1. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the matters stated herein.

2. I am fifteen years old. I live in Knoxville, Tennessee with my parents, Mario and Shelley Esquivel, and my twin sister. I am currently a sophomore at Farragut High School in Knoxville.

3. I am a boy who is transgender. Ever since I can remember, I did not see myself as a girl. In fact, for most of my life, I have worn traditionally male clothing, and have engaged in activities that are viewed as stereotypically male, including cutting my hair short, becoming friends with boys before girls, and emulating my behavior after my father. Although my original birth certificate lists my sex assigned at birth as female, I fully identify as a male. I have always been a boy.

4. In 2019, when I was in seventh grade, I told my parents that I did not consider myself a girl and wanted to live as a boy. My parents were not surprised when I told them this because I had always expressed interest in traditionally male things. I emphasized to my parents that I had thought about this for a long time, and this was not just a phase: this is who I am.

5. In early 2020, shortly after I told my parents, I began seeing a pediatrician to discuss potential options for my transitioning into living fully as a boy. Over the coming months, I worked with a pediatrician, an endocrinologist, and a mental health care therapist assist with the process of transitioning.

6. On January 28, 2021, I was officially diagnosed with gender dysphoria by my mental healthcare therapist, Samuel Steinbrugge.

7. Prior to beginning my transition, I felt a disconnect between who I was on the inside and what I looked like on the outside. I did not feel comfortable identifying as a girl, and it frustrated me when people perceived me as a girl. It makes me feel embarrassed when people perceive me as a girl. I often felt anxious and did not feel at peace in my own body. In fact, I have on numerous occasions expressed to my parents and doctors that I do not want to develop breasts or otherwise undergo the typical stages of female puberty because that is not who I am.

8. To further assist with my transition, I began taking pubertal suppression medications on April 23, 2021. I am also planning to begin testosterone treatment later this fall to further the transition process.

9. Even before I was formally diagnosed with gender dysphoria, I began the process of socially transitioning and living my life as a boy. This gradual process has included cutting my hair to a more traditionally male style, legally changing my name, adopting male pronouns,

using the male restroom, and continuing to dress and groom in traditionally male ways. In all respects, I live my life as a boy because that is who I am.

10. My family, peers at school, and teachers recognize me as a boy. My family fully supports me living as a boy because they recognize that this is who I am. Ever since people began recognizing me as a boy, I have been much happier. My anxiety has diminished, and I feel much better that people are perceiving me for who I really am.

11. In addition to living authentically as the boy I am, I am happiest when I am playing golf. I began playing golf in the summer of 2018, when I went to a free golf clinic in Knoxville with my parents. I instantly fell in love with the game.

12. Shortly after that experience, that same summer, my parents bought me my own set of clubs and golf shoes, which they did because they realized how much it meant to me.

13. Unlike other sports, golf is the only sport that has kept my attention – largely because I love playing it. I always want to play more, and I am engaged in making sure I am taking steps to improve my game.

14. I love that playing golf requires skill, focus, and determination. When I am on the course, I feel like the world around me is quiet and I am able to simply focus on improving my game. I often have trouble focusing on things, but with golf it feel different. I love the challenge of having to focus on improving my game, and I feel really proud when I feel as though my years of coaching have paid off by allowing me to hit good shots.

15. Over the years, I have taken golf lessons with multiple instructors. From July 2018 to July 2021, I took these lessons as often as weekly. I have had several golf coaches—both male and female—and they have helped me improve my game. In fact, my chipping and distance hitting have gotten much better over the years.

16. I often play golf with my dad. Though recreational in nature, we have played a number of courses throughout the greater Knoxville area, and we try to go to the driving range a few times a month. This practice has paid off, and I am continuing to get better over time.

17. When I was in middle school, I played on the Farragut Middle School girls' golf team. I played on this team before I had begun the process of transitioning into living my life as a boy.

18. While members of the girls' golf team were never outwardly rude to me, I felt an overwhelming sense of discomfort playing on that team. Looking back on that experience, I get angry and embarrassed. I did not feel like myself when playing on the girls' team, and that experience significantly contributed to my feelings of anxiety. I am sad to think that my only option to play golf is to have to go through these anxieties and difficulties again.

19. It is my dream to be able to play for the Farragut High School boys' golf team, and I have expressed that to my parents. I want to play on this team because I love the sport of golf, but I also want to be able to be who I am when I play. Due to the recent legislation that was passed in Tennessee called SB 228, however, I will not be able to achieve this goal of mine simply because of who I am.

20. I was devastated when I learned about SB 228. I did not understand why politicians would want to target individuals like me, who simply want to play the sport they love and live their life authentically. I felt even worse after being able to see all my other friends be able to freely try out and join the teams of their choice.

21. I am much happier now living my life as a boy than I ever was when I had to live my life as a girl. I cannot fathom having to live my life as a girl in order to play golf. In fact, if

that is my only option to play for my school, I would choose not to play golf for my school. My identity is not negotiable: this is who I am, and I must live my life as a boy.

22. If I had to play on the Farragut High School girls' golf team, I would be the only boy on the team. I expect I would be ridiculed as a result. The idea of doing this significantly raises my anxiety levels, and I could not endure this experience.

23. Playing for the Farragut High School boys' golf team, on the other hand, would allow me to experience the benefits of team sports and contribute to something greater than myself. I want to be able to experience the camaraderie of being part of a team. I want to push myself to be a better golfer, and I know that playing with and learning from the other boys on the Farragut High School boys' golf team would allow me to do that.

24. The fact that I'm not allowed to play on the Farragut High School boys' golf team, just because I'm transgender, makes me feel very angry and devastated. I cannot change who I am, and the fact that this law prevents me from playing golf on the boys' team makes me feel like I am an outcast. Even though I work extremely hard to improve my golf game, I feel like I am facing an uphill battle and making no progress. This law makes me feel not worthy, and certainly makes me feel more anxious and concerned about the future. Playing sports on the boys' golf team would mean the world to me. But knowing that no matter how hard I try to make the team, with this law in place there is nothing I can do to make the team, regardless of how well I play, makes me feel completely defeated.

25. Playing golf makes me really happy. I hope to be able to play on the Farragut High School boys' golf team and beyond in college or in some other capacity. Playing for the Farragut High School boys' golf team would increase my ability to potentially play golf at the

collegiate level. But more importantly, playing for the Farragut High School boys' golf team would allow me to play the game I love while being my authentic self.

\* \* \*

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

Executed on 10/6/22

L.E.

L.E.

# EXHIBIT 2



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

L.E., by his next friends            )  
and parents, SHELLEY                )  
ESQUIVEL and MARIO ESQUIVEL       )  
                                          )  
                                  Plaintiff        )  
                                                  )  
vs.                                        )        No. 3:21-cv-00835  
                                                  )  
BILL LEE, in his official            )  
capacity as Governor of the        )  
Tennessee, et al.                    )  
                                                  )  
                                  Defendants        )

VIDEOTAPED

DEPOSITION

OF

L.E.

August 1, 2022

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HOOD & McMASTERS  
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VIDEOGRAPHER: Ernie Tracy, Tracy Imaging

## APPEARANCES:

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1 A (Shakes head up and down.)

2 Q Also, I know that you've had to wait some  
3 this morning, and I apologize for that, but if at any time  
4 you need to take a break, please let me know.

5 A Yes, ma'am.

6 Q Okay. Have you had a good summer?

7 A Yes.

8 Q And what do you like to do for fun?

9 A Golf, puzzles, drawing, just hang out  
10 with my friends.

11 Q What year will you start in -- or when  
12 does school start this year?

13 A August 8th.

14 Q Okay. And what grade will you enter  
15 into?

16 A Tenth grade.

17 Q Okay. When did you begin playing golf?

18 A I would say in around sixth grade.

19 Q And how did you become interested in  
20 golf?

21 A There was a golf clinic and anyone could  
22 try it out just for fun, and so I did try it out, and I  
23 thought it was cool and wanted to see if I could get  
24 better at it, so I did that.

25 Q Was the golf clinic with your school?

1           A           No, I don't think it -- no, no, it was  
2           not.

3           Q           Was the golf clinic at one particular  
4           golf course?

5           A           I don't remember what golf course it was  
6           at, if it was even at a golf course.

7           Q           Did your parents buy you golf clubs so  
8           that you could play in the golf clinic?

9           A           Not necessarily in the golf clinic  
10          because they had clubs you could borrow, but a little bit  
11          after, we did get some clubs.

12          Q           And you mentioned tryouts. Did you try  
13          out to play with that golf clinic?

14          A           No, every -- anyone could try it just to  
15          see, just to get introduced to it.

16          Q           When did you play with your middle-school  
17          golf team?

18          A           I would say around seventh -- well,  
19          beginning of seventh and maybe a little bit of sixth. I  
20          can't remember about sixth.

21          Q           What grades were in your middle school?

22          A           What do you mean by grades?

23          Q           Did your middle school have sixth,  
24          seventh, and eighth grade?

25          A           Yes.

1 other than that?

2 A Yes.

3 Q Okay. And who would you play golf with?

4 A My dad.

5 Q Anyone else?

6 A No, not really. It would just be me and  
7 my dad giving me a ride. Sometimes he'll even leave me.

8 Q And dad pays; right?

9 A We have a card, yes, like, at Fairways  
10 and Greens and all that stuff.

11 Q And was there a certain course that you  
12 and your dad played?

13 A Yeah. Usually we would go to Fairways  
14 and Greens just to warm up and hit some balls and just  
15 practice, and then we would go to Concord, Dead Horse.  
16 There's also a few other ones I can't remember off the top  
17 of my head.

18 MS. BERGMEYER: Are you able to hear  
19 okay, Miss Court Reporter?

20 THE COURT REPORTER: Yes.

21 MS. BERGMEYER: Okay.

22 Q So you mentioned Concord, and I'm not  
23 from the Knoxville area. Is that a golf course in the  
24 area?

25 A Yes.

1 Q Okay. And what was the second course?

2 A Dead Horse.

3 Q Did you have a favorite?

4 A I like them all.

5 Q Good. Fairways and Greens, is that a  
6 driving range?

7 A Yes.

8 Q When you played golf with your dad, which  
9 tee box would you hit from?

10 A The white tee boxes.

11 Q Did you keep score when you played with  
12 your dad?

13 A No, because we were just playing it for  
14 fun.

15 Q Did your dad keep score for himself?

16 A Occasionally, though for the most part,  
17 he would, like, quit halfway through.

18 Q How many sets of golf clubs have you had?

19 A Well, at the start I had one, but then I  
20 started, I mean, getting new clubs just to add onto that,  
21 and then I just recently got a new, like, fitted set of  
22 golf clubs.

23 Q Oh, wow. Do you know if there are golf  
24 clubs designated for boys or girls?

25 A I mean, I guess it depends on what you

1 want, like, if you want a lighter club or a heavier one.

2 Q Okay. Do you prefer lighter or heavier?

3 A Heavier.

4 Q Have you taken golf lessons?

5 A Yes.

6 Q Okay. Have you had more than one private  
7 instructor?

8 A Yes.

9 Q So who have you got lessons from?

10 A Miss Suzanne, Amy -- I forget this  
11 person's name. It starts with an A. I'm sorry.

12 Q That's okay.

13 A Then there's also another guy I've seen  
14 before that I just got back seeing him for more lessons.  
15 I also forgot his name.

16 Q That's okay.

17 A And then also Dave.

18 Q Coach Dave?

19 A Yes.

20 Q And did you say one of the guy  
21 instructors you recently went back to see?

22 A Yes.

23 Q Okay. When did you start lessons with  
24 him again?

25 A Maybe, like, a month, a month and a half



1 ago.

2 Q How long before that had it been since  
3 you had had lessons?

4 A From -- what do you mean by lessons?

5 Q So you -- that was a bad question.  
6 Always feel free to tell me that. You recently started  
7 lessons with a male instructor, you said one to one and a  
8 half months ago; is that right?

9 A Yes.

10 Q Okay. Were you taking lessons before  
11 that?

12 A Yes.

13 Q Okay. And who were you taking lessons  
14 with?

15 A Miss Suzanne.

16 Q Do you know why you left Miss Suzanne,  
17 having lessons with her?

18 A Mainly because I wanted to get someone  
19 else's point of view just to see what I have to improve  
20 on, not just from one person, but another just to see what  
21 things I can also improve on from their standpoint.

22 Q Okay. When you had lessons with Miss  
23 Suzanne, how often would you see her?

24 A I don't really know if it was -- I don't  
25 really know any consistent date. I would just see her

1           when I think there is something I definitely want to  
2           improve on. Like, there's always something to improve on,  
3           but something in particular, like, maybe with my irons, or  
4           I'm struggling to keep the ball more straight and it's  
5           curving a little bit right, or maybe my long putts are not  
6           doing very good at the time, so I want to improve on that.

7                   Q           Have you tried to tee off from either the  
8           yellow or red tee boxes?

9                   A           Yes, I -- yeah, I did do red a little  
10           bit, though I would usually go up a club or two or just  
11           stay with the same club but do a fuller swing instead of a  
12           half swing.

13                   Q           How many times did you play golf this  
14           summer?

15                   A           To be honest, I'm not keeping track of  
16           how many times I play. I mean, I went golfing, like, two  
17           days ago because I was in Florida and there's, like, a  
18           little Top Golf, but not really Top Golf. It was, like,  
19           half.

20                   Q           When you play golf with your dad, do you  
21           play a 9-hole course or an 18-hole course?

22                   A           Nine hole because 18 holes is, like, the  
23           whole day. We don't have that time.

24                   Q           Do you know when the last time you played  
25           a 9-hole course was?

1           A           I don't remember. Actually, wait. I  
2           don't know the exact date, so I can't -- it was recent.  
3           Well, it was like -- I'm just going to say I don't  
4           remember.

5           Q           Okay. Do you think it would have been  
6           sometime this summer?

7           A           Oh, yeah, it's been the summer.

8           Q           Do you follow professional golf?

9           A           I'm sorry? Can you --

10          Q           Do you follow professional golf?

11          A           Like, watch it?

12          Q           Yes.

13          A           I mean, I usually just -- it's -- if it's  
14          on, I just glance to see who's playing and if they did a  
15          good shot and then do something else.

16          Q           Do you have any favorite professional  
17          golfers?

18          A           No. I'm trying to think. No.

19          Q           Did you want to play golf for your  
20          high-school golf team?

21          A           Yes. I wanted to play on the guys' golf  
22          team.

23          Q           Okay. And what made you decide that you  
24          wanted to play for the guys' team?

25          A           Because I'm a boy.

1 Q Did you talk to anyone about wanting to  
2 play golf for the high-school boys' team?

3 A Yes.

4 Q Okay. Who did you speak with?

5 A My mom, dad, friends, lawyer, lawyers.

6 Q Sure.

7 A Yeah.

8 Q Do you know who the boys' golf coach is  
9 for Farragut High School?

10 A No.

11 Q Do you know when the boys' golf team have  
12 tryouts at your school?

13 A No, though I think my mom does.

14 Q Do you follow the players on the Farragut  
15 boys' golf team or keep track of how they're doing on the  
16 team?

17 A Not exactly keep track, though I do know  
18 they are good.

19 Q What do you know about them being good?

20 A They got second place in a tournament, I  
21 think it was a tournament.

22 Q Are you friends with anyone on the boys'  
23 golf team?

24 A No.

25 Q Why did you not go to tryouts for the

1 golf team before or for your freshman year of high school?

2 A Because even if I did have the chance to  
3 try out, if I can't even be able to play on the guy's golf  
4 team, there -- I just wouldn't try out. There's no point.

5 Q Do you know if the boys and girls try out  
6 at the same time for the golf team?

7 A I do not know.

8 Q Do you know what tryout what -- do you  
9 know what someone has to do at the tryouts to see whether  
10 they can make the team?

11 A I do not. I would expect you just to be  
12 able to play well.

13 Q Have you -- do you know what a handicap  
14 is for golf?

15 A Yes.

16 Q What is your understanding of a handicap?

17 A My understanding of it is where you get  
18 to be closer to the hole or something that helps you.

19 Q Do you know how golfers keep score?

20 A Depending on how many hits it takes you  
21 until you get to the hole. It could be birdie, par,  
22 bogey, double bogey max, and if you're really, really  
23 lucky, eagle, and I never got that. I wish I got an  
24 eagle.

25 Q Do you know what par is?

1 A Yes.

2 Q Okay. And what is that?

3 A It's where it takes you three golf hits  
4 -- well -- yeah. It can be different depending on, like,  
5 distance, if this makes any sense of what I'm saying, but  
6 yeah.

7 Q Sure. It was a -- it was a broad  
8 question; I understand. Do golfers try to make par when  
9 they golf?

10 A I would think so. I mean, you just try  
11 to do it in as little hits as possible.

12 Q We are here today because you have -- you  
13 and your parents have filed a lawsuit because you want to  
14 play and try out for the boys' golf team; is that right?

15 MS. BUCHERT: Objection to form.

16 A I want to have the chance to play.

17 Q Okay. And have you spoken to news  
18 reporters and people of the press about this lawsuit?

19 A No.

20 Q Okay. Are you aware of this lawsuit  
21 being in the news?

22 A Wait, actually, maybe I did.

23 Q Okay.

24 A Well, I don't know if that exactly  
25 counts. I'm just going to say no for now.

1 Q Okay. Did you change the way that you  
2 dressed when people started calling you L.E.?

3 MS. BUCHERT: Objection to form.

4 A No. I kind of already wore tomboyish boy  
5 clothes from the start. Like, I didn't like frilly  
6 dresses or anything like that. I would also get clothes  
7 from one of my cousins who's a guy and then also clothes  
8 from my dad and then -- yeah. I guess I was more open and  
9 less nervous about wearing boy clothes, but I did not  
10 really change what I was wearing.

11 Q You mentioned you told your closest  
12 friends. Are your closest friends boys or girls?

13 A Both.

14 Q Okay.

15 A I guess I've known -- I guess the ones I  
16 met first are actually guys. Like, the first friends I  
17 ever made, their names are Ben and Zack. They are in  
18 elementary -- I met them in elementary school and -- yeah.

19 Q When did people in school call you L.E.?

20 A Not until my name was changed and I --  
21 can you -- wait, can you say the question again?

22 Q Sure. When did people in school start  
23 calling you L.E.? Do you know what grade?

24 A I guess after I got my name changed and  
25 it was on the teacher's thing, but I did also tell the

1 teacher my name's L.E. before that, so it could be a  
2 little later.

3 Q You have several doctors that you see,  
4 one being your pediatrician Dr. Blackman?

5 A Yes.

6 Q Okay. Have you spoken with Dr. Blackman  
7 about being a transgender person and how he can help you  
8 with that?

9 A Yes, I did tell him I was a transgender.

10 Q Okay. You also at some point began  
11 seeing a therapist; I believe the name is Samuel  
12 Steinbruegge?

13 A Yes.

14 Q Okay. And how long have you seen him?

15 A Oh, man, I hate time. I don't -- I don't  
16 know. I mean, it's not -- it was consistent at the start,  
17 and then it's not as much. It's just, like, every so  
18 often.

19 Q Okay. And you decided along with your  
20 parents to take pubertal -- pubertal suppression  
21 medication; is that right?

22 A Yes. It's an implant.

23 Q Okay. And what made you decide to begin  
24 that medication?

25 A I didn't -- I guess before I started



1           having more feminine features. I didn't really think  
2           about it like that. That's not what I was expecting  
3           exactly. I guess in my mind I'd be the same or just more  
4           -- or less feminine features than I was actually expecting  
5           until I realized that's not what I want and didn't  
6           actually think about how that was going to happen.

7           Q           Okay.

8           A           And also when I was transitioning as a  
9           male, I found that, since I'm a guy, I don't want feminine  
10          features, so...

11          Q           Are you considering testosterone therapy?

12          A           Yes.

13          Q           Okay. And what is your understanding of  
14          testosterone therapy?

15          A           I will be getting a deeper voice, more  
16          hair, less of a feminine body shape.

17                   MS. BERGMEYER: I think this would be a  
18                   good time for me to take a very short break, and  
19                   I'm almost done.

20                   MS. BUCHERT: Okay, great.

21                   THE VIDEOGRAPHER: Okay. We're going off  
22                   the record. The time on the camera is 11:06.

23                               (Short break.)

24                   THE VIDEOGRAPHER: Okay. We're back on  
25                   the record. The time on the camera is 11:40 a.m.

1 Q All right. L.E., did you talk to any  
2 golf coach or instructor about wanting to play golf in  
3 high school?

4 MR. SANDERS: Excuse me, Stephanie, this  
5 is David. We don't have any video feed.

6 (Technical difficulties.)

7 (Off the record.)

8 THE VIDEOGRAPHER: You may continue.

9 Q All right. L.E., did you talk to any  
10 golf coach or instructor about wanting to play golf in  
11 high school?

12 A A little bit to Miss Suzanne just as a  
13 topic to chat about.

14 Q Do you know what tees the boys on the  
15 high-school golf team hit from?

16 A I'd assume that it's brown, though I may  
17 be wrong.

18 Q Is it a tee that is further from the tee  
19 that you currently hit from?

20 A Yes.

21 Q And have you ever hit from the tees that  
22 you assume the boys' golf team in high school hit from?

23 A Yes.

24 Q How many times have you hit from that  
25 tee, tee box?

1           A           I have no clue. I don't keep track.

2           Q           But it is not the tee box that you  
3 routinely play from.

4           A           I do not routinely play from that tee  
5 box.

6           Q           Did you play on the girls' middle-school  
7 team after transitioning as a boy?

8                   MS. BUCHERT: Objection to form.

9           A           Not exactly -- well, I'm sorry, can you  
10 repeat the question?

11          Q           Yes. After going through a social  
12 transition to be recognized as a boy, did you play on the  
13 girls' middle-school golf team?

14          A           Yes, but only -- okay. Yes, but only a  
15 little bit. Well, not exactly a -- okay. Yes.

16          Q           And you have previously stated that  
17 playing for the girls' golf team made you uncomfortable;  
18 is that right?

19          A           Yes.

20          Q           Okay. Can you explain more about why you  
21 felt uncomfortable.

22          A           They weren't doing anything or anything  
23 like that. It's just because I'm a boy and it would be  
24 awkward to be the only boy playing on a girls' golf team.

25          Q           Okay. So did the girls on the team treat

1           you well?

2                   A           I mean, yeah, they were nice.

3                   Q           And was the coach nice?

4                   A           Yes.

5                   Q           Are there any other reasons that you felt  
6           uncomfortable playing for the girls' golf team?

7                   A           No. I mean, no. I mean, it's not just  
8           uncomfortable, it's just embarrassing, a little angering  
9           to myself, I guess, when you think about it. It's just,  
10          like, I really, really love golf, and I love  
11          competitiveness, but I don't like playing on the girls'  
12          golf team, so -- because I'm a boy and -- yeah.

13                  Q           Okay. How long have you been off school  
14          for the summer?

15                  A           Let's see. I forget when school actually  
16          ended, I'll be honest. I know it -- I know school ended  
17          in June, and that's my birthday month, but, I mean, I kind  
18          of forget. I didn't really keep track. I was just  
19          excited to go to summer.

20                  Q           Do you know when you -- when it was your  
21          birthday, were you in school or out of school?

22                  A           Oh, out of school.

23                  Q           Was there anything that prevented you  
24          from playing golf more this summer?

25                               MS. BUCHERT: Objection to form.

1 decision because I can't read your mind. I don't know  
2 what you're thinking, so...

3 Q And so what is the difference between a  
4 boy and a girl?

5 MS. BUCHERT: Objection to form.

6 A Things you do, mannerisms, way of speech,  
7 how you speak a little bit, the way you dress. Yeah.

8 Q Okay. And is it your understanding that  
9 you have always been a boy, or did your feelings or  
10 understanding about that change as you got older?

11 A I think I've always been a boy, though --  
12 I mean, like, I didn't really see myself as a girl, but  
13 because of my birth certificate, I just didn't really --  
14 and I didn't even -- I wasn't even educated at the time  
15 about transgender, so, yeah...

16 Q How did you get educated about  
17 transgender persons?

18 MS. BUCHERT: Objection to form.

19 A Well, mainly my friends. They taught me  
20 about pronouns, and then I kind of looked into it myself  
21 on YouTube, and then I still don't even know. I mean,  
22 it's mostly on feelings, I guess, so I can't really --  
23 it's, like, how I feel like a boy, so, yeah...

24 MS. BERGMEYER: I have no further  
25 questions. Thank you for your time today.

1           Q           One more actually, I apologize. Have you  
2 understood the questions I've asked you today?

3           A           Yes.

4           MS. BERGMEYER: Thank you.

5                           EXAMINATION

6 BY MS. JOHNSON:

7           Q           Hi, I'm Jessica. I'm the attorney for  
8 the Knox County Board of Education and Bob Thomas -- and I  
9 need a microphone. hold on one second.

10                        I have just a few questions for you;  
11 okay? Same rules. Yes and no responses. If you don't  
12 understand the question, ask me and I'll try to rephrase;  
13 okay? So first I want to ask you about when you played in  
14 middle school, and that was at Farragut Middle School; is  
15 that right?

16           A           Yes.

17           Q           Do you remember when you were on the team  
18 if you played matches against other schools?

19           A           We did a few times. I don't remember  
20 which schools.

21           Q           And do you think you played against  
22 another school three times?

23           A           No, I don't know about three times. It  
24 was kind of odd because we would play in different ways.  
25 Like, best ball is one way we would do it. It's where

1 everyone on your team who are participating in this game  
2 would hit a ball. Whichever one is better, you would pick  
3 that ball and then pick up all the rest, and then everyone  
4 would hit from there, and then whatever one's better from  
5 there, you would hit there and so forth until you get into  
6 the hole.

7 Q And when you played best ball, how many  
8 people did you play with?

9 A I honestly don't remember.

10 Q Okay. Okay.

11 A I don't think it was the whole team,  
12 though.

13 Q Did you -- do you remember if you played  
14 against other schools less than five times?

15 A I would say it's less than five times,  
16 but we would also play against the same schools more than  
17 -- so we would usually, like, have a school that we know  
18 more than others, so we would play with them more.

19 Q And then I want to talk about golf this  
20 summer. Have you been to the driving range this summer?

21 A Yes.

22 Q Do you know about how many times you've  
23 been?

24 A No, I never keep track.

25 Q And I'm not looking for an exact number.

1 Do you think you went once a week this summer?

2 A Sometimes it would be more. Like, some  
3 weeks we would go more than others, so it's, like, one  
4 week we would not have time to go at all because Dad's  
5 working and I have practice -- well, I have the play, so I  
6 can't go that week, but next week, we have nothing that  
7 week, so we're going to go tomorrow and then the other day  
8 -- I mean, the next day, and then we'll kind of spread it  
9 out, if that makes any sense.

10 Q Absolutely.

11 A Yeah, that's why I kind of can't -- I  
12 don't -- I can't say it's, like, an exact week.

13 Q Sure. Do you think you've been less than  
14 ten times this summer?

15 A No.

16 Q Would you say you've been more than ten  
17 times?

18 A Yes.

19 Q Okay, great. And when was the last time  
20 you played an 18-hole course?

21 A Oh, that's been a while because 18 holes  
22 is where you have to spend the whole -- you have to spend  
23 a whole day. You have to make sure your schedule is,  
24 like, completely empty. Definitely not this year. I  
25 haven't had time to do that. We usually do nine holes.



1           calculated your handicap in golf?

2                   A           No.

3                               MS. JOHNSON:  Okay.  I think those are  
4                               all the questions I have.  Thank you so much.

5                               MS. BUCHERT:  If we could take a  
6                               five-minute break, that would be great.

7                               THE VIDEOGRAPHER:  Okay.  We're going off  
8                               the record.  The time on the camera is 12:07.

9                                       (Short break.)

10                               THE VIDEOGRAPHER:  Okay.  We're back on  
11                               the record.  The time is 12:13.

12                                       EXAMINATION

13           BY MS. BUCHERT:

14                   Q           All right.  L.E., I just have a few quick  
15                   questions for you.  In your words, what does it mean to  
16                   socially transition?

17                   A           Well, it takes time.  I see it as a  
18                   process, I mean, like, just bit by bit understanding  
19                   yourself first and then making the changes, like -- like,  
20                   the implant, getting diagnosed with trans dysphoria, yeah,  
21                   and just making the changes that you would like, not  
22                   playing on the girls' golf team.

23                   Q           All right.  And when did you receive a  
24                   gender dysphoria diagnosis?

25                   A           In 2021.

1 Q And when did you obtain a name change?

2 A I think that was also in 2021.

3 Q And when did you receive your implant?

4 A Twenty twenty-one. I forget the complete  
5 date of all these.

6 Q So when you were playing for the Farragut  
7 Middle School, none of those things had been done when you  
8 were -- while you were playing on that team; is that  
9 accurate?

10 A Yes.

11 Q Okay. And if this law remained in place,  
12 would you consider playing for a girls' team even though  
13 you could not play for a boys' team?

14 A No.

15 MS. BUCHERT: Okay. No further  
16 questions. Thank you.

17 MS. BERGMEYER: Nothing further.

18 MS. JOHNSON: Nothing for us.

19 (Discussion off the record.)  
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FURTHER THE DEPONENT SAITH NOT.

L.E.

Sworn to before me when  
taken August 1, 2022.

/s/ Donna D. Touseull

Donna D. Touseull

Licensed Court Reporter

LCR No. 342 / License Expires: 06-30-2024

## REPORTER'S CERTIFICATE

STATE OF TENNESSEE )

COUNTY OF KNOX )

I, DONNA D. TOUSEULL, Licensed Court Reporter in and the State of Tennessee, do hereby certify that I reported in machine shorthand the foregoing testimony held on the 1st day of August 2022 and that the foregoing 43 pages were transcribed by me and constitute a true record of the proceedings to the best of my knowledge and ability.

I further certify that I am not an attorney or counsel for any of the parties, nor an employee or relative of anyone connected with the action, nor financially interested in the action.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 19th day of August 2022.

/s/ Donna D. Touseull

DONNA D. TOUSEULL  
Licensed Court Reporter  
LCR No. 342 / License Expires: 06-30-2024

# EXHIBIT 3

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

L.E., by his next friends )  
and parents, SHELLEY )  
ESQUIVEL and MARIO ESQUIVEL )  
 )  
Plaintiff )  
 )  
vs. ) No. 3:21-cv-00835  
 )  
BILL LEE, in his official )  
capacity as Governor of the )  
Tennessee, et al. )  
 )  
Defendants )

VIDEOTAPED  
DEPOSITION  
OF  
SHELLEY ESQUIVEL  
August 1, 2022

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parents, Shelley and Mario Esquivel

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MR. TRAVIS ROYER

MR. CLARK HILDABRAND (via Zoom)

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MS. AMANDA MORSE

MR. DAVID SANDERS (via Zoom)

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Knox County Board of Education, et al.

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1 A Nothing (indicating).

2 Q Okay. If I ask you a question that you  
3 do not understand, will you please let me know?

4 A Yes.

5 Q Okay. You sat through L.E.'s deposition  
6 this morning; is that correct?

7 A Yes.

8 Q Okay. And did everything that L.E. said  
9 appear to be true and accurate to the best of your  
10 knowledge?

11 MS. NOWLIN-SOHL: Object to form.

12 A There were some areas where he was a  
13 little confused so -- but for the most part, yeah, based  
14 -- he did the best to his ability to remember dates and  
15 things like that.

16 Q Okay. Looking at the complaint -- have  
17 you seen the complaint before?

18 A Yes, I have.

19 Q Okay. Page 23, the first paragraph,  
20 Paragraph 76 -- I guess actually I should go to the page  
21 before, Page 22, Paragraph 75. So L.E.'s original birth  
22 certificate states the sex a female; is that correct?

23 A Yes, that's correct.

24 Q Okay. Now going to the next page,  
25 Paragraph 76 states, in 2019 -- I'm going to go ahead and

1 say L.E. for the purposes of being consistent for this  
2 deposition. So it says L, but we all know that's  
3 referencing L.E.; is that correct? L.E.?

4 A Yes.

5 Q Okay. Told you that he was a boy. Tell  
6 me about when L.E. told you that he was a boy.

7 A So it's been a process. L.E. has always  
8 preferred what you would call boys' clothes and doing what  
9 you would say are boys' activities, and around -- in 2019,  
10 he really started telling me that -- things like, "I wish  
11 that I was born a boy. I wish I wasn't a girl."

12 And so it was towards the end of 2019, he  
13 wanted to get his hair cut. He had had long,  
14 shoulder-length hair, and he wanted to get a haircut so  
15 that he resembled a stereotypical boy, I guess, even  
16 though some boys do have long hair. So it was just a  
17 matter of him, I guess, working through his feelings and  
18 telling us that he feels like he's a boy.

19 Q Prior to that conversation, had you  
20 called L.E. L.E. before that time?

21 MS. NOWLIN-SOHL: Object to form.

22 A No.

23 Q Okay. And when -- I apologize because I  
24 think you have answered this, but I want to make sure.  
25 When in 2019 did the first discussion occur?

1 MS. NOWLIN-SOHL: Object to form.

2 A I would say it was -- it was towards the  
3 end of 2019, so, like, in the fall, during the fall  
4 semester of school.

5 Q Do you recall what grade L.E. would have  
6 been in?

7 A Let's see. He -- if it was in 2019 in  
8 the fall, seventh grade. Twenty...

9 Q And so what was your response at that  
10 time?

11 A Well, I personally was not very surprised  
12 because, like I said, he'd always gravitated towards boys'  
13 clothes and wanting to do things with other boys, and my  
14 response was that we needed to talk to the family  
15 pediatrician and see kind of what the next steps are, what  
16 would be appropriate for L.E.

17 Q At that time on or around the fall of  
18 2019, did you have any affiliation with transgender  
19 persons, alliances, or support groups?

20 MS. NOWLIN-SOHL: Object to form.

21 A No.

22 Q Okay. Did you know any transgender  
23 persons at that time?

24 A Yes.

25 Q Okay. And were the transgender persons

1           you knew a resource for you when you were deciding the  
2           proper response to L.E.?

3                   A           She was more of an acquaintance of ours,  
4           so I don't -- I don't believe that we ever really talked  
5           about L.E. transitioning.

6                   Q           And so did you take L.E. to the  
7           pediatrician on or around that time?

8                   A           Yes, early on in 2020.

9                   Q           What was the pediatrician's advice?

10                   A           She -- so I did research on my own, and I  
11           knew that there was such a thing as puberty blockers, and  
12           so in my discussion with her, I mentioned that being a way  
13           to kind of pause things, you know, pause puberty while  
14           L.E., you know, figures things out with his gender, and  
15           she at the time did not know that there were doctors in  
16           our area who would provide that treatment to children  
17           under 18.

18                                So she had more of a kind of wait-and-see  
19           approach, meaning wait to see if this is a phase or if  
20           it's not, and then to proceed with hormone treatment or  
21           whatever the next step was after the age of 18. She has  
22           since apologized because she was very much so uninformed  
23           that care is indeed being treated to kids who are younger  
24           than 18.

25                   Q           So the pediatrician's advice in early

1 Q Sure. Was there anything else you  
2 observed or other knowledge you have that made you think  
3 L.E. being a boy was not a phase?

4 A He would consistently say things like he  
5 wished he were born a boy, he doesn't want to develop  
6 breasts, absolutely no desire to have children, he wants a  
7 deeper voice. In my -- in -- in my opinion, phases don't  
8 last for as long as what these kinds of feelings that he  
9 conveyed to me lasted.

10 Q So you mentioned testosterone therapy.  
11 Has that been discussed with Dr. Eatajoo?

12 A Yes.

13 Q Okay. And is there a plan for L.E. to  
14 begin testosterone therapy?

15 A Yes.

16 Q And what is the plan?

17 A The plan is for him to meet with the  
18 endocrinologist again in October, and there is something  
19 that Children's has put together. It's called a gender  
20 clinic, so where other kids -- actually, I really don't --  
21 to be honest with you, I don't know all that it entails,  
22 but it's something that where they work through with, I  
23 guess, talking about the side effects and things like that  
24 of testosterone.

25 And then originally the plan was for him

1 to begin testosterone at 16, but the endocrinologist feels  
2 comfortable, given that he wants to begin sooner so that  
3 he can continue puberty, that around -- at some point  
4 after October, so I think 15 and a half is kind of what  
5 I'm hearing, which would put us into December, January.

6 Q Has L.E. expressed any hesitation at  
7 receiving testosterone therapy?

8 A Not at all.

9 MS. NOWLIN-SOHL: Object to the form.

10 Q What has L.E. said about receiving  
11 testosterone therapy?

12 A He says that he can't wait, he wants to  
13 make sure that breast development doesn't occur, he wants  
14 a deeper voice, he wants to have body hair, he wants to go  
15 into puberty again so he can begin to get taller. So he's  
16 overall conveyed that he's excited to begin testosterone  
17 treatment.

18 Q If L.E. wanted to play a club sport, golf  
19 in a club sport, would you have the financial means to  
20 afford that?

21 MS. NOWLIN-SOHL: Object to form.

22 A It depends. I don't know how much that  
23 would cost.

24 Q Have you looked into leagues, or club  
25 sports, or other avenues for L.E. to play golf outside of

1 the high-school golf team?

2 MS. NOWLIN-SOHL: Object to form.

3 A No, I haven't. I believe my husband  
4 might have.

5 Q Looking back to Paragraph 76 of the  
6 complaint, the second sentence states, "Since 2020, he,"  
7 referring to L.E., "has been using a typically male name  
8 and pronouns and grooming and dressing in traditionally  
9 male styles." Did I read that correctly?

10 A Yes.

11 Q Okay. Did you provide this information  
12 for the complaint?

13 A Yes.

14 Q Okay. So how did it come about that L.E.  
15 began to use a male name and pronouns?

16 A When he started kind of talking about how  
17 he didn't feel like a girl and that he felt more like he  
18 was probably a boy, we actually started calling him  
19 instead of because it was a little more neutral and  
20 he felt more comfortable with that at the time.

21 Q Was that something that L.E. requested,  
22 or was that an idea that you or your husband came up with?

23 A I think it was L.E. I think -- I  
24 remember talking to him about it, and he -- he liked  
25 because it was similar to his given name but it was more

1 neutral, and so that's what we went with for a time  
2 period.

3 Q Okay. And then how did it come that you  
4 began to call L.E.?

5 A When he was more sure that he definitely  
6 identified as a boy.

7 Q And when was that?

8 A Let's see. We got his name changed in  
9 2021, and we were calling him L.E. for a certain amount of  
10 time before that, so I'd say late 2019 -- or, sorry, late  
11 -- let's see -- late 2020 to early '21.

12 Q Did L.E.'s grooming and dressing -- it  
13 states that, since 2020, L.E. has been using -- grooming  
14 and dressing in traditionally male styles. Was his -- did  
15 L.E.'s grooming and dressing change, or was it consistent  
16 with how L.E. had been dressing and grooming?

17 A It was consistent with how he had been  
18 grooming and dressing. I think the way this was intended  
19 was, since 2020, he had been all of those things, so he  
20 had been using the male pronouns, the male name, and  
21 grooming and dressing since then with -- especially with  
22 the haircut. So the grooming definitely started later  
23 than the dressing did.

24 Q What do you mean by grooming?

25 A The way that he had his hair cut, and he



1 didn't shave much before then honestly, but that's when he  
2 just completely decided not to shave.

3 Q If I ask you about L.E. transitioning and  
4 I use the word transition, what does that mean to you?

5 MS. NOWLIN-SOHL: Object to form.

6 A It's the process by which L.E. identified  
7 and started presenting as male instead of female.

8 Q And some of that process is described in  
9 Paragraph 26 -- or 76, I'm sorry.

10 A Yes.

11 Q Okay. And is there more to L.E.  
12 transitioning that's not included in Paragraph 76 to your  
13 understanding of the term?

14 A No, not -- not that I can think of.

15 Q Did you discuss L.E.'s transitioning with  
16 anyone at his school?

17 A No, I don't believe so.

18 Q In 2020, L.E. was at Farragut Middle  
19 School; is that correct?

20 A Correct.

21 Q Okay. Do you know if L.E.'s teachers  
22 recognized his transitioning at the time?

23 A Yes, I believe they did.

24 Q But any of that discussion was done  
25 through L.E. and his teachers, then?

1 MS. NOWLIN-SOHL: Object to form.

2 A Some of it was when he asked -- he would  
3 ask to be called L.E. instead of especially -- or  
4 even before that when he would ask them to call him  
5 instead of . So some of those conversations were had  
6 between him and his teachers, but then there were also  
7 conversations that I had with -- L.E. has an IEP.

8 So there was an IEP team where I know I  
9 discussed his gender with his -- I discussed his name  
10 preferences and pronoun preferences with them, and that  
11 was in the eighth grade, and also I had conversations with  
12 his IEP team in the ninth grade too. And I also emailed.  
13 I don't know if this falls into your question, but I  
14 emailed Dr. Bartlett going into -- so it was towards the  
15 end of the eighth-grade school year going into the ninth  
16 grade to kind of introduce him to L.E. and let him know  
17 that L.E. was going to be coming in the ninth grade.

18 Q To your knowledge, how did L.E.'s  
19 classmates respond to the transition?

20 MS. NOWLIN-SOHL: Object to form.

21 A To my knowledge, things were really --  
22 really went smoothly. L.E. has always been the kind of  
23 kid who has a close-knit group of friends, so I know he  
24 had already had conversations with them about his gender,  
25 and honestly, and I think it's to his benefit, he can be

1 pretty aloof when it comes to how other kids are talking  
2 about him or perceiving him. So if there was anybody  
3 saying anything negative about it, it went unnoticed.

4 Q Are L.E. and his sister close?

5 A As close as a set of twins can be.

6 Q Are they friends within school to your  
7 knowledge?

8 A No.

9 Q Okay. When did L.E. begin therapy?  
10 MS. NOWLIN-SOHL: Object to form.

11 A He began therapy around the same time  
12 that we knew we wanted to pursue the puberty suppression,  
13 so that was in early 2021.

14 Q Are there any other reasons that L.E.  
15 began therapy at the time?

16 MS. NOWLIN-SOHL: Objection.

17 A No.

18 Q And why did L.E. begin therapy when you  
19 wanted to pursue puberty suppression?

20 MS. NOWLIN-SOHL: Objection.

21 BY MS. BERGMEYER:

22 Q And when I mean you, I mean you and your  
23 husband and L.E. as a team, of course.

24 A We -- when we met with Dr. Blackman  
25 earlier in the year in 2020, she had suggested that L.E.

1 start seeing a therapist to talk about his gender  
2 identity, somebody who could talk through things, emotions  
3 that he was having, and I actually did -- she provided a  
4 list of providers, and I tried to -- I tried to call maybe  
5 a handful of them, and it's very hard to find therapists  
6 who have availability to work with kids right now.

7 And so I asked L.E., I said, "Are you --  
8 do you feel like you need to talk to somebody about, you  
9 know, what you're feeling and, and what you're thinking?"  
10 and L.E. can be a pretty -- he calls himself a chill kid,  
11 -- and he said he really felt fine, that he was happy, he  
12 felt like he could talk to us, his family, and that he had  
13 friends that he could talk to and so that he was okay  
14 without seeing a therapist.

15 However, once I learned that -- that  
16 puberty suppression was something that he could pursue  
17 sooner rather than later, I started calling around again  
18 for a therapist, and one of the providers didn't have any  
19 availability but knew of Sam and knew that he had some  
20 openings, and so that's how he began seeing Sam as his  
21 therapist.

22 Q Has L.E. been diagnosed with gender  
23 dysphoria?

24 A Yes.

25 Q And which doctor provided that diagnosis?

1           A           It was the therapist, Sam, and it could  
2           have been -- I'm not sure; I haven't seen it. Dr.  
3           Blackman may have made that diagnosis based on our  
4           conversation with her earlier on in 2020.

5           Q           What is your understanding of L.E.'s  
6           gender dysphoria?

7                       MS. NOWLIN-SOHL: Object to form.

8           A           Are you asking about L.E. in particular  
9           or my understanding about gender dysphoria?

10          Q           I am asking about L.E. in particular.

11          A           Okay. So my understanding is that he was  
12          assigned female at birth and has -- you know, started his  
13          life being perceived as a girl when in reality he feels  
14          like and knows that he is a boy and that that causes a  
15          great amount of anxiety unless the child is allowed and  
16          given the ability to do things like socially transition  
17          and receive medical intervention.

18          Q           Prior to L.E. seeing the therapist, did  
19          you know L.E. was anxious?

20          A           Yes. I knew that he was anxious about  
21          entering into a female puberty and developing breasts and  
22          starting a menstrual cycle.

23          Q           Did L.E. begin puberty suppression before  
24          having a menstrual cycle?

25          A           Yes.

1 Q What treatment has L.E. received for  
2 gender dysphoria?

3 A He --

4 MS. NOWLIN-SOHL: Objection.

5 THE WITNESS: He has received, like --  
6 I'm sorry, can you repeat your question?

7 Q Sure. What treatment has L.E. received  
8 for gender dysphoria?

9 MS. NOWLIN-SOHL: Same objection.

10 A So most of the treatment is just being  
11 allowed to -- given the freedom to live his life as a boy.  
12 The -- the other side of the treatment is the puberty  
13 suppression that he is on and then ultimately testosterone  
14 treatment, although that's not the case for all  
15 transgender people that they would pursue hormone  
16 treatment, but in his case, that's what he would like to  
17 do.

18 Q Is therapy also treatment for gender  
19 dysphoria for L.E.?

20 MS. NOWLIN-SOHL: Objection.

21 A I wouldn't know if I would classify it as  
22 treatment, but it helps him get through the process and to  
23 have an outlet to express his fears and concerns,  
24 anxieties that are related to him being transgender.

25 Q Does L.E. take any medication for

1 anxiety?

2 A Yes, he does.

3 Q How did L.E. become interested in golf?

4 A I took him -- at the Fairways and Greens,  
5 there was a -- it's sponsored by Food City, the grocery  
6 store. They had kind of like a kid event, a golf clinic,  
7 and they had, like, hot dogs and hamburgers, and they had  
8 some of their instructors out giving free lessons to the  
9 kids. And so we went with some neighbors of ours, and I  
10 took L.E., and so he got a free golf instruction that day,  
11 and he really just really loved it.

12 Q Prior to that time, did you play golf?

13 A No.

14 Q Did your husband?

15 A Recreationally, yes.

16 Q Did your husband have a set of golf clubs  
17 at the time?

18 A Yes.

19 Q And so after that free golf instruction,  
20 did L.E. continue to play golf?

21 A Yes.

22 Q Okay. Is Fairway and Greens a driving  
23 range?

24 A It is, and they also have a par-three  
25 course.

1           Q           L.E. testified earlier today of feeling  
2           uncomfortable playing on the girls' team. Do you remember  
3           L.E. saying that?

4           A           Yes.

5           Q           Okay. Is that something you were aware  
6           of at the time?

7           A           Yes.

8           Q           Okay. And what did L.E. tell you?

9           A           Just that he felt odd being the only boy  
10          on a team that consisted of all girls and that was called  
11          the girls' golf team.

12          Q           Did L.E. have any friends on the girls'  
13          golf team?

14          A           Yes.

15          Q           Did L.E. have any friends on the boys'  
16          middle-school golf team?

17          A           Not to my knowledge. We really weren't  
18          familiar -- we actually didn't know if there was a boys'  
19          team. The only reason we became aware that there was a  
20          girls' team was because the same coach who did First Tee,  
21          he said, "Hey, guess what, there's a golf team that I  
22          coach," and so that's how he became a member of the golf  
23          team.

24          Q           Do you think L.E. benefitted from playing  
25          on the girls' middle-school golf team?



1 MS. NOWLIN-SOHL: Objection.

2 A I think he benefitted from learning in a  
3 team environment. I think he benefitted from having the  
4 support of a coach and teammates all working toward a  
5 common goal.

6 Q Those are benefits that L.E. could gain  
7 from playing on the high-school girls' golf team, is it  
8 not?

9  
10 MS. NOWLIN-SOHL: Objection.

11 A I think they would be, but I think the  
12 harm that it would cause him emotionally to be the only  
13 boy on a girls' team -- I think the harm that would come  
14 from that would far outweigh the benefits that he would  
15 get from playing on a girls' -- on a girls' team.

16 Q Have you had a discussion about that with  
17 L.E.?

18 MS. NOWLIN-SOHL: Objection.

19 A Yes.

20 Q When did you discuss with L.E. the  
21 benefits or harms to playing on the Farragut High School  
22 boys' golf team or girls' golf team?

23 MS. NOWLIN-SOHL: Objection.

24 A It was during the -- probably the middle  
25 to the end of the season that he played when he was

1 playing on the eighth-grade girls' team. He was very  
2 adamant that he wanted to try out for the boys' team in  
3 high school, and at that time he still would have been  
4 allowed to since the law had not been passed, so that was  
5 his plan for moving forward into high school.

6 Q When was the middle-school golf team?  
7 What season did they play?

8 A I believe they were a fall sport with  
9 tryouts in the summer, so, yeah.

10 Q Did you research when the Farragut High  
11 School boys' golf team tryouts were for L.E.'s freshman  
12 year?

13 A We did not because at that time the law  
14 had already passed that prohibited him from playing on the  
15 boys' golf team. I believe they were held around the same  
16 time as the girls, but I couldn't be certain.

17 Q Do you know when the law -- when you say  
18 the law, what law are you referring to?

19 A SB228 I believe is the number of it, the  
20 one that requires students in middle school and in high  
21 school to play on the team that corresponds with the sex  
22 on their birth certificate.

23 Q Do you recall when that was passed,  
24 Senate Bill 228?

25 A I believe it was in March of 2021.

1           Q           If you want to, because I'm certainly not  
2           trying to trick you, the complaint, Page 22, and I believe  
3           the allegation is in Paragraph 69 at the top of the page.  
4           Does this paragraph in the complaint state that Senate  
5           Bill 228 was signed into law by Governor Bill Lee on March  
6           26th?

7           A           Yes.

8           Q           And that's March 26th of 2021?

9           A           Correct.

10          Q           Okay. You obtained these attorneys that  
11          represent you and L.E. for the lawsuit we're all sitting  
12          here for also in March of 2021; is that correct?

13          A           I believe so, yes.

14          Q           Okay. And so how did you -- or when did  
15          you decide to discuss Senate Bill 228 with an attorney?

16          A           I believe it was during the same time  
17          that the bill -- I think it was before the bill was signed  
18          by the governor. There was outreach made by ACLU to talk  
19          to families who would be impacted by the law should it --  
20          should it be signed into law.

21          Q           And why did you decide to bring this  
22          lawsuit?

23          A           Because I saw how much it hurt my kid not  
24          being able to play on a golf team that he had prepared  
25          for, wanted to play for, was excited to play on. I felt

1 he was being discriminated against, and I knew that we  
2 couldn't be the only ones in this situation, and so  
3 together our whole family decided that we wanted to work  
4 to try to make things different.

5 Q L.E. has not tried out for the Farragut  
6 High School golf team whether it is the boys' team or the  
7 girls' team; is that correct?

8 A Yes, that's correct.

9 Q Have you ever spoken to the Farragut High  
10 School golf coach about L.E.?

11 A No, not directly.

12 Q What do you mean not directly? Who did  
13 you speak to L.E. about playing high-school golf?

14 MS. NOWLIN-SOHL: Object to form.

15 A I talked to -- I had emailed the  
16 principal introducing L.E. and letting him know that L.E.  
17 wanted to try out for the boys' golf team. That was  
18 before the law had passed.

19 Q After this lawsuit was filed in November  
20 of 2021, an attorney from Knox County raised the idea of  
21 L.E. trying out for the golf team. Were you made aware of  
22 that offer?

23 A Yes, I was.

24 Q Okay. And the offer was denied; is that  
25 correct?

1           A           Yes, we denied the offer.

2           Q           Okay. Why?

3           A           Because he wouldn't be able to play on  
4 the team. The tryouts were -- would be pretty much  
5 meaningless.

6           Q           I would like for you to find the  
7 Plaintiff's Responses to Defendant Knox County Board of  
8 Education's First Set of Interrogatories. Have you seen  
9 the Plaintiff's Responses to Knox County Board of  
10 Education's Interrogatories before?

11          A           Yes, I have.

12          Q           Okay. If you'll turn to Page 5, please,  
13 and look at Interrogatory Number 2. Interrogatory Number  
14 2 states, "Identify your 2021 handicap index and the  
15 course handicap as well as your current handicap index and  
16 course handicap." Did I read that correctly?

17          A           Yes.

18          Q           Okay. Do you know what a handicap index  
19 is?

20          A           I have a vague understanding of it.

21          Q           Okay. What's your understanding?

22          A           That's it's a way to rank your  
23 performance in the game of golf.

24          Q           And do you know what a course handicap  
25 is?

1           A           I don't.

2           Q           The response, which is in the last two  
3 sentences after objections from counsel, is that,  
4 "Plaintiff has not calculated and does not have a handicap  
5 index or a course handicap for 2021 or 2022." Is that  
6 information that you provided?

7           A           That's information that my husband  
8 provided.

9           Q           Okay. Looking down to Number 3, the  
10 interrogatory requests, "Identify the date and location of  
11 the last ten rounds of golf that you," for L.E., "have  
12 played and your score for each round." Did I read that  
13 correctly?

14          A           Yes.

15          Q           Okay. Looking down once again after  
16 objections from counsel, and there are one, two, three,  
17 four, five dates provided. Did you provide the  
18 information for this interrogatory?

19          A           No, my husband did.

20          Q           Okay. Do you have any reason to disagree  
21 with your husband's responses to Interrogatory Number 2  
22 and 3?

23          A           I have no reason to -- to believe that  
24 they that they would be incorrect.

25          Q           Okay. Do you know why L.E. played golf

1           only one time in 2022?

2                               MS. NOWLIN-SOHL: Object to form.

3           A           He played golf more, but with the  
4           question being rounds of golf and being defined as 18  
5           holes of golf, I mean, I think you can see even in 2021  
6           that there weren't a whole lot of those, and also some of  
7           the ones in 2021 happened later on in the fall, so there's  
8           November and September, and we haven't made it that far  
9           into 2022 yet.

10           Q           Does L.E. play golf that does not involve  
11           playing 18 holes of golf?

12           A           Yes.

13           Q           Okay. And what kinds of golf courses  
14           does L.E. play then?

15           A           So L.E.'s definition of playing golf is  
16           getting out with his clubs and hitting balls. That could  
17           be at the Fairways and Greens, on the driving range. It  
18           could be at fun things like Top Golf, that sort of thing.  
19           There is a par-three course at Fairways and Greens that he  
20           plays on. At Concord Park, there is another golf course  
21           that's free that him and his dad like to go to.

22           Q           Is the Concord golf course a par-three?

23           A           I believe it is.

24           Q           And I believe L.E. mentioned one other  
25           golf course this morning, maybe Dark House? Does that

1 sound familiar?

2 A It does. I've never taken him there, so  
3 -- his dad might have.

4 Q Do you ever go with L.E. and his father  
5 when they golf?

6 A No, I don't.

7 Q Do you have any reason to disagree with  
8 the information provided in Interrogatory Number 3, the  
9 plaintiff did not track or record L.E.'s score when he  
10 played golf?

11 A That is my understanding that they don't  
12 take score.

13 Q For Interrogatories Number 5 and 6 which  
14 reference L.E. playing golf, would Mr. Esquivel be the  
15 correct person to discuss those interrogatories with?

16 MS. NOWLIN-SOHL: Object to form.

17 A Yes, he would be.

18 Q Would you have provided any of the  
19 information in the response to Interrogatory Number 5 or  
20 6?

21 A No.

22 Q And do you have any information or any  
23 reason to disagree with the information provided by either  
24 L.E. or your husband for these interrogatories?

25 A No, I have no reason to disagree.



1 parent or your husband became aware of that diagnosis, and  
2 the date provided is January 28th of 2021. Is that a  
3 diagnosis from the therapist?

4 A Yes.

5 Q Okay. And is that date accurate to the  
6 best of your knowledge?

7 A It is.

8 Q Okay. Did you provide this answer?

9 A I did.

10 Q Okay. Did you look at the medical  
11 records when you provided it?

12 A I believe so. I think I went to -- yeah,  
13 I think I looked at medical records.

14 Q Okay. Interrogatory Number 2 asks the  
15 date when L.E. began to social transition, and the  
16 response provided is September -- in or around September  
17 of 2020. Did you also provide this information and  
18 response?

19 A Yes.

20 Q Okay. And how did you determine that  
21 date?

22 A I think I determined that date by the  
23 date at which he had really told his friends, told his  
24 family that he didn't want to go by anymore, that he  
25 wanted to go by L.E., and just kind of remembering the

1 timeline of when that happened. I know it was during the  
2 fall semester of 2020, and it was relatively early on.

3 Q Okay. Interrogatory Number 3 asks for  
4 the date when L.E. began pubertal suppression medication,  
5 and the response is on or about April 23rd of 2021. Did  
6 you also look at medical records to verify this date when  
7 you provided it?

8 A I actually went to my calendar, and I  
9 knew that's when the appointment was for that.

10 Q Okay. You mentioned earlier that when  
11 you had first gone to the pediatrician that the  
12 pediatrician wasn't aware of -- or at the time did not  
13 provide treatment you were seeking for L.E.; do you recall  
14 that testimony?

15 A Yes.

16 MS. NOWLIN-SOHL: Object to form.

17 Q Okay. And then you stated, I believe,  
18 that you did some research, spoke again with the  
19 pediatrician, who was happy to provide the treatment at a  
20 later date or after discussing it with you again. What  
21 research did you do --

22 MS. NOWLIN-SOHL: Object to form.

23 BY MS. BERGMEYER:

24 Q -- before talking to the pediatrician the  
25 second time?

1 it was published, so, yeah, that makes sense.

2 Q Okay. The next one is dated April 26th,  
3 and is this a Facebook post that you made?

4 A Yes.

5 Q Okay. And did you share a Golf Digest  
6 article about L.E.?

7 A Yes.

8 Q Okay. For the Golf Digest article, did  
9 you meet with the author?

10 A Yes.

11 Q Okay. Who provided information to the  
12 author of the Golf Digest article?

13 MS. NOWLIN-SOHL: Object to form.

14 A I know that L.E. did, my husband did, I  
15 did, Sasha did, and that's all that I'm aware of.

16 Q Okay. The article references that L.E.  
17 was devastated, the right to be a part of a team was  
18 stripped, made worse by watching his friends go out and  
19 join the team.

20 MS. NOWLIN-SOHL: Counsel, do you have a  
21 copy of that article that she can look at?

22 MS. BERGMEYER: So the printing wasn't  
23 accurate. It's missing a chunk, I think because  
24 of how it was printed, but I think this part is.

25 THE WITNESS: Thank you.

1           Q           The paragraph I was reading from begins  
2           with six months after the bill's passage. If you'll  
3           actually look at the paragraph before that and go ahead  
4           and take your time to read that too.

5           A           (Witness reviews document.)

6           Q           Okay. So in this article it states that,  
7           at the time the law was passed, the quote from L.E. says  
8           -- I'm going to read after it says L.E. says. "They acted  
9           like they were cleaning up a problem, but they were really  
10          just creating a new mess. I was just like whatever." Did  
11          I read that correctly?

12          A           Yes.

13          Q           Okay. Does this accurately reflect how  
14          L.E. felt at the time the law was passed?

15                      MS. NOWLIN-SOHL: Object to form.

16          A           Yes.

17          Q           Okay. And so would it be fair to say  
18          that, when the law first passed, L.E. was not -- what do  
19          you take it to mean when they reference that L.E. said, "I  
20          was just like whatever."

21                      MS. NOWLIN-SOHL: Object to form.

22          BY MS. BERGMEYER:

23          Q           How would you characterize how L.E. felt  
24          at the time?

25                      MS. NOWLIN-SOHL: Object to form.

1           A           He was frustrated and felt defeated like  
2           there was nothing he can do. So to me, him saying, "I was  
3           just like whatever," that he was angry and that he felt  
4           helpless at that moment because there was nothing he could  
5           do.

6           Q           Okay. So it goes on to say, "Six months  
7           after the bill's passage, a different reality and  
8           disposition set in. All L.E. wants to do is play golf and  
9           to be part of a team. The happy-go-lucky kid was  
10          devastated that right was stripped, made worse by watching  
11          his friends go out and join the team." What friends did  
12          L.E. watch go out and join the team?

13                   MS. NOWLIN-SOHL: Object to form.

14          A           If I remember the conversation, I think  
15          it was -- his best friend Lily plays on the girls' golf  
16          team, and so getting her -- getting to see her be excited  
17          and looking forward to playing on a high-school team where  
18          he felt left out, like, he didn't have that option.

19                   MS. BERGMEYER: Does your copy of the  
20          article have ten pages?

21                   MS. NOWLIN-SOHL: Yes.

22          Q           If you'll look at the very bottom on what  
23          is referenced as Page 8 of 10.

24                   MS. NOWLIN-SOHL: There's highlighting on  
25          this. Are you okay with it? I haven't looked at

1           it yet.

2                   MS. BERGMEYER: I haven't either. It's  
3           my highlighting. I gave you the wrong copy maybe.

4                   MS. NOWLIN-SOHL: Would you like to  
5           switch, or is it too late?

6                   MS. BERGMEYER: No, that's okay.

7                   MS. NOWLIN-SOHL: Okay.

8                   MS. BERGMEYER: Let me just -- thank you.

9           BY MS. BERGMEYER:

10                   Q           Let's go to the top of Page 8. It  
11           mentions that, "Shortly after the lawsuit was filed,  
12           anti-LGBTQ protestors stood outside the corner from L.E.'s  
13           school holding signs that read LGBTQ is a sin." Did I  
14           read that correctly?

15                   A           Yes.

16                   Q           Okay. Had you experienced protestors  
17           outside L.E.'s school before?

18                   A           I believe a couple of times I've seen  
19           them, yeah.

20                   Q           Okay. And when I say protestors, I mean  
21           anti-LGBTQ protestors.

22                   A           I don't recall ever seeing protestors  
23           that were anti-LGBTQ before.

24                   Q           Outside of L.E.'s school?

25                   A           Yeah, I --

1 Q The paragraph above, about midway through  
2 that paragraph, it mentions he signed up and played for  
3 his middle-school golf team. Do you see that sentence?

4 A Yes.

5 Q Okay. The next sentence says, "He's down  
6 to a 12 handicapped."

7 A Uh-huh.

8 Q Handicap. Where did the information that  
9 L.E. was down to a 12 handicap -- who provided that  
10 information?

11 A Yeah, that is the exact line that I  
12 wanted to point out. I have no idea where he got that  
13 from. My best guess was that when they -- they played on  
14 the course that was there that he guesstimated what his  
15 handicap was based on how he did. That is not a number  
16 that any of us provided to the reporter.

17 Q Okay.

18 MS. BERGMEYER: What I'll do is make this  
19 article a late-filed Exhibit Number 3, and I will  
20 find a way to print it where that paragraph is not  
21 left out.

22 MS. NOWLIN-SOHL: Are we done with that  
23 article?

24 MS. BERGMEYER: Yes.

25 MS. NOWLIN-SOHL: Stephanie, is that

1 going to be a part of the whole social media  
2 exhibit, or will it be a separate one?

3 MS. BERGMEYER: Good question. Let's go  
4 ahead and make -- let's make that a separate one.  
5 So let's make the social media posts beginning  
6 with November 4th of 2021 through April 26th,  
7 which this post does share Golf Digest, let's make  
8 this a collective Exhibit 3.

9 (Collective EXHIBIT 3, marked.)

10 MS. BERGMEYER: And then the Golf Digest  
11 article will be a late-filed Exhibit 4. Thank you  
12 for following up with that.

13 (EXHIBIT 4, late-filed.)

14 BY MS. BERGMEYER:

15 Q Do you know what bathroom L.E. uses at  
16 Farragut High School?

17 MS. NOWLIN-SOHL: Object to form.

18 A He uses the boys' bathroom.

19 Q Do you know what locker room L.E. uses at  
20 Farragut High School?

21 MS. NOWLIN-SOHL: Objection.

22 A I'm not sure he's had to use a locker  
23 room, so I -- I'm not sure.

24 Q In the complaint, Page 24, Paragraph 87  
25 -- Paragraph 88 -- no, no, I'm sorry, 87, I was right.



1 Paragraph 87 states that, "L.E. has a reasonable fear that  
2 Senate Bill 228 will encourage bullying and harassment  
3 against transgender students like himself." Has L.E.  
4 experienced --

5 MS. NOWLIN-SOHL: Do you mind finishing  
6 the sentence, Counsel?

7 MS. BERGMEYER: Sure.

8 BY MS. BERGMEYER:

9 Q I'm going to just read the whole thing.  
10 Paragraph 87 states that, "L.E. also has a reasonable fear  
11 that Senate Bill 228 will encourage bullying and  
12 harassment against transgender students like himself since  
13 it sends a message that it is acceptable to treat  
14 transgender students differently because they are  
15 transgender."

16 And I'm reading that slowly for the court  
17 reporter just because I know that was odd. Has L.E.  
18 experienced any bullying and harassment after the passage  
19 of Senate Bill 228?

20 MS. NOWLIN-SOHL: Objection.

21 A Yes.

22 Q Okay. What has L.E. experienced?

23 A There's a boy on his school bus who would  
24 kind of -- they get off and on at the same -- at the same  
25 stop. So he would block him from getting off for a little

1 bit saying things like, "Okay, boy. Okay, boy," like,  
2 just making it clear that he was targeting him for being  
3 transgender.

4 Q Did this happen before the passage of  
5 Senate Bill 228?

6 A No, it did not.

7 Q Any other bullying or harassment that  
8 L.E. has experienced?

9 MS. NOWLIN-SOHL: Objection.

10 BY MS. BERGMEYER:

11 Q I'll say while at Farragut High School.

12 MS. NOWLIN-SOHL: Same objection.

13 A Not that I am aware of.

14 Q Are you aware of any bullying and  
15 harassment L.E. experienced while at Farragut Middle  
16 School?

17 A I do vaguely recall him telling me about  
18 a kid in one of his classes, but, honestly, I think this  
19 kid was mean to a lot of kids, so I don't think he was  
20 targeting L.E. specifically. I think he was just a bully  
21 in general.

22 Q And what did L.E. tell you that the kid  
23 did?

24 A I don't recall.

25 Q Is it the same child from the school bus?

1 A No.

2 Q Did L.E. tell you that whatever the kid  
3 did was because L.E. was a boy?

4 A No.

5 Q Paragraph 88, I'll just ask you to read  
6 that to yourself, please.

7 A (Witness complies with request.)

8 Q Paragraph 88 would not be applicable to  
9 L.E. because he was known to be transgender by peers.

10 MS. NOWLIN-SOHL: Objection.

11 BY MS. BERGMEYER:

12 Q Is that correct?

13 MS. NOWLIN-SOHL: Same objection.

14 A (Witness reviews document.) Yeah, that  
15 -- that would be correct. He -- yes, that's correct.

16 Q Have you understood the questions I asked  
17 today?

18 A Yes, I have.

19 MS. BERGMEYER: Okay. No further  
20 questions. Thank you.

21 EXAMINATION

22 BY MS. JOHNSON:

23 Q I have just a few questions; I promise  
24 not very many. First I'm going to hand you a document --

25 MS. JOHNSON: And I guess we'll just play

1 FURTHER THE DEPONENT SAITH NOT.

2 SHELLEY ESQUIVEL

3  
4  
5  
6 Sworn to before me when  
7 taken August 1, 2022.

8  
9  
10 /s/ Donna D. Touseull

11 Donna D. Touseull

12 Licensed Court Reporter

13 LCR No. 342 / License Expires: 06-30-2024

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## REPORTER'S CERTIFICATE

STATE OF TENNESSEE )

COUNTY OF KNOX )

I, DONNA D. TOUSEULL, Licensed Court Reporter in and the State of Tennessee, do hereby certify that I reported in machine shorthand the foregoing testimony held on the 1st day of August 2022 and that the foregoing 82 pages were transcribed by me and constitute a true record of the proceedings to the best of my knowledge and ability.

I further certify that I am not an attorney or counsel for any of the parties, nor an employee or relative of anyone connected with the action, nor financially interested in the action.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 20th day of August 2022.

/s/ Donna D. Touseull

DONNA D. TOUSEULL  
Licensed Court Reporter  
LCR No. 342 / License Expires: 06-30-2024

# EXHIBIT 4

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

L.E., by his next friends            )  
and parents, SHELLEY                )  
ESQUIVEL and MARIO ESQUIVEL       )  
                                          )  
                                  Plaintiff    )  
                                          )  
vs.                                        )        No. 3:21-cv-00835  
                                          )  
BILL LEE, in his official            )  
capacity as Governor of the         )  
Tennessee, et al.                    )  
                                          )  
                                  Defendants    )

VIDEOTAPED  
DEPOSITION  
OF  
MARIO ESQUIVEL  
August 2, 2022

---

DONNA D. TOUSEULL, LCR  
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VIDEOGRAPHER: Ernie Tracy, Tracy Imaging

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MS. AMANDA MORSE

MR. DAVID SANDERS (via Zoom)

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Esquivel to Shelley Esquivel

1 Q Okay. How long have you played golf?

2 A I've played golf maybe 22 years.

3 Q Did you ever play on a golf team?

4 A No.

5 Q When you play golf, do you play an  
6 18-hole golf course?

7 A Typically, yes.

8 Q Okay. When you began to play with L.E.,  
9 what golf courses did you play?

10 A Mostly middle-school courses.

11 Q Are those courses 18-hole golf courses?

12 A Yeah, some are 18, and some are  
13 par-three courses, which are nine holes.

14 Q Are par-three courses shorter than  
15 18-hole courses?

16 A Yes.

17 Q Okay. And I know that you mentioned nine  
18 holes, but are the holes themselves shorter in distance?

19 A Yes.

20 Q Okay. Which golf courses have you played  
21 with L.E.?

22 A We primarily play the par-three at  
23 Concord Park Par 3.

24 Q Okay. What other golf courses?

25 A Knox Municipal Golf Course.

1 Q What type of golf course is that?

2 A City. City owned. It's a full 18-hole  
3 golf course.

4 Q Okay. Any other golf courses you play  
5 with L.E.?

6 A We played the First Tee Williams Creek  
7 Golf Course and Centennial Golf Course.

8 Q First Tee Williams Creek?

9 A Yes.

10 Q Is that an 18-hole or a nine-hole course?

11 A That is actually an 18-hole par-three.  
12 The longest one is a par-four, but...

13 Q Okay. And what about Centennial Golf  
14 Course?

15 A That's a golf -- a regular golf course.

16 Q When you say regular, do you mean 18  
17 holes?

18 A Eighteen hole, yes.

19 Q Okay. Which of these golf courses do you  
20 play most often?

21 A It would be a tie between Concord Park  
22 and Knox Municipal.

23 Q When you play Knox Municipal, do you play  
24 all 18 holes?

25 A That's a mixture. Sometimes it's nine,

1 and sometimes it's 18.

2 Q And when you play golf with L.E., do you  
3 walk or use the golf carts?

4 A Both. We've walked and rode.

5 Q Are there golf clubs that are designated  
6 for boys and golf clubs that are designated for girls?

7 A No, not that I'm aware of.

8 Q Do you know if the golf clubs that L.E.  
9 uses are designated for either boys or girls?

10 MS. RILEY-SWANBECK: Objection to form.

11 A The golf clubs we -- we go to are public,  
12 so everyone can go to them.

13 Q Okay.

14 A They're -- yeah, they're municipal, City,  
15 City-owned courses.

16 Q When I refer to golf clubs, I mean the  
17 physical -- the wedges and the different clubs that you  
18 hit --

19 A Oh, oh, I thought --

20 Q -- the golf ball with.

21 A I'm sorry, I thought you meant, like,  
22 Augusta National or a golf club, country clubs. Okay.

23 Q Without being able to --

24 A Okay. I'm sorry.

25 Q -- better identify the different

1 clubs, --

2 A Okay.

3 Q -- I'm referring to drivers, and wedges,  
4 and putters, and things like that.

5 A Okay.

6 Q Okay. So let me start back.

7 A Yes.

8 Q Do you know -- now that we agree what I  
9 mean by golf clubs, are there golf clubs designated for  
10 boys or girls?

11 A Yes, there are.

12 Q Okay. And do you know the clubs that  
13 L.E. uses, whether it is designated for boys or girls?

14 MS. RILEY-SWANBECK: Object to form.

15 A The clubs L.E. used are generally for men  
16 or boys.

17 Q How long has L.E. used that set of clubs?

18 A For two years.

19 Q Can you describe for me the different box  
20 tees that are available at the golf courses you play with  
21 L.E.

22 A Yes. The golf tees are for yardage. You  
23 have a set that's closer to the hole, a set that is maybe  
24 25 yards past that, and then 25 yards past that for  
25 different levels of golf.

1           A           I would say on average or on par with all  
2           the other -- there is clearly separation between top girls  
3           from the rest, but pretty average.

4           Q           At some point L.E. -- well, let me strike  
5           that. L.E. wants to play on the Farragut High School  
6           boys' golf team; is that correct?

7           A           Yes.

8           Q           Okay. Did you have a discussion with  
9           L.E. about whether to play for the Farragut High School  
10          boys' team or the girls' team?

11                       MS. RILEY-SWANBECK: Objection.

12          A           We just had discussions to play on the  
13          team.

14          Q           And what were those discussions?

15          A           He really wanted to play on the boys'  
16          team.

17          Q           And did L.E. say why?

18          A           Because he was a boy.

19          Q           And what was your response to that?

20          A           "Yes, you are a boy. You should play on  
21          the boys' team."

22          Q           Okay. Did you ever discuss with L.E. the  
23          option to play on the Farragut High School girls' golf  
24          team?

25          A           Yes.

1 Q Okay. And what were those discussions?

2 A At the time -- golf is a very hard game  
3 to play. You need constant practice and repetition. I  
4 felt to play on the -- play golf with a group of kids  
5 gives you practice, and those are mostly courses I would  
6 never be able to play on or afford to play to, what they  
7 were playing on, and he really enjoyed playing the game,  
8 and he -- he just doesn't want to -- didn't feel  
9 comfortable playing with the girls.

10 So that crushed me, and I said, "I don't  
11 want you to be uncomfortable," and he didn't want to play  
12 with the girls, and I said, "Okay, then. We're not going  
13 to play golf, then."

14 Q Does L.E. have any friends on the  
15 Farragut High School girls' golf team?

16 A Yes.

17 Q Is L.E.'s best friend on that girls' golf  
18 team?

19 A Yes.

20 Q To your knowledge, did any of the girls  
21 on the Farragut Middle School golf team discriminate  
22 against L.E.?

23 MS. RILEY-SWANBECK: Objection.

24 A I wasn't there for -- like I said, I was  
25 dropping her off and watching -- when you watch golf, you

1 have to kind of stay away, and you can kind of watch from  
2 a distance, so I -- I don't know if there was any  
3 discrimination during play.

4 Q Did L.E. ever mention to you that any of  
5 the girls on the golf team were not nice?

6 A No.

7 Q And do you know whether L.E. mentioned to  
8 your wife whether any of the girls on the Farragut Middle  
9 School golf team were not nice?

10 A Not that I'm aware of.

11 Q Okay. Do you know why L.E. felt  
12 uncomfortable on the girls' golf team?

13 A Yes. I noticed because all of the golf  
14 girls, they wear ponytails and skirts and the ladies-cut  
15 shirts, and he didn't feel a part of that, that group  
16 while playing. He just enjoys the game, like, enjoyed  
17 being out there, just felt -- didn't feel comfortable.

18 Q You mentioned that the Farragut High  
19 School boys' team and girls' team plays courses that you  
20 -- I believe you said you cannot afford; is that right?

21 A Yes. They're at golf country clubs.

22 Q Do you know if those courses are regular  
23 18-hole golf courses?

24 A Yes.

25 Q Have you or L.E. ever played on any of



1           those courses?

2                                   MS. RILEY-SWANBECK: Object to form.

3                   A           L.E. has played during meets, but not  
4 myself.

5                   Q           So during the middle-school golf team,  
6 L.E. played some of these courses; is that right?

7                   A           Yeah. So high school and middle school's  
8 -- I don't know the middle school's schedule -- or, I'm  
9 sorry, I don't know the high school's schedule, but I  
10 believe they share the same home course, which is a golf  
11 club or country club.

12                  Q           And what is that home course?

13                  A           Fox Den Country Club.

14                  Q           How often does L.E. go to the driving  
15 range?

16                  A           Well, we try to go frequently, as often  
17 as possible, but life happens and sometimes we cannot get  
18 to it all the time. I try to do it at least a couple  
19 times a month. You know, some weeks are better than  
20 others.

21                  Q           What driving range do you go to?

22                  A           Fairways and Greens.

23                  Q           Does that driving range have areas where  
24 you can putt?

25                  A           Yes.

1 TSSAA's rules.

2 A Not -- not -- not all of them, so, no.

3 Q Okay. Paragraph 76 talks about when L.E.  
4 told you and his mom that L.E. was a boy, and what do you  
5 recall about when you first were told L.E. was a boy and  
6 when L.E. began to use male names, grooming and dressing?

7 MS. RILEY-SWANBECK: Objection.

8 A Could you repeat that first part of the  
9 question?

10 Q Sure. When L.E. told you that L.E. was a  
11 boy, was that something that you had thought of or  
12 considered before?

13 MS. RILEY-SWANBECK: Objection.

14 A Yes.

15 Q Okay. Why?

16 A He started taking on the -- the persona  
17 like -- or started becoming how a boy was as far as  
18 appearance and attitude and -- and -- and everything was  
19 -- was -- was boyish.

20 Q How did you respond to L.E. telling you  
21 that L.E. was a boy?

22 A Shocked, confused, and at the same time  
23 supportive and accepting.

24 Q Did you do any research about transgender  
25 persons or how to parent transgender persons once you

1 found out?

2 A No.

3 MS. RILEY-SWANBECK: Objection.

4 THE WITNESS: No.

5 Q How did you decide as a parent how to  
6 treat and support L.E. as a transgender person?

7 A Well, L.E. is a boy. I accepted him as a  
8 boy. As far as treating goes, there's no -- I don't like  
9 treating. There is no -- I don't see that.

10 Q Okay. Let me --

11 A That's not -- I don't like the word  
12 treating. That's -- L.E. is a boy, and it's like -- it's  
13 like -- it's not -- he is a boy. I'm not --

14 Q Let me ask a better question so you know  
15 what I'm asking for. What I meant was, how did you decide  
16 what medical treatments or decisions to make for L.E.?

17 A Oh. We would talk to a pediatrician.

18 Q I did not mean treat in general, so that  
19 was --

20 A That's okay.

21 Q -- a bad question. So, yes, how did you  
22 decide the medical decisions for L.E.?

23 A With my wife and I and L.E.

24 Q Have you done any research of your own  
25 about the scope and course of L.E.'s medical treatment?

1 MS. RILEY-SWANBECK: Object to form.

2 A No, not -- not my own personal research.

3 Q Okay. Paragraph 79 states that, the last  
4 sentence, "With the support of his parents, L.E. intends  
5 to begin testosterone therapy when older and when  
6 healthcare providers deem it medically appropriate." Is  
7 that -- is that your understanding of the next -- well,  
8 strike that. Does L.E. intend to begin testosterone  
9 therapy at some point in the future? Is that still true  
10 today?

11 A Yes.

12 Q Okay. What is your understanding of the  
13 testosterone therapy being recommended for L.E.?

14 A What does it mean or --

15 Q Yes, what will it involve for L.E.  
16 specifically?

17 A Oh, yes, a deeper voice, more hair,  
18 generally more male features.

19 Q And what is your understanding of when  
20 the treatment can or should begin?

21 A I believe the age of 16 to 18, so...

22 Q Paragraph 80 states that, "L.E.'s health  
23 and well-being depend on him being able to live life fully  
24 as the boy he is." Is that your -- do you agree with that  
25 sentence?

1 A Yes.

2 Q And why do you agree with it?

3 A He is full of life. He's really happy  
4 with -- with -- with himself, and I don't want to take  
5 that away from him.

6 Q Has a doctor or healthcare provider told  
7 you that L.E.'s health depends on being able to live as a  
8 boy?

9 MS. RILEY-SWANBECK: Objection.

10 A Like, you mean in notes? Yeah. Yes.  
11 Yes. He has suffered anxiety, depression with when he --  
12 before he transitioned and was not feeling like himself.

13 Q What was your understanding of L.E.'s  
14 anxiety?

15 MS. RILEY-SWANBECK: Objection.

16 A I never understood it because some stuff  
17 he kept to himself, so I cannot say what...

18 Q Do you know what L.E. was anxious about?

19 A No, I do not, but once he transitioned  
20 over, it seemed he was like a new person within himself.

21 Q L.E. has a pediatrician, and what is that  
22 pediatrician's name?

23 A Dr. Abby Blackman.

24 Q Has Dr. Blackman said that L.E.'s health  
25 depends on being able to live fully as a boy?

1 MS. RILEY-SWANBECK: Objection.

2 A I don't remember those -- those words  
3 being said, but she was very concerned about him.

4 Q And L.E. also goes to therapy; correct?

5 A Yes.

6 Q Okay. Do you know -- well, strike that.  
7 The name we've been provided as L.E.'s therapist is a  
8 licensed social worker. Is that your understanding of the  
9 therapist's credentials?

10 MS. RILEY-SWANBECK: Objection.

11 A Yes.

12 Q Has the therapist ever said that L.E.'s  
13 mental health depends on being able to live fully as a  
14 boy?

15 A Yes.

16 Q And what has the therapist said about  
17 that?

18 MS. RILEY-SWANBECK: Objection.

19 A The anxiety, the depression.

20 Q So I understand that L.E. has or had  
21 anxiety, depression. Is it your testimony that those  
22 conditions would be worse if L.E. cannot live life fully  
23 as a boy?

24 MS. RILEY-SWANBECK: Objection.

25 A Yes. In my opinion, yes.

1 Q Did the therapist say those anxiety and  
2 depression conditions would be worse if L.E. cannot live  
3 life fully as a boy?

4 A I don't -- L.E. is a boy, so I -- I can't  
5 express -- so I agree with the therapist, yeah. L.E. is a  
6 boy, so I -- I believe it will harm.

7 Q Who treats L.E. for anxiety, which  
8 medical provider?

9 A Dr. Blackman.

10 Q Okay. If you'll turn back to Page 22 of  
11 the complaint, Paragraph 69 mentions SB, which I'll  
12 represent is short for senate bill, 228, and it states in  
13 the last sentence the bill took effect -- well, I'm sorry.  
14 It says in the sentence before that that Senate Bill 228  
15 was signed into law by Governor Bill Lee on March 26th.  
16 Did you know about Senate Bill 228 when it was being  
17 considered in the state legislature?

18 A No, I don't remember.

19 Q And when I mention Senate Bill 228, do  
20 you know the law that I'm referring to?

21 A Yes.

22 Q Okay. What does the law say to your  
23 understanding? And when I say the law, I mean Senate Bill  
24 228.

25 A To me, it's a horrible law that is

1 licenses Sam has?

2 A Not the specifics, no.

3 Q Are you aware that a licensed social  
4 worker does not have a medical degree?

5 A No, I wasn't aware of that.

6 Q What is your understanding of L.E.'s  
7 gender dysphoria?

8 A What do you mean by understanding?

9 Q Do you know -- do you know generally what  
10 gender dysphoria is?

11 A Yes.

12 Q Okay. And what do you know about it in  
13 general?

14 A Uneasiness, anxieties, the result -- you  
15 know, with gender identity.

16 Q Have you observed this in L.E.?

17 A Yes.

18 Q What have you observed?

19 A Mostly with the golf team being -- like I  
20 said earlier, being around -- being forced to play with  
21 the girls and just the uneasiness associated with that.

22 Q What treatment is L.E. receiving for  
23 gender dysphoria?

24 A He's taking some, like,  
25 , and that's it.



1           Q           If you look to Interrogatories Number 2  
2           and 3, they ask about dates when L.E. began to social  
3           transition and when L.E. began pubertal suppression  
4           medication, and my question is, did you provide  
5           information for the response?

6           A           No.

7           Q           Okay. For Interrogatories Number 1, 2,  
8           and 3, do you have any reason to disagree with the  
9           responses provided?

10          A           No, I don't disagree.

11                   MS. RILEY-SWANBECK: Objection.

12                   THE WITNESS: No, I do not disagree.

13          Q           Okay. What is your knowledge about  
14          L.E.'s social transition?

15                   MS. RILEY-SWANBECK: Objection.

16          A           The big one was the name change.

17          Q           And why do you say that was the big one?

18          A           Because that's the only one I heard of.

19          Q           Did L.E. dress differently once he shared  
20          with you that he was a boy?

21          A           No, he dressed the same.

22          Q           Do you know how L.E.'s social transition  
23          was received by schoolmates?

24          A           It was received very well.

25          Q           And how do you know that?

1           A           He has a small group of friends that are  
2           very accepting.

3           Q           Are those friends boys or girls?

4           A           I believe they're girls.

5           Q           Why did L.E. begin pubertal suppression  
6           medication?

7           A           Because he's a boy and wanted to, I  
8           guess, slow or stop puberty.

9           Q           Interrogatory Number 4 asks for  
10          interscholastic athletic events, clubs, or teams L.E. has  
11          participated on in middle or high school, and the response  
12          was the middle-school girls' golf team. Are you aware of  
13          other athletic events, clubs, or teams that L.E. has  
14          participated on?

15          A           No, that was just the middle-school  
16          girls' golf team.

17          Q           Outside of the school setting, it's my  
18          understanding that L.E. is participating in a community  
19          theater play?

20          A           Yes.

21          Q           Okay. Are there other examples such as  
22          the play where L.E. is participating in clubs or  
23          activities?

24          A           Oh, yes, the SGA club at school. There  
25          is the Knoxville Pride group, and he's in a group called

1 GLSEN, which I don't know what it stands for. He does --  
2 does stuff with them.

3 Q Can L.E. learn skills such as discipline,  
4 working with other people in these groups?

5 MS. RILEY-SWANBECK: Objection.

6 A What kind of skills did you say again? I  
7 mean, of course.

8 Q What would you say were the benefits that  
9 L.E. got from participating on the girls' middle-school  
10 golf team?

11 A Being part of a team camaraderie; the joy  
12 of, I guess, if competition is a thing; being part of  
13 something bigger than yourself.

14 Q And can L.E. still get team camaraderie  
15 and being a part of something bigger than -- than yourself  
16 from the play and the other groups that L.E. participates  
17 in?

18 MS. RILEY-SWANBECK: Objection.

19 A You could say that about anything really.  
20 This is -- it's a different kind of -- it's just two  
21 different -- I don't see how that is no different --  
22 sports are different than clubs and work.

23 Q What benefits does L.E. get from  
24 participating in the play or some of these school clubs or  
25 groups such as the SGA club, Knoxville Pride group, and

1 GLSEN?

2 A The play is, I'm guessing, more  
3 organizational, time-management skills. The SGA, I don't  
4 know what they really discuss in those clubs at school,  
5 and the Knox Pride is -- it's like a -- it's just a  
6 gathering of -- of -- of kids, and GLSEN is -- it's  
7 organizational stuff. I'm not really too sure of the  
8 details of the GLSEN program.

9 Q From the play and the Knoxville Pride  
10 group, does L.E. get to experience group camaraderie or  
11 working well with other members?

12 MS. RILEY-SWANBECK: Objection.

13 A That's a different kind of camaraderie  
14 compared to being on a -- part of a sports team. Being a  
15 part of a sports team is special. I'd rather be part of a  
16 sports team than, like, a group of people at work; right?

17 Just being part of a sports team is very  
18 special to him. I can see it in his -- his eyes when he  
19 plays. He's a very rah-rah guy, team guy, and sports  
20 really makes him happy. The play, he's stressed out all  
21 the time trying to learn time-management skills, but when  
22 he's out playing a sport, that really, really makes him  
23 happy.

24 Q Have you looked into clubs or junior  
25 leagues or other ways that L.E. could play golf?

1           A           Yes.

2                       MS. RILEY-SWANBECK:  Objection.

3                       THE WITNESS:  Yes.

4           Q           Okay.  Did you participate in any  
5 organizations or alliances that support transgender  
6 persons before L.E. told you that L.E. is a boy?

7           A           No.

8           Q           Did your wife?

9           A           I don't -- I don't know.

10          Q           Okay.  Are you or L.E. waffling at all on  
11 the testosterone treatment?

12                       MS. RILEY-SWANBECK:  Objection.

13          A           No.

14          Q           How was L.E. different after the time  
15 that L.E. told you L.E. is a boy?  What changed?  Like,  
16 did anything change?  Obviously, you've mentioned the name  
17 change, that you made that official.  What else?

18          A           He -- he felt like he -- he -- he -- he  
19 felt belong -- like, a sense of belonging.  He felt -- he  
20 was -- he felt kind of like a weight lifted off his  
21 shoulder feeling and felt right and felt -- I think he got  
22 more goofy after that.  Yes, so he felt more -- more  
23 comfortable, happy, like a kid.

24          Q           What about the way L.E. dressed, groomed,  
25 appeared, did that change?

1           A           Well, L.E. always wore, like, shorts and  
2           t-shirts, so that never changed.

3           Q           Have you discussed that L.E. is a  
4           transgender person with people at L.E.'s high school?

5           A           No, I have not personally.

6           Q           Do you know whether your wife has?

7           A           No, I do not.

8           Q           Did you discuss L.E. trying out or  
9           participating with the Farragut High School boys' team  
10          with anyone from the high school?

11          A           No.

12          Q           You mentioned this Sneads Golf. Is --  
13          did you look at what that would cost?

14          A           Yes.

15          Q           Okay. And is the cost of that program a  
16          burden for L.E. being able to participate in the program?

17                   MS. RILEY-SWANBECK: Objection.

18          A           A burden?

19          Q           Or is it a reason why L.E. would not be  
20          able to participate?

21                   MS. RILEY-SWANBECK: Objection.

22          A           No, it's not a reason.

23          Q           Have you understood the questions I've  
24          asked you today?

25          A           Yeah. For the most part, yes.

1 questions.

2 A Okay.

3 Q So let's go back. Did you have a  
4 conversation at some point with L.E. about not playing  
5 golf on the girls' team?

6 A I'm sorry, I'm trying to -- to not play  
7 on the girls' team?

8 Q About his desire to no longer play on  
9 the --

10 A Oh.

11 Q -- girls' team.

12 A Oh. Yes.

13 Q Okay, great.

14 A Yeah.

15 Q When did that occur?

16 A That was freshman year or the summer of  
17 going into -- from middle school going into freshman year.

18 Q So that conversation occurred in summer  
19 of 2021; is that correct?

20 A Yeah.

21 Q And I believe that you testified earlier  
22 that you said or you thought, "I guess that means we  
23 aren't playing golf." Is that right?

24 A Yes.

25 Q And why did you think that?

1           A           Because L.E. is a boy. He didn't want to  
2           play on the girls' team.

3           Q           Okay. And was there a cost associated  
4           with playing on the Farragut Middle School golf team?

5           A           Yes.

6           Q           Do you remember what that cost was?

7           A           I know I had to buy uniforms.

8           Q           Were there green fees associated with the  
9           matches that we looked at on the calendar earlier?

10          A           No.

11          Q           Okay. And then you also testified that  
12          there was an issue with L.E. being able to use the  
13          bathroom of his choice at some point. Was that at  
14          Farragut Middle School?

15          A           Farragut High School.

16          Q           So it's your testimony that there has  
17          been an issue with L.E. using the bathroom of his choice  
18          at Farragut High School?

19          A           Yes.

20          Q           And my last question is, just as someone  
21          who's played golf for 22 years and played extensively with  
22          L.E., --

23          A           Yeah.

24          Q           -- do you think he could average a score  
25          of 90 or better while walking 18 holes at a standard



1 course?

2 MS. RILEY-SWANBECK: Objection.

3 A Of course, I believe, yeah, of course,  
4 definitely.

5 MS. JOHNSON: Okay. That's all I have.

6 MS. RILEY-SWANBECK: Can we take a quick  
7 break?

8 THE VIDEOGRAPHER: The time on the camera  
9 is 12:13. We're off.

10 (Short break.)

11 THE VIDEOGRAPHER: Okay. We're back on  
12 the record. The time on the camera is 12:22.

13 EXAMINATION

14 BY RILEY-SWANBECK:

15 Q Mr. Esquivel, I want to ask you just a  
16 few more followup questions.

17 A Okay.

18 Q L.E. is a boy; is that right?

19 A Yes, he is.

20 Q What does L.E.'s birth certificate say?

21 A Female.

22 Q But do you still understand L.E. to be a  
23 boy?

24 A Yes, L.E. is a boy.

25 Q And you mentioned that you had

1           conversations with L.E. about not wanting to play on the  
2           girls' golf team; is that right?

3                   A           Yes.

4                   Q           Why did L.E. not want to play on the  
5           girls' golf team?

6                   A           Well, L.E. is a boy, and he just did not  
7           feel comfortable playing on the girls' team. He felt out  
8           of place. He felt -- he felt he didn't belong there on  
9           the girls' team and wanted to play on the boys' team  
10          instead.

11                  Q           Was he concerned that others would see  
12          him as a girl?

13                  A           Yes, yes, initially, yes, but -- yeah.  
14          You mean on the girls' -- on the girls' golf team?

15                  Q           On the girls' golf team.

16                  A           Oh.

17                  Q           If he played, excuse me, was he concerned  
18          that others would see him as a girl if he played on the  
19          girls' golf team?

20                  A           Yes. Yes.

21                  Q           And what do you think that would do to  
22          him?

23                  A           It would hurt him. He already felt out  
24          of place, just -- it's just hard for me to imagine him  
25          trying to play somewhere you didn't fit in when you know

1           you should be playing somewhere else that -- that brings  
2           you to play a game, and you can't have fun because you are  
3           -- are -- like I said, he's walking with other players  
4           that aren't -- aren't like him, and to be forced to do  
5           that is not -- that's not -- not good in my opinion.

6                   Q           Did L.E. tell you that he would rather  
7           not play on a golf team than play on the girls' golf team  
8           in high school?

9                   A           No, he told me he'd rather -- yeah. He  
10          wants to play golf. He didn't -- he just didn't want to  
11          play on the girls' team.

12                   Q           And is L.E. able to play on the boys'  
13          team right now?

14                   A           No, he cannot because of this -- this law  
15          that is -- that is discriminating against him for being a  
16          boy. Yeah, so he doesn't have the opportunity right now.

17                   Q           What do you understand to be the harms to  
18          L.E. of not being able to play on the boys' team?

19                   A           He's -- like I said earlier, when you're  
20          a part of -- part of something, something special like a  
21          sports team especially in high school or middle school,  
22          you have that sense of generically accomplishment,  
23          camaraderie, the -- the -- the pain of defeat, the agony  
24          of defeat is what they say.

25                                   Everyone remembers their -- their -- at

1 least from my experience, you always remember the glory  
2 days on the field, you work together, and he's missing --  
3 missing all of those memories and locker room, "Buddy.  
4 Buddy. Hey, remember this. You did great,"  
5 and then all the energy you get when you play sports. He  
6 does not get to experience any -- any -- any of that.

7 When -- like, the closest to the pin, the  
8 closest to the pin, he -- you should have seen his face  
9 light up when he actually made it and when -- when you see  
10 him almost break par, that is -- it's special as a parent  
11 to see that, and it -- he gets all of those benefits by  
12 playing sports, and when you take that away from him, he's  
13 not going to have any of that. It's hard, hard to say. I  
14 don't want -- yeah, it's just -- I think sports are -- are  
15 good for him.

16 Q Do you think the fact that L.E. cannot  
17 play on the boys' golf team makes him feel isolated?

18 A Yes, not worthy, not -- an outcast. He  
19 desperately wants to play, and that could have -- I mean,  
20 that's like being excluded, being -- being not good  
21 enough. That feeling, that weight will follow him through  
22 school.

23 And when you're, like, part of a team,  
24 everyone knows, you know, soccer team and football team.  
25 You're all part. You're all -- you all have a common -- a

1 common interest, and he's not going to have that. He's  
2 going to -- he's just going to be sad if he doesn't, and  
3 as a parent, you want what's best for your child, and just  
4 taking that away from him, he'd lose that -- that joy,  
5 that -- the little smirk playing in a -- yeah, just the  
6 sports, being a part of a team, yeah.

7 Q Just one more question for you.

8 A Yeah.

9 Q We talked a little bit about L.E.'s birth  
10 certificate. Who do you think gets to determine whether a  
11 person is a boy or a girl?

12 MS. BERGMEYER: Object to form.

13 A It's the person.

14 Q Do you understand a birth certificate to  
15 be the only designation that determines whether a person  
16 is a boy or a girl?

17 MS. BERGMEYER: Object to form.

18 A No, I do not.

19 MS. RILEY-SWANBECK: That's it. That's  
20 it for us.

21 MS. BERGMEYER: Nothing further.

22 MS. JOHNSON: No.

23 THE VIDEOGRAPHER: We're going off the  
24 record. The time is 12:31 on the camera.

25

1 FURTHER THE DEPONENT SAITH NOT.

2 MARIO ESQUIVEL

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Sworn to before me when

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taken August 2, 2022.

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/s/ Donna D. Touseull

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Donna D. Touseull

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Licensed Court Reporter

14

LCR No. 342 / License Expires: 06-30-2024

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## REPORTER'S CERTIFICATE

STATE OF TENNESSEE )

COUNTY OF KNOX )

I, DONNA D. TOUSEULL, Licensed Court Reporter in and the State of Tennessee, do hereby certify that I reported in machine shorthand the foregoing testimony held on the 2nd day of August 2022 that the foregoing 78 pages were transcribed by me and constitute a true record of the proceedings to the best of my knowledge and ability.

I further certify that I am not an attorney or counsel for any of the parties, nor an employee or relative of anyone connected with the action, nor financially interested in the action.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 22nd day of August 2022.

/s/ Donna D. Touseull

DONNA D. TOUSEULL  
Licensed Court Reporter  
LCR No. 342 / License Expires: 06-30-2024

# EXHIBIT 5



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

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L.E., by his next friends,  
And parents \*

Plaintiff \*

V. \*

BILL LEE, in his official \*  
Capacity as Governor of \*  
Tennessee; PENNY SCHWINN, \*  
In her official capacity as \*  
The Tennessee Education \*  
Commissioner; TENNESSEE \*  
STATE BOARD OF EDUCATION; \*  
SARA HEYBURN MORRISON in \*  
Her official capacity as \*  
The executive Director of \*  
The Tennessee State Board \*  
Of Education; NICK DARNELL \*  
MIKE EDWARDS ROBERT EBY \*  
GORDON FERGUSON, ELISSA, \*  
KIM LILLIAN HARTGROVE, \*  
NATE MORROW, LARRY JENSEN \*  
DARRELL COBBINS, and EMILY \*  
HOUSE, the individual \*  
Members of the Tennessee \*  
State Board of Education, \*  
In their official \*  
Capacities; KNOX COUNTY \*  
BOARD OF EDUCATION a/k/a \*  
KNOX COUNTY SCHOOLS a/k/a \*  
KNOX COUNTY SCHOOL \*  
DISTRICT; ROBERT M. "BOB" \*  
THOMAS, in his Official \*  
Capacity as Director of \*  
Knox County Schools, \*

Defendants. \*

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DEPOSITION OF PENNY SCHWINN, COMMISSIONER  
APPEARING REMOTELY FROM  
KNOXVILLE, TENNESSEE

August 3, 2022

10:30 a.m.

REPORTED BY:

Dawn L. Halcisak, CLR

APPEARING REMOTELY FROM CRISFIELD, MARYLAND

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A P P E A R A N C E S (Cont'd.)  
  
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TENNESSEE OFFICE OF THE ATTORNEY  
  
GENERAL & REPORTER  
  
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## E X H I B I T S

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No. B Plaintiff's Exhibit D 02092021, E-mail	117
No. C Plaintiff's Exhibit E 02092021, Additional Emails	--
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No. I Plaintiff's Exhibit M 07222022, Proposed Rule 0520-01-03 (Exhibits attached to transcript.)	167

1 not to answer, however, you still do need to  
2 answer.

3 Do you understand that?

4 A. Yes.

5 Q. Okay. And at the beginning of the  
6 deposition, the court reporter administered an  
7 oath. It is the same oath you would take as if  
8 you were testifying in a courtroom. You must  
9 testify truthfully and not leave anything out.

10 Is there any reason you can't testify  
11 truthfully today?

12 A. No.

13 Q. Okay. And if you recall additional  
14 information relevant to any of my previous  
15 questions at a later point in the deposition, I  
16 ask that you let me know that, and we can go  
17 over it.

18 A. Yes.

19 Q. Okay. And lastly, I just want to go  
20 over some shorthand terms that I'm going to use  
21 today, just to make sure that we're all on the  
22 same page.

1           When I say "state board," I'm referring  
2 to the Tennessee State Board of Education.

3           When I say "SB228," I'm referring to  
4 Senate Bill 228, the law at issue in this case  
5 and as codified into Tennessee's annotated code,  
6 Section 49-6-310.

7           A.     Yes.

8           Q.     When I say "legislative branch," I'm  
9 referring to the Tennessee State Legislature.

10          A.     Yes.

11          Q.     When I say "transgender," I'm referring  
12 to someone whose gender identity does not match  
13 their sex assigned at birth.

14          A.     Yes.

15          Q.     When is say "cisgender," I'm referring  
16 to someone whose identity matches their sex  
17 assigned at birth, okay?

18          A.     Yes.    I understand.

19          Q.     And when I say "L.E.," I'm referring to  
20 the Plaintiff in this case.

21          A.     Yes.

22          Q.     Okay.   Great.   Do you have any



1 A. Yes.

2 Q. Okay. And could you describe those?

3 A. I have participated in fellowships, and  
4 in those fellowship -- the content of delivery  
5 of those fellowships, we would have similar  
6 conversations.

7 Q. And anything else?

8 A. No.

9 Q. Okay. And so how are you liking being  
10 commissioner?

11 A. I think it is a very, very big job, and  
12 I love when we get to see impacts for kids that  
13 help theme be successful in their live.

14 Q. Okay. And so can you describe to me  
15 the responsibility of the Tennessee Department  
16 of Education, in general?

17 A. So the Tennessee Department of  
18 Education is part of the executive branch. We  
19 are one of -- there are multiple departments  
20 that oversee education in the state. We, I  
21 think, are the largest of those. We are  
22 specifically tasked with implementation.

1           So when a law is passed, unless directed  
2 otherwise, the department of education is the  
3 education arm. But primary responsibility in  
4 overseeing monitoring the 147 districts, or LEAs  
5 in the state.

6           Q. Okay. You said multiple department are  
7 in charge of education in Tennessee, and the  
8 department of education is the implementation  
9 arm.

10           What are the other departments, and  
11 what are their functions?

12           A. So there are several departments or  
13 commissions. One is the State Board of  
14 Education, primarily responsible for policy  
15 development.

16           Another is the Tennessee Charter School  
17 Commission, which is responsible for -- it is  
18 also an LEA in the state, but is responsible for,  
19 kind of, the appeals and authorization of public  
20 of charter schools.

21           And then the other, kind of, larger ones  
22 that is often dealt with is the textbook

1 commission, that is a commission that  
2 specifically oversees the state-approved list for  
3 instructional materials in public schools.

4 Q. Okay. And that's all of the  
5 departments that --

6 A. There were --

7 Q. -- that you're speaking about?

8 A. Those are the ones I'm speaking about.  
9 You'll have some smaller agencies that also  
10 impact education, like energy-efficient schools.  
11 But those are the four that are the primary,  
12 from a policy perspective that have roles and  
13 responsibilities.

14 Q. And of those ancillary ones that have,  
15 you know -- that have any kind of dealings  
16 around anything related to SB228?

17 A. We do not oversee sports in the  
18 department of education. That is a different  
19 completely separate.

20 Q. And what organization is that?

21 A. TSSAA.

22 Q. Okay. And is the Tennessee Department

1 of Education a government entity?

2 A. Yes.

3 Q. And does the department of education  
4 receive federal funding?

5 A. Yes.

6 Q. Okay. What kind of federal funding?

7 A. We receive traditional grants, such as  
8 title 1, title 2, title 3, Perkins, IVEA, et  
9 cetera.

10 The second is federal relief funding.  
11 And the third would be discretionary grants that  
12 we may apply for and be awarded.

13 Q. And how are those pots of money -- I  
14 mean, I don't know if they're divided based on  
15 where they originate from, or how they  
16 originated, but how is that administrator in the  
17 Tennessee Department of Education?

18 A. So they'll all have different  
19 administrations based on the rules supplied by  
20 the U.S. Department of Administration or other  
21 entities.

22 So we look at the rules that are

1 promulgated at the federal level, and then we  
2 comply with the way it should be disbursed.

3 So title 1, for example, has a number of  
4 different components to it, but it is  
5 specifically to economically disadvantaged.

6 And so we will comply with whatever  
7 rules or policies are promulgated at the federal  
8 level.

9 Q. Okay. And what role do you play in the  
10 administrative -- funding generally? Is it more  
11 are you in an overseeing role or directly  
12 involved?

13 A. I'm not directly involved. My role is  
14 signatory, as the agent overseeing the  
15 department of education. We have a different --  
16 under me, one of the our departments is federal  
17 programs. So the federal programs office  
18 receives the grants, federal funding monitors  
19 that. It's through what's called a "G5 system."  
20 So they will do all of the signatures, et  
21 cetera, with delegate authority from me.

22 Q. Okay. And is it fair to say that all

1 the government funding that you described is  
2 administered by the federal programs division,  
3 in the department of education?

4 A. The -- no. The grants, the  
5 discretionary grants will usually be a  
6 partnership between the federal programs office  
7 who is the responsible party, and then the  
8 actual program office, in the department, who  
9 applied for and was awarded the grant.

10 Q. Okay. Can you give me an example of a  
11 program office?

12 A. Charter schools. So the Public Charter  
13 School Grant, which is an open right now.  
14 Should we apply for that grant, the office of  
15 choice will be responsible for administering the  
16 programmatic elements, our federal program  
17 office is responsible for receiving, kind of,  
18 that official paperwork related to the financial  
19 management of that.

20 Q. Okay. Does the department of education  
21 have to comply with federal law?

22 A. Yes.

1 Q. Title 9 of the Education Amendment?

2 A. If we sign -- we have to sign  
3 assurances. And so if we receive funding and we  
4 sign papers for those assurance, we are saying  
5 that we will comply with those assurances.

6 Q. Okay. And so specifically, does the  
7 Tennessee Department of Education have to comply  
8 with title 9?

9 A. Yes. Title 9 is law that we must  
10 comply with federal law.

11 Q. Okay. And your understanding is that  
12 it is law?

13 A. Yes. It is title 9.

14 Q. Okay. And does the Tennessee  
15 Department of Education have to comply with  
16 state law?

17 A. Yes.

18 Q. And does the Tennessee Department of  
19 Education have to comply with SB228?

20 A. Yes. Any law that is passed by the  
21 general assembly and signed into law, we are  
22 legally required implement.

1 Q. Okay. And so we talked a little bit  
2 about the overall, sort of, responsibilities of  
3 the department of education. But what are your  
4 responsibilities, as commissioner?

5 A. As commissioner, I oversee all of the  
6 employees in the department of education, and  
7 their various work streams. I'm also  
8 responsible, of course, as an appointee of the  
9 governor to work directly with the  
10 administration.

11 And then the third component would be, I  
12 work with the general assembly, in terms of -- as  
13 they are deciding which laws to pass, and then  
14 pass those laws. I am -- unless delegated -- the  
15 primarily agent of this department to testify,  
16 when request, on any law related to education.

17 MS. BROWN: Okay. Give me one second,  
18 if you will.

19 (Brief pause.)

20 BY MS. BROWN:

21 Q. Okay. And so just to clarify, you said  
22 that as the commissioner, you sometimes work



1 directly with the administration; meaning, the  
2 governor's office?

3 A. Yes.

4 Q. Around education, and law, and policy?

5 A. Yes.

6 Q. Okay. And you also said you are the  
7 designee who works with the general assembly, if  
8 asked, or required?

9 A. Yes.

10 Q. Okay. Okay. So let me ask you some  
11 specific duties.

12 So, again -- so you're responsible for  
13 the implementation of laws and policies by the  
14 general assembly and the State Board of  
15 Education?

16 A. Yes.

17 Q. Okay.

18 "The commissioner shall attend all  
19 meetings of the State Board of  
20 Education and may speak at the meetings  
21 and may make recommendations. Any  
22 recommendations made by the

1 Q. Okay. So, to be clear, did the state  
2 board take any implementation measures in 2021,  
3 as related to SB228 -- I'm sorry, did I say  
4 "state board." I meant department of education.

5 Did the department of education take  
6 any implementation measures, in 2021, as related  
7 to SB228?

8 A. Not that I can -- not that I'm aware  
9 of, by memory.

10 Q. Okay. And so when a new law is passed  
11 who, in the department of education, assesses  
12 what the department of education actually needs  
13 to do, in terms of responsibility and  
14 compliance?

15 A. The office of the general counsel and  
16 policy and legislative affairs teams.

17 Q. And do they make a report to you?

18 A. No.

19 Q. Okay. And do you have any oversight of  
20 their assessment?

21 A. I -- typically, cabinet -- our cabinet  
22 prioritizes major legislation that will require

1 cross-divisional activities. And so on  
2 a selection of legislation, I will be more  
3 directly participatory.

4 As a note, we had over 70 bills passed  
5 last session. So we typically do what we would  
6 can call "major pieces of legislation." And, you  
7 know, that is complicated implementation or  
8 high-dollar values. But otherwise, regular  
9 implementation is delegated to those two teams.

10 Q. Okay. So for -- so what about SB228;  
11 was it just the pure delegation you had no  
12 involvement as they made their assessment, or  
13 were you involved, as you described, because of  
14 some of those other factors?

15 A. It was deleted because it did not  
16 have -- it was not involving high-dollar values  
17 and it was not a complicated implementation, in  
18 terms of what the department's responsibilities  
19 were.

20 Q. And as it stands now, what's your  
21 understanding of the department's  
22 responsibilities and obligations, in relation to

1 SB228?

2 A. We are responsible for implementing  
3 laws that are passed. And so if there was an  
4 issue that arose to us, then our office of  
5 general counsel, as with any laws, is required  
6 to decide whether or not to investigate. But  
7 the -- the actual implementation of the law  
8 is -- is at the local level, or those who  
9 oversee districts directly.

10 The only exception to that would be the  
11 department's role in overseeing a small number of  
12 school districts, in which policies would need to  
13 reflect the laws that are passed.

14 Q. Okay. And so I want to make sure -- I  
15 don't want to mischaracterized it.

16 So I'm just going to ask: Based on  
17 what you just said, am I understanding it  
18 correctly that you're saying that the department  
19 of education has no role in the actual policy  
20 developed by the L- -- the local -- LEAs? Is  
21 that the acronym?

22 A. Yeah.

1 Q. Okay.

2 A. Local education agencies are  
3 responsible for their policies. We do not --  
4 and their local boards provide legal counsel.

5 The exception to that is that we do  
6 oversee some LEAs, in which case we operate as  
7 the LEA. And so for those LEAs, we are  
8 responsible for developing policies in alignment  
9 with any law passed.

10 Q. And who is responsible for making sure  
11 they actually develop policies?

12 A. Office of general -- oh, excuse me.  
13 I'm sorry.

14 MS. BERGMAYER: Excuse me.

15 I object to form.

16 THE WITNESS: The office of the general  
17 counsel and the policy and legislative affairs  
18 team. And then, we have an assistant  
19 commissioner, who is over what we call our  
20 "state's special schools." And so those are  
21 school districts that the department directly  
22 manages.

1 Q. Okay. And are there any policies  
2 you're aware of, right now, that refer their  
3 complaints to the department of education,  
4 outside of the ones that you have direct  
5 authority over?

6 A. I'm not aware of any, no.

7 MS. BERGMEYER: Okay. Okay. So I'm  
8 heading -- I'm hitting another section. So this  
9 is sort of a good of sections of questions that  
10 I realized that we're past the time. We have 13  
11 minutes.

12 Okay. I'll start anyway. I think I  
13 can -- I think can further cut it off.

14 BY MS. BROWN:

15 Q. So can you describe for me the  
16 relationship between -- again in general,  
17 between the department of education and the  
18 state board?

19 I understand that, again, the state  
20 board is the policy and rule-making, sort of,  
21 arm, and you're the implementing arm, but  
22 anything else about that relationship?

1 A. No.

2 Q. And you testified that you're required  
3 to follow state board policy that's passed?

4 A. Yes.

5 Q. And is the state board a government  
6 entity?

7 A. Yes.

8 Q. And does the state board receive  
9 federal financial assistance?

10 A. I don't know.

11 Q. Okay. You don't know.

12 Any policies or programs created by the  
13 state board that you're aware of that receive  
14 federal funds from the department of education?

15 A. I don't know of any federal funds  
16 that's we supply to the state board of  
17 education. But I can't speak to their  
18 relationship with the federal government or any  
19 of their financiers.

20 Q. Okay. Does the department of education  
21 make reporting -- or do any reporting to state  
22 board about its federal financial, or federal

1 A. I do.

2 Q. Okay. Okay. So if you refresh it, you  
3 should see an exhibit in the marked folder now.  
4 Let me know when you have that exhibit open.

5 A. Okay. I'll refresh now.

6 I see Exhibit A.

7 (SCHWINN Exhibit No. A marked for  
8 identification and attached to the transcript.)

9 BY MS. BROWN:

10 Q. Okay. That's right. Okay.

11 So I'm showing you what I've marked as  
12 Plaintiff's Exhibit A. So if you would just  
13 take a moment to read this over, and then once  
14 you've read it, you know -- I think you can  
15 read -- you can stop at the last letter. I  
16 think it's "F," perhaps -- and then just let me  
17 know verbally that you've completed reading it.

18 A. Okay.

19 (Brief pause.)

20 THE WITNESS: Okay. I've completed  
21 reading it through "F."

22



1 BY MS. BROWN:

2 Q. Great. Thanks. And just to confirm,  
3 remember that you're still under oath, right?  
4 So everything this morning is still in effect.

5 A. Yes, ma'am.

6 Q. Thank you. Okay.

7 And so, Commissioner Schwinn, what does  
8 this appear to be to you?

9 A. This appears to be a statute effective  
10 July 1, 2022.

11 Q. Okay. And what's the title of this  
12 statute?

13 A. "TCA49-6-310: Determining Student  
14 Gender for Purposes of Participation in  
15 Athletics."

16 Q. Okay. And have you seen this before?

17 A. I have.

18 Q. Okay. And is it the -- what we've been  
19 talking about today -- what I've been referring  
20 to as "SB228"?

21 A. Yes.

22 Q. Okay. And are you familiar with the

1 provision of this law?

2 A. Yes.

3 Q. Okay. Thanks.

4 And so I have more questions related to  
5 that.

6 But briefly, again, Commissioner  
7 Schwinn, when did you -- again, so we're talking  
8 about SB228. And in this question,  
9 specifically, I want to know when did you first  
10 learn about it?

11 And, again, so this is -- if it  
12 was while it was pending, or if it was while it  
13 was enacted -- maybe that's the first question.

14 Did you learn about it after it was  
15 enacted, or did you know about it beforehand?

16 A. I -- we briefly, less than one minute  
17 of conversation, discussed it in those weekly  
18 meetings that I referred to earlier. We did not  
19 discuss the language of the bill or anything in  
20 depth at all, because the department, in the way  
21 that it was proposed, had such a limited role,  
22 it was not something we spent time on.

1           So the first time I actually would have  
2 read the contents of this would have been in the  
3 month of July of 2022.

4           Q.     Okay. And you said in reference to  
5 those "weekly meetings, can you clarify for me  
6 which meetings you're talking about and with  
7 whom?

8           A.     So these would be the weekly meetings  
9 that I would have had with cabinet policy  
10 legislative affairs and counsel to provide  
11 recommendations on bill positions, or to discuss  
12 what the bill positions were that have been  
13 handed down by the governor.

14                 We go over every piece of proposed  
15 legislation. So this would have been in that,  
16 but it would not have been one we spent any time  
17 on.

18           Q.     Okay. And do you remember the earliest  
19 date of that -- or when that meeting occurred --  
20 whenever you had this brief discussion?

21           A.     I do not. But, as a practice, any time  
22 bill is calendared, that would be the first week

1 that we would discuss it.

2 Q. Okay. And, again -- so, you know, in  
3 those meetings that you were just talking about,  
4 these cabinet-level meetings to review proposed  
5 legislation, you said part of that is  
6 offering what's know as the "consultation"?

7 A. So part of that is determining the  
8 consultation that I would give to the governor  
9 and the governor's office, as they consider the  
10 position they'll have on a bill. Multiple  
11 agencies provide that on many bills.

12 Q. Okay. And so the consultations are a  
13 written document or -- you know, what's the  
14 format?

15 A. Typically, that is something that is  
16 communicated in writing, unless it is an  
17 administration bill, that -- that would be  
18 the -- the standard format would be in writing.

19 Q. Okay. And is your consultation grouped  
20 with the other departments or agencies who are  
21 also providing consultation?

22 A. No. My consultation -- it's each

1 agency submits that, on a weekly basis, to the  
2 governor's office.

3 Q. Okay. And so would you have submitted  
4 a consultation for SB228?

5 A. Policy and legislative affairs would  
6 submit that consultation on my behalf.

7 Q. Okay. Would you review it before it's  
8 sent out?

9 A. Typically, there are standard weekly  
10 meetings. If I'm not able to be at the meeting,  
11 for a number of issues related to my job, then  
12 cabinet would -- would continue without me. And  
13 then I have that -- policy and legislative  
14 affairs would have that consultation with me  
15 after -- after to let me know what the  
16 recommendations were for my team. And then I  
17 confirm what our recommendations are to the  
18 governor's office, and then that is what is  
19 sent.

20 Q. And. Okay. All right. Thank you.

21 And so having just reviewed this and,  
22 obviously, we're in litigation about this, what

1 does SB228 mean to you?

2 A. So a couple of things. I think if  
3 we're looking specifically at Part A, it is  
4 determining, kind of, for the purposes of  
5 interscholastic activities, participation  
6 eligibility. And it defines what they -- what  
7 the bill or what the law believes eligibility  
8 is.

9 It discusses who is responsible for  
10 promulgating rules and policies.

11 And then, it goes through, kind of, what  
12 the process is, should those policies or rules be  
13 violated or not put into place.

14 Q. Okay. Thank you.

15 And so based on your understanding of  
16 what this law does, would a transgender boy, who  
17 has a female gender marker on his original birth  
18 certificate, be able to play on his -- let's  
19 say, 9th grade soccer team, at a public high  
20 school in Tennessee?

21 A. Can I repeat back to you to make sure  
22 that I understand the -- the --

1 Q. Absolutely.

2 A. So a -- a transgender boy, under this  
3 law, would that transgender boy be able to play  
4 on which soccer team?

5 Q. On the boys' soccer team at his public  
6 9th grade high -- public high school. He's in  
7 the 9th grade, let's say.

8 A. So my understanding of this law is  
9 that, no, that student would be eligible to  
10 participate on that team.

11 MS. BERGMEYER: And I'm going to object  
12 to the form to that question.

13 BY MS. BROWN:

14 Q. And -- okay. And just to drill down on  
15 it: And why specifically wouldn't he be able  
16 to?

17 A. So why specifically, I would -- I would  
18 direct back to section A, and in the law that  
19 was -- or in the bill that was put into law.

20 It -- it says, "Determined by the  
21 student's sex at the time of the student's birth  
22 as indicated on the student's original birth

1 certificate."

2           If the student had a marker female at -  
3 on the original birth certificate, or was  
4 indicated in that way on the original birth  
5 certificate, then my understanding of the law is  
6 that that student would be eligible to  
7 participate on a girls' interscholastic team and  
8 not a boys' interscholastic team, based on the  
9 law or -- yeah, based on the law.

10           Q.     And as education commissioner or  
11 commissioner of education, as the highest person  
12 in the department of education -- again, I  
13 understand that there are formal mechanisms for  
14 providing feedback that we've discussed -- but,  
15 again, just based on commissioner and your  
16 experience, in general, as an educator and as an  
17 executive, what did you think about SB228 when  
18 you first learn about it or soon after?

19           MS. BERGMAYER:   Object to form.

20           THE WITNESS:   So I -- in the four  
21 year -- almost four years I've been in this job,  
22 I do not infuse my personal opinion.  I -- I do



1 discrimination in -- in state board policies  
2 that you're aware of?

3 MS. BERGMEYER: Object to form.

4 THE WITNESS: I would defer to counsel.  
5 If there are any, I'm not aware of any. But  
6 that would be a question I would ask my counsel.

7 BY MS. BROWN:

8 Q. Okay. Commission Schwinn, if you will  
9 go back to the marked exhibits and just to  
10 confirm, yes, open up Exhibit A again? And let  
11 me know verbally when you've done that.

12 A. I have it open.

13 Q. Okay. Again, based upon your review of  
14 the law and understanding of the law, what's the  
15 department of education's role in SB228?

16 A. Our role is what I would read as our  
17 standard role with a number of statutes which  
18 the commissioner of education shall uphold a  
19 portion of the state's education finance funds,  
20 if an LEA fails or refuses to comply.

21 The only difference that I note from  
22 what is, kind of, written blanket within the

1 statute in a number of places is "shall," versus  
2 "may," in Section F.

3 Q. Okay. So you stated withholding funds  
4 for LEAs that are not in compliance with this  
5 law?

6 A. Yes.

7 Q. Okay. What is your understanding of  
8 the state board's role in SB228?

9 A. The state board's role, as outlined  
10 here, is they need to promulgate rules to ensure  
11 compliance and establish a procedure for how the  
12 commissioner and the department are to withhold  
13 funds, pursuant to -- so, essentially, the  
14 process to comply.

15 Q. And so when we say "LEA" -- well, let's  
16 say, what are the role of -- what is your  
17 understanding of the role local school boards,  
18 in relation to SB228?

19 A. Local school boards are the governing  
20 body of the majority of our school districts.  
21 The only exceptions to that would be our states  
22 special schools, the public charter school

1 commission, and that would be it.

2 Q. Okay. And so -- and what do they do in  
3 relationship to SB228 as your -- I mean, your  
4 understanding about it?

5 A. Their responsibility is to enact policy  
6 in compliance with the law.

7 Q. And then, what about individuals  
8 schools; what is their -- what is your  
9 understanding of their role in SB228?

10 A. Individual schools, as with any board  
11 policy, individual schools need to follow the  
12 board policies that have been enacted that are  
13 applicable to them.

14 Q. Okay. So you said it's your  
15 understanding that the -- one of the  
16 responsibilities of the state board, in relation  
17 to SB228, is to promulgate rules for compliance?

18 A. Yes.

19 Q. Okay. The other role that you  
20 identified of the state board, in relation to  
21 SB228, is the process for which you, the  
22 Commissioner, can withhold funds from schools

1 that are not in compliance?

2 A. Yes.

3 Q. Okay. Earlier you testified that in  
4 relation to rule-making, it's usually a joint  
5 effort between the office of general counsel, at  
6 the Tennessee Department of Education, with  
7 someone from legislative and policy, at the  
8 Tennessee Department of Education, and the  
9 office of general counsel, at the state board,  
10 correct?

11 A. Yes.

12 Q. Okay. Would there be someone, from the  
13 Tennessee Department of Education, to work on  
14 promulgating rules for compliance, with SB228?

15 A. It would be either the office of  
16 general counsel or the policy and legislative  
17 affairs team, if they participated.

18 But as I testified earlier, I -- the  
19 first time that I was involved in this would have  
20 been this month. So I don't know what those --  
21 what those conversations may have been.

22 Q. Okay. And would someone from the

1 BY MS. BROWN:

2 Q. Okay. Let me ask you this: Is there a  
3 differentiation between pol- -- school board --  
4 or state board policy and state board rules?

5 MS. BERGMAYER: Object to form.

6 THE WITNESS: State board rules have  
7 the affect of law. I would defer to our the  
8 office of general counsel on individual  
9 policies, because it will depend on the policy  
10 and what it references.

11 BY MS. BROWN:

12 Q. Okay. But the department of education  
13 has to ensure that all school board policies are  
14 being complied with by schools, K-12 schools, in  
15 Tennessee -- public schools?

16 A. No, that's not accurate.

17 Q. Okay. Why isn't that accurate?

18 A. We are responsible for monitoring the  
19 implementation of all local board policies.

20 Q. Okay. Are you responsible for  
21 implementing all school board policies related  
22 to SB228?

1 MS. BERGMEYER: Object to form.

2 THE WITNESS: No, we are not  
3 responsible for the implementation of that. No.

4 BY MS. BROWN:

5 Q. Okay. So do you recall ever meeting  
6 with anyone from the Alvancy York  
7 Agricultural -- or you anyone at the department  
8 of education, has anyone ever met with anyone  
9 from the Alvancy York Agricultural Institute  
10 about SB228?

11 A. Not that I'm aware of.

12 Q. Okay. And have you, or anyone at the  
13 department of education, met with anyone from  
14 the Tennessee School for the Blind, related to  
15 SB228?

16 A. I don't know. Not that I'm aware of.

17 Q. Have you had conversations with anyone?

18 A. No.

19 Q. Okay. And it's the same question:  
20 Have you, or anyone from the department of  
21 education, met with anyone from the Achievement  
22 School District about SB228?

1 Department of Education, correct?

2 A. Yes.

3 Q. Okay. Commissioner Schwinn, you can  
4 now take a look at the next exhibit, which is  
5 marked as Exhibit I.

6 And so, for this one, I would like you  
7 to take a moment to read through this one. And  
8 just, again, verbally let me when you've  
9 completed reading it.

10 (Brief pause.)

11 THE WITNESS: Okay.

12 BY MS. BROWN:

13 Q. And so what does this document appear  
14 to be to you?

15 A. This appears to be a rule related to  
16 the Interscholastic Athletics for the State  
17 Board of Education.

18 Q. Okay. And so this was the rule that  
19 was with the agenda for the July 22, 2022,  
20 meetings of the state board.

21 And so let me ask you: Who was at that  
22 meeting, aside from Ms. Hersey?

1           Are you aware of anyone from the  
2 department of education that was there?

3           A.    I wasn't there, so I can't speak to  
4 that.

5           Q.    Okay. Did you plan not to be there?

6           A.    No.

7           Q.    Have you talked to anyone about this  
8 meeting --

9           A.    No --

10          Q.    -- from the department of education --  
11 sorry.

12                    So had you spoken with anyone, in the  
13 department of education, about this meeting?

14          A.    No.

15          Q.    Have you spoken with anyone, at the  
16 school board, about this meaning?

17                    MS. BERGMEYER: State board.

18 BY MS. BROWN:

19                    MS. BROWN: State board.

20 BY MS. BROWN:

21          Q.    Have you spoken with anyone, at the  
22 state board, about this meeting?



1 A. No.

2 Q. Okay. So looking at the policy --  
3 which, again, is marked as Plaintiff's Exhibit  
4 I -- where did this policy come from -- or I  
5 should say, I take that back. Sorry.

6 Looking at this rule or this proposal,  
7 where did this proposal come from?

8 A. Can you clarify what you mean "where  
9 did it come from?"

10 Q. Who developed this proposal?

11 A. I don't know.

12 Q. Do you know if anyone, from the  
13 department of education, was involved?

14 A. We are typically involved with  
15 rule-making, but I can't speak to this specific  
16 rule.

17 Q. Okay. Do you know why Mrs. Hersey  
18 presented the rule to the -- during the meeting?

19 A. Typically, department staff present  
20 rules, as it relates to K-12 education.

21 Q. Okay. And we're -- what now -- you  
22 know, a little bit over a week, maybe more,

1 since that July 22nd meeting, and has there been  
2 any steps taken, at the department of education,  
3 in relation to this rule or -- rule?

4 A. I don't know. I can't speak to that.

5 Q. And so remind me, what's your  
6 understanding of the status of this rule  
7 proposal?

8 A. My understanding of the status is that  
9 this was heard on reading on July 22, 2022.

10 Q. And what does "Heard on First Reading,"  
11 mean?

12 A. Typically, it goes through two  
13 readings. There's a first reading. The state  
14 board is able to discuss and ask questions.  
15 There's time between the first reading and the  
16 second reading for any revisions that might be  
17 necessary.

18 And then the second reading is typically  
19 second -- sometimes, it's second and final.

20 And sometimes, there's another reading  
21 for final. But it is the first time in which the  
22 state board would have a chance -- an opportunity

1 to review the rule publicly.

2 Q. Okay. And I think I know the answer, I  
3 think you've said it.

4 But, again, are you aware of any future  
5 plans, by the department of education, about  
6 this proposed rule?

7 A. I have not had any discussions about  
8 this rule -- the July -- the July 22nd meeting,  
9 so I don't know.

10 Q. Okay. And so I'll ask: But any future  
11 plans, by the state board, in relation to this  
12 proposed rule?

13 A. I can't speak for the state board.

14 Q. Okay. And so let's take a closer look  
15 at the policy.

16 So, obviously, in the first section of  
17 the definition, you're listed as the  
18 Commissioner, and "department" means the  
19 Tennessee Department of Education.

20 A. Uh-huh. Yes.

21 Q. Okay. And so based on your read of the  
22 Section called "LEA Requirements," what does

1 this proposed rule require LEAs to do?

2 A. It requires them to be in compliance  
3 with the statute and that they have written  
4 procedures and policies at the local level with  
5 how that shall be enacted on a regular -- on an  
6 annual basis.

7 Q. And just for clarification -- so in the  
8 definition it says:

9 "An LEA means a Tennessee local  
10 education agency and has the same  
11 meaning of an NTCA Section 4,9-1-1032."

12 Is a school board an LEA, based on your  
13 understanding of this?

14 A. No, a school board is not an LEA. A  
15 school board is the governing body over an LEA.

16 Q. And so it's the individual schools?

17 A. It is the -- an LEA would be the  
18 collection of schools, while not exactly the  
19 same, but it is what people, oftentimes,  
20 interchange with a school district. So that  
21 would be a central office, the school districts,  
22 the governing board, et cetera.

1 Q. Okay. And so in, again, looking at the  
2 LEA Section 2, do you see the portion where it  
3 mentions an "annual LEA compliance report to the  
4 department"?

5 A. Yes.

6 Q. Okay. And, again, that -- under these  
7 definitions, department -- the department of  
8 education?

9 A. Yes.

10 Q. Okay. Does the department of education  
11 have a compliance report like what -- like  
12 contemplated by this provisions?

13 A. Yes, it is a -- there's an annual  
14 report that essentially certifies that the LEA  
15 is in compliance with state law. It does not go  
16 through each individual law. It's a general  
17 assurance.

18 Q. Okay. Let's move down to "Reviewing  
19 Allegations of Noncompliance."

20 Does compliance fall within your  
21 understanding of enforcement?

22 A. Compliance would be the -- the people

1 responsible for implementation; enforcement  
2 would be a different organization -- would be  
3 different. So I do not see them as the same.

4 Q. Okay. So, again, we've talked about if  
5 the school board is not in compliance, one of  
6 the mechanisms is withholding of school funding.

7 And you don't consider that  
8 enforcement?

9 A. No, they -- they have different  
10 definitions.

11 Q. Okay. And so who, in the first  
12 instance, gets a report of noncompliance under  
13 this proposed rule?

14 A. The district would receive the report  
15 of noncompliance.

16 Q. And so what's the difference between  
17 that and what it says in Section 1, which says,  
18 "Upon receipt of notice of an allegation of  
19 noncompliance"?

20 A. Well, the -- upon receipt of notice of  
21 allegation of noncompliance, that does not  
22 indicate that there is noncompliance. It's just

1 that there is a notice of an allegation.

2 Q. Okay. And so where there's an  
3 allegation, again, of noncompliance with SB228  
4 who receives that?

5 A. In -- if we're looking at Section 1,  
6 then this is when the department receives that  
7 notice of an allegation of noncompliance.

8 Q. Okay. And, again, just to be clear,  
9 based on this proposed rule, what happens next  
10 after you receive this notice -- of an  
11 allegation?

12 A. The department must or shall initiate a  
13 review of the allegation within 10 calendar  
14 days.

15 Q. And in that investigation, under this  
16 proposal rule, what does the department of  
17 education have the authority to do?

18 A. We -- we do a review and we send  
19 written notification to the LEA of that review.  
20 We will also inform the reporting party, which  
21 is the person or persons who provide the notice  
22 of an allegation.

1           And then we have the authority to  
2 request information, or interview as part of an  
3 investigation, if that -- if those are the next  
4 steps that the department determines are  
5 necessary.

6           Q.     Okay.  And then what's your  
7 understanding of provision 3, under the same  
8 section?

9           A.     The department has 60 days to have a  
10 determination.  There must be a determination  
11 letter that is sent to the LEA.  That is where  
12 the allegations arose.  It is also sent to the  
13 reporting party.

14           MS. BROWN:  Okay.  Can you all still  
15 hear me?  I had to switch my ear pods.  They  
16 just died.

17           THE WITNESS:  Yes.

18           BY MS. BROWN:

19           Q.     And her provision 4, what happens with  
20 the LEA, if found to be in noncompliance?

21           A.     If they are found to be in  
22 noncompliance, the letter that we are required



1 to send within 60 days, shall include that  
2 notice that lets them know they're in  
3 noncompliance.

4 It also would require that we provide  
5 corrective action steps that they can move into  
6 compliance -- and a deadline by which they must  
7 to do that.

8 Q. Okay. And so you see the provision  
9 that says "coercive action steps are required  
10 for compliance"?

11 A. Is that under 4?

12 Q. Yes.

13 A. "Corrective action steps"?

14 Q. Oh, sorry. Yeah. You're actually  
15 right, "corrective action steps require for  
16 compliance."

17 A. Okay.

18 Q. Okay.

19 A. Yes.

20 Q. Okay. And then provision 5, what's  
21 your understanding of that?

22 A. If we determine that the LEA does not

1 meet the corrective actions, as outlined in  
2 Section 4, we will send them a letter of  
3 withholding, explain why there's a withholding,  
4 and that withholding will occur, and it will  
5 tell the LEA they have a right to contest our  
6 determination.

7 Q. And as of now, there's no formula for  
8 assessing a withholding, if an LEA was found to  
9 be noncompliance?

10 And there's no -- let's say, so there's  
11 no school board policy assessing a formula  
12 for -- for calculating how much you would  
13 withhold in the event there was noncompliance?

14 A. I'm not aware of any formula that would  
15 do that. No.

16 Q. Okay. And there's no school board rule  
17 on the same issue -- school -- state board --  
18 state board rule -- on the same issue?

19 A. No, I not aware of any state board  
20 rule.

21 Q. Okay. And -- okay. And so under the  
22 section entitled "Early Resolution," you read

1 transgender girl is interested in playing, maybe  
2 golf, participate on that team, are you aware of  
3 any Title 9 implications, in this scenario,  
4 where there's only a boys' sports team?

5 A. No, I would defer to counsel if that  
6 question came to my desk.

7 Q. Okay. And, again, looking at Exhibit  
8 A --

9 A. Uh-huh.

10 Q. -- well, then, so let me start off with  
11 this question. Okay.

12 So would you agree that there are other  
13 benefits to participation in interscholastic  
14 sports, other than winning and the opportunity  
15 for collegiate scholarships?

16 MS. BERGMEYER: Object to form.

17 THE WITNESS: Yes.

18 BY MS. BROWN:

19 Q. Okay. So what are the benefits of  
20 participating in interscholastic sports  
21 generally, in K-12 education?

22 A. Physical --

1 (Whereupon, multiple speakers  
2 simultaneously.)

3 MS. BERGMEYER: Same objection.

4 THE WITNESS: Sorry. I'm sorry.

5 MS. BERGMEYER: It's okay. Objection  
6 for the record.

7 Please continue with your response.

8 THE WITNESS: Physical health,  
9 friendship would be examples.

10 BY MS. BROWN:

11 Q. What about the benefits to mental  
12 health, in participation in interscholastic  
13 sports?

14 A. Yes. That's with all extracurricular  
15 activities.

16 Q. Okay. What about the benefits to  
17 academic performance when students participate  
18 in interscholastic sports?

19 MS. BERGMEYER: Object to form.

20 THE WITNESS: It depends on the  
21 student.

22

1 BY MS. BROWN:

2 Q. Okay. So given these benefits that  
3 we've talked about, do you think that  
4 transgender students would or could receive  
5 these same benefits from participation in  
6 interscholastic sports?

7 MS. BERGMEYER: I object to the form.

8 THE WITNESS: I believe transgender  
9 students would receive the same benefits as any  
10 other students, as it relates to extracurricular  
11 activities.

12 BY MS. BROWN:

13 Q. Okay. Again, in your experience as  
14 Commissioner and your background in education,  
15 do you think higher education, beyond K-12, is  
16 important?

17 A. Yes.

18 Q. Why?

19 A. Statically, students who complete  
20 post-secondary education opportunities are more  
21 likely to have higher income and better health  
22 benefits -- health later in life. That's tied

1 to post-secondary completion, as well as 3rd  
2 grade reading.

3 Q. Okay. Would you agree that some  
4 transgender students may want to go to college?

5 MS. BERGMEYER: Object to form.

6 THE WITNESS: Yes, I believe that is  
7 a -- that is a reasonable statement, yes.

8 BY MS. BROWN:

9 Q. Are you aware of any transgender  
10 students -- any transgender people, I should  
11 say, that participate in collegiate sports?

12 A. Yes.

13 Q. Okay. And who specifically?

14 A. I do not know -- I do not know her  
15 name, but it would be the -- the -- I think the  
16 context that has been publicized quite often,  
17 related to the swim team. I don't know the  
18 school name or the states involved.

19 Q. Okay. Do you think transgender  
20 students may want or need athletic scholarship  
21 opportunities to be able to attend college?

22 MS. BERGMEYER: Object to form.

1 THE WITNESS: I don't have enough  
2 information or expertise to be able to comment  
3 on wants and needs of these students.

4 BY MS. BROWN:

5 Q. Okay. So earlier in your testimony,  
6 you talked about a potential downside to the  
7 participation of transgender students, in K-12  
8 sports, as what I'm going to characterize as  
9 "displacement" of perhaps -- you know, if we're  
10 talking about a transgender girl -- a cisgender  
11 girl from the team, because of an athletic  
12 advantage.

13 Is that fair to say?

14 A. I think I talked about the benefits and  
15 drawbacks from both perspectives on that issue,  
16 yeah.

17 Q. But -- okay. But that was one of the  
18 drawbacks, as I described it?

19 A. Correct.

20 Q. In Tennessee, K-12 interscholastic  
21 sports, are you aware of any instances of  
22 cisgender girls being displaced by transgender

1 girls?

2 A. No.

3 Q. And in Tennessee, K-12 interscholastic  
4 sports, are you aware of any instances of as  
5 cisgender boys being displaced by transgender  
6 boys?

7 A. No.

8 MS. BROWN: Okay. So we're at 5:27.  
9 So before I proceed with the rest of my  
10 questions -- which I promise are not that  
11 long -- I do want to have a moment to check in  
12 with my team really quickly.

13 (Recessed at 5:28 p.m.)

14 (Reconvened at 5:44 p.m.)

15 BY MS. BROWN:

16 Q. Generally, I understand from your  
17 testimony today that the department of education  
18 isn't really involved in interscholastic policy,  
19 except where necessitated by the law, correct?

20 A. That's correct.

21 Q. Do you, or anyone at the department of  
22 education, collect data related to injuries in



1 interscholastic sports, in K-12 public  
2 education?

3 A. Not that I'm aware of.

4 Q. Okay. Do you know about injuries  
5 generally, in K-12 public education  
6 interscholastic sports, in Tennessee?

7 A. No.

8 Q. Okay. Under SB228, if a transgender  
9 boy, who is known to all his fellow students as  
10 a boy, and treated as a boy, shows up for  
11 tryouts for a girls' sports team, how do you  
12 think that student may be treated?

13 MS. BERGMEYER: I object to the form.

14 THE WITNESS: I -- I don't think I can  
15 speak to generally how a -- how a student would  
16 be treated.

17 BY MS. BROWN:

18 Q. Okay. And so earlier -- again, so just  
19 recapping some of your testimony earlier to make  
20 sure we're on the same page.

21 I asked you if a -- under your current  
22 understanding and read of SB228, a transgender

1 boy, who has a female gender marker on his  
2 original birth certificate, would not be allowed  
3 to play on a boys' interscholastic sports team,  
4 in K-12 -- well, K-12, but -- that's going  
5 through 12th grade, interscholastic teams in  
6 public schools, in Tennessee, correct?

7 A. That's correct.

8 Q. Okay. Under SB228, if a transgender  
9 boy tried out for a boys sports team and was  
10 good enough to make the team, would he be  
11 allowed to join and play on the team?

12 MS. BERGMEYER: Object to form.

13 THE WITNESS: My understanding is he  
14 would -- that student would not be allowed to  
15 participate on that team.

16 BY MS. BROWN:

17 Q. Would the student be allowed to try out  
18 under SB228?

19 MS. BERGMEYER: Object to form.

20 THE WITNESS: The law says  
21 "participation." I would defer to counsel  
22 whether participation is actually playing on the

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Dawn L. Halcisak, Court Reporter and  
3 Notary Public in and for the State of Maryland,  
4 the officer before whom the foregoing Remote  
5 Deposition was taken, do hereby certify that the  
6 foregoing transcript is a true and correct  
7 record of the testimony given; that said  
8 testimony was taken by me stenographically and  
9 thereafter reduced to typewriting under my  
10 direction and that I am neither counsel for,  
11 related to, nor employed by any of the parties  
12 to this case and have no interest, financial or  
13 otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set  
15 my hand this 22nd day of August, 2022.

16  
17

18 My Commission Expires:

19  
20



21 NOTARY PUBLIC IN AND FOR THE  
22 STATE OF MARYLAND

# EXHIBIT 6

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

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L.E., by his next friends  
And parents, \*  
Plaintiff, \*  
V. \*  
BILL LEE, in his official \*  
Capacity as Governor of \*  
Tennessee; PENNY SCHWINN, \*  
In her official capacity as \*  
The Tennessee Education \*  
Commissioner; TENNESSEE \*  
STATE BOARD OF EDUCATION; \*  
SARA HEYBURN MORRISON in \*  
Her official capacity as \*  
The executive Director of \*  
The Tennessee State Board \*  
Of Education; NICK DARNELL \*  
MIKE EDWARDS ROBERT EBY \*  
GORDON FERGUSON, ELISSA, \*  
KIM LILLIAN HARTGROVE, \*  
NATE MORROW, LARRY JENSEN \*  
DARRELL COBBINS, and EMILY \*  
HOUSE, the individual \*  
Members of the Tennessee \*  
State Board of Education, \*  
In their official \*  
Capacities; KNOX COUNTY \*  
BOARD OF EDUCATION a/k/a \*  
KNOX COUNTY SCHOOLS a/k/a \*  
KNOX COUNTY SCHOOL \*  
DISTRICT; ROBERT M. "BOB" \*  
THOMAS, in his Official \*  
Capacity as Director of \*  
Knox County Schools, \*  
Defendants. \*  
-----x

1 DEPOSITION OF SARA MORRISON  
2 APPEARING REMOTELY FROM  
3 NASHVILLE, TENNESSEE  
4  
5

6 August 22, 2022

7 11:00 a.m.  
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19 REPORTED BY:

20 Dawn L. Halcisak, CLR

21 APPEARING REMOTELY FROM CRISFIELD, MARYLAND

1 R E M O T E A P P E A R A N C E S

2  
3 ON BEHALF OF PLAINTIFF KNOX COUNTY BOARD OF

4 EDUCATION AND BOB THOMAS:

5 JESSICA JERNIGAN-JOHNSON, ESQUIRE

6 KNOX COUNTY LAW DIRECTOR'S OFFICE

7 (865) 215-2327

8 jessica.johnson@knoxcounty.org

9  
10  
11 SASHA BUCHERT, ESQUIRE

12 (pro hac vice forthcoming)

13 LAMBDA LEGAL DEFENSE AND EDUCATION

14 FUND INC.

15 1776 K Street, N.W., 8th Floor

16 Washington, D.C 20006

17 (202) 804-6245

18 sbuchert@lambdalegal.org

19  
20  
21

1 R E M O T E A P P E A R A N C E S (Cont'd.)

2  
3 ON BEHALF OF L.E., by his next friends and  
4 parents SHELLEY ESQUIVEL and MARIO ESQUIVEL  
5 & ACLU OF TENNESSEE:

6 STELLA YARBROUGH, ESQUIRE (No. 33637)

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Washington, DC 20001

16 628-235-1000  
17  
18  
19  
20  
21



1 R E M O T E A P P E A R A N C E S (Cont'd.)

2  
3 ALSO PRESENT:

4 FOR KNOX COUNTY LAW DIRECTOR'S OFFICE:

5 Bob Thomas, Director of Knox County Schools  
6 Coach Donald Dodgen

7  
8 ATTORNEY GENERAL'S OFFICE:

9 Anne Levit

10 Mr. Swaine

11 Executive Director Morrison

12 State Board Members

13 Veda Newman, Law Clerk

14 Lucas Cameron-Vaugh, ACLU

15  
16 VERITEXT:

17 Jerry CUrran, Concierge Tech

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I N D E X

Name of Witness	Page
SARA MORRISON	
Examination	
MR. SCHOENFELD	6

E X H I B I T S

(Premarked for Identification and  
attached to the Transcript.)

Exhibit	Page
No. 1 Notice of Deposition	7
No. 2 Meeting Adgenda, 07/22/22	7
No. 3 Interscholastic Athletics Rule 0520-01-23 Cover, 07/22/22	7
No. 4 TN Policy Cover Email	7
No. 5 SEAD Scan Wraparound TDOEF	7
No. 6 Tennessee Teacher Code of Ethics, 081619	7
No. 7 State BOE Response to First Wave ROGs	7
No. 8 State BOE Response to First Wave RFPs	7

1           A.    I do.

2           Q.    Okay.  Are you prepared to testify on  
3 each of the 18 topics that are listed in the  
4 deposition notice?

5           A.    I am.

6           Q.    Okay.  So could you state, for the  
7 record, what your current position is?

8           A.    Yes.  My current position is executive  
9 director for the Tennessee State Board of  
10 Education.

11          Q.    And what are your job responsibilities?

12          A.    In this role, I have a staff of  
13 individuals who support our Board.  The  
14 governor-appointed members of the state board,  
15 who come together, at least quarterly, to vote  
16 on K12 policies and rules in Tennessee.

17          Q.    What sort of support do you and your  
18 staff derive for the Board?

19          A.    Well, in addition, to putting together  
20 the meeting agendas and ensuring that members  
21 have access to material and feel fully prepared

1 on the issues on which they will be asked to  
2 vote at each meeting, we also do our best to  
3 send newsletters to stakeholders to -- to -- in  
4 many cases, have public hearings for rules that  
5 are in promulgation.

6 I mentioned early, we also maintain a  
7 staff of attorneys who are responsible for  
8 licensure disciplinary cases in Tennessee.

9 We have a team that also is solely  
10 focused on policy and research. So there's a  
11 number of different research reports that some of  
12 our staff members put together to support our  
13 Board and their understanding of K12 nationally  
14 and in Tennessee.

15 So it runs the gamut, in terms of our  
16 staff. I'm happy to talk, in more specifics, if  
17 you have questions.

18 Q. How many staff members do you have?

19 A. It's always changing. Currently, we  
20 have 15, and we've got an open position, which  
21 was added after this last session that we're

1 A. Correct.

2 Q. What skills did playing sports teach  
3 you?

4 A. They taught me discipline and  
5 responsibility, teamwork, among other things.  
6 But those are the three that stand out.

7 MS. BERMEYER: And I'm going to state  
8 an objection, for the record, to the line of  
9 questioning that's personal in nature as outside  
10 the scope of the 30(b)(6).

11 MR. SCHOENFELD: Well, she's also being  
12 deposed in her personal capacity, correct?

13 MS. BERMEYER: Correct. So I just want  
14 to make sure when the questions are for her  
15 official capacity instead of the 30(b)(6) that's  
16 it's clear for the record what her responses go  
17 for.

18 BY MR. SCHOENFELD:

19 Q. And you said you didn't play any sports  
20 in college, correct?

21 A. Correct.

1 Q. Okay. Did you coach any sports when  
2 you were teaching either in Brentwood or  
3 Louisville?

4 A. I did. I coached cross-country in  
5 Brentwood.

6 Q. Why did you decide to coach  
7 cross-country?

8 A. It was less of a decision and more of a  
9 requirement, as a new teacher.

10 Q. Do you have any understanding of why it  
11 was a requirement as a new teacher?

12 A. Well, my understanding is that they've  
13 got a lot of sports that they need coaches for,  
14 and when you've new teachers, that's often one  
15 of the expectations is that you, you know, agree  
16 to coach or sponsor an activity at the school to  
17 support the overall working of the -- the  
18 school.

19 Q. Has your professional work in  
20 educational leadership or administration  
21 involved anything relating to interscholastic

1 sports?

2 A. Since -- since my career as a teacher?

3 Q. Yeah. In the, sort of -- from the  
4 governor's office forward, have any of your  
5 responsibilities related to interscholastic  
6 sports?

7 A. No -- I mean, the exception being that  
8 we make rules, as you know, on things like the  
9 law in question. But outside of that, I've  
10 had no responsibilities related to  
11 interscholastic sports.

12 Q. So when you were a cross-country coach,  
13 what sorts of skills did you try to teach your  
14 students?

15 A. Well, there were the physical skills  
16 required to be an excellent runner, and then  
17 there were the team and, sort of, individual,  
18 kind of, psychological skills, I would say, in  
19 terms of persevering through hardship that are  
20 required in cross-country specifically.

21 Q. Anything else?

1           A.    No.  It was really, you know, the  
2           physical and, sort of, psychological elements,  
3           teamwork, as well.  You know, what does it mean  
4           to be a runner on the team?  What does it mean  
5           to be part of the team -- to support each other?

6           Q.    So you mentioned discipline, teamwork,  
7           responsibility, persevering through hardship.

8                     Anything else?

9           A.    I mean, life-long fitness.  You know,  
10          the role that staying fit and healthy plays  
11          in -- in your, sort of, overall wellbeing.

12          Q.    And these are skills that every student  
13          should learn, right, not just student athletes?

14          A.    I would argue, yes, all students need  
15          to understand, sort of, the emotional, physical  
16          connections and how to take care of themselves  
17          holistically.

18          Q.    Are you familiar with the Plaintiff in  
19          this case L.E.?

20          A.    Only so far as the deposition notice,  
21          not in any other capacity.



1           A.    No, I don't.  I think it's a high  
2 school student.

3           Q.    Do you know the student's sex or  
4 gender?

5           A.    I do not.

6           Q.    I want to talk a little bit about the  
7 state board of education.  I'm sure this is very  
8 complex, but can you describe to me the  
9 relationship between the board of education and  
10 the department of education?

11          A.    Certainly.  In Tennessee, not unlike  
12 other states, but specifically in our state, the  
13 governor appoints both the state board members  
14 and the commissioner of education.  The state  
15 board, according to the general assembly and the  
16 law that has, kind of, created the state board,  
17 is responsible for K12 policy and governance in  
18 Tennessee.

19                    So our Board comes together, at least  
20 quarterly, to review and vote on regulation.  So  
21 rules and policies related to all kinds of things

1 that govern K12 education.

2 Under the statute, as well, we do not  
3 have implementation responsibility. That is what  
4 falls supposed to the department of education.

5 So we partner closely with them, both in  
6 terms of the drafting and presenting the rules  
7 and policies. Their staff, which is much more  
8 extensive than the state board staff and includes  
9 a lot of content experts, are often the one that  
10 present rules and policies to the Board.

11 Our staff partners with them in the  
12 reviews -- the review of those rules and policies  
13 before they get to the Board. And then the  
14 department is also the body that's responsible  
15 for implementation and working closely with  
16 districts to oversee and monitor implementation  
17 of the rules, laws, and policies.

18 Q. Both the board of education and the  
19 department of education are state government  
20 entities, correct?

21 A. Correct.

1 federal funds received by the Tennessee  
2 department of education; is that right?

3 A. I'm sure I follow your question  
4 completely. But to -- to restate what I think  
5 you're saying: The Board -- state board sets  
6 policy and rule regarding how districts are  
7 required to spend federal dollars, in some  
8 cases, like, Title 9 and others.

9 We do not set policy or rules regarding  
10 how the department of education spends federal  
11 dollars that they might receive. They are a  
12 separate and distinct agency.

13 So anything that we set, in terms of  
14 regulations, is specific to public schools and  
15 districts in Tennessee.

16 Q. Okay. That's a helpful clarification.

17 What's the relationship between the  
18 LEAs and the state board of education?

19 A. I believe by "relationship," you mean  
20 communication and interaction?

21 Q. Is there a legal or a reporting

1 relationship between the LEAs and the state  
2 board?

3 A. Not -- not broadly speaking.

4 Now -- and, again, that's why I think  
5 the distinction between the department of  
6 education and the state board is an important  
7 one.

8 Reporting and monitoring of district  
9 implementation of state board policies and rules  
10 is purely the function of the department of  
11 education.

12 So the way I would describe the  
13 relationship that the state has -- and when I say  
14 "board," I'm meaning our members, but also our  
15 staff, just generally speaking, as we talk -- is  
16 to engage with superintendents, in particular,  
17 educators, to understand how things are going,  
18 what issues they're encountering, to inform our  
19 policy and rules. But that's as part of the  
20 ecosystem that includes the department of  
21 education who's doing a lot more work on the

1 ground to monitor and oversee implementation.

2 So the relationship that we have with  
3 LEAs is about setting rules and policies, having  
4 relationships with those directors of schools, in  
5 particular, and educators to understand how  
6 things are going and where we might need to work  
7 with the department of education to make  
8 adjustments to our rules and policies.

9 But it's really, sort of, in that cycle  
10 of rule-making and policy-making that we have  
11 relationships with LEAs to inform their work.

12 Q. Who has -- or how are the state board's  
13 policies enforced at the LEA or school district  
14 level?

15 A. Well, it varies, according to, you  
16 know, the rule or policy, how much enforcement  
17 is required. But anything that's being  
18 monitored or, quote, unquote, enforced would  
19 happen through the department of education.

20 Q. And what are the mechanisms for  
21 enforcement?

1 ratifies it?

2 A. No.

3 Q. Okay.

4 A. So the other -- the workflow is in the  
5 other direction.

6 Q. Got it.

7 Were you in attendance at the July 22,  
8 2022, state board of education meeting?

9 A. I was.

10 Q. Do you recall -- well, let me take a  
11 step back.

12 I'm going to refer to the law at issue  
13 here as SB228. Is that -- do you understand  
14 what I'm referring to when I refer to "SB228" --

15 A. I do. PC909 or PC40. Yes.

16 Q. What are you referring to when you say  
17 "PC909" or "PC40"?

18 A. Well, PC40 was the actual public  
19 chapter that SB228 became in 2021. And then  
20 PC909 was the updated version in 20-- -- this  
21 past legislative session, 2022.

1 Q. Okay. What's the difference between  
2 the two public chapters that you're referencing?

3 A. Well, one passed in 2021, and one was  
4 in 2022, and the 2022 legislation updated and  
5 added to PC40.

6 Q. What are the substantive differences  
7 between the two versions of the statute?

8 A. The first version spoke to, again,  
9 interscholastic sports and students  
10 participating, based on their sex at the time,  
11 of birth.

12 And the second -- the subsequent update  
13 to that law required the state board to  
14 promulgate rules around the withholding of funds  
15 for noncompliance with that previous law.

16 Q. Okay.

17 MR. SCHOENFELD: John, can you bring up  
18 the July 22, 2022, board minutes?

19 MR. O'TOOLE: Okay.

20 BY MR. SCHOENFELD:

21 Q. Dr. Morrison, would you just let me

1 know when you have access to it?

2 A. Yep. Give me just a minute.

3 Okay. I've got it up.

4 Q. Okay. And you said you were at this  
5 meeting, correct?

6 A. Correct.

7 Q. Do you see item "N" on the agenda  
8 refers to "Interscholastic Athletics Rule 0520,"  
9 dash, "01," dash, "23"?

10 A. Hang on one second. I'm looking at  
11 item "N, First Reading"?

12 Q. Correct.

13 A. Yes, I'm with you. Uh-huh.

14 Q. And it refers to a "First reading of  
15 item to create an interscholastic athletics rule  
16 pursuant to public chapter 909 of the 2022  
17 legislative session," right?

18 A. Yes.

19 Q. Is this the first board meeting you can  
20 recall where SB228, or any of its iterations,  
21 was discussed by the Board?



1           A.    It is.

2           Q.    Do you recall any discussion with any  
3 board members, or among the Board, about SB228,  
4 prior to the July 20, 2022, board meeting?

5           A.    I do not.

6           Q.    Can you explain what a "first reading"  
7 is?

8           A.    Sure.  According to our meeting policy,  
9 we have two readings on most every rule and  
10 policy that comes before the Board.  The first  
11 reading is the attempt to look at a strong draft  
12 and get feedback from our board.

13                   And then subsequently, if it's a rule,  
14 feedback from the public, from other  
15 stakeholders, through the -- the rule-making  
16 hearing to make adjustments to that first reading  
17 language, prior to bringing it back before the  
18 Board for a final reading, at which point, once  
19 the Board votes, then that final version is what  
20 goes on to the secretary of state's office and to  
21 make laws.

1 Q. Did you say "a strong version"? Was  
2 that the language you used?

3 A. I wouldn't say -- it's a working draft.  
4 I mean, that first draft, again, our -- our team  
5 of staff members, as well as sometimes the  
6 department of education, depending on the actual  
7 item, works hard to ensure that what comes on  
8 the first reading represents our best work, our  
9 best effort.

10 But, again, it is a first reading;  
11 meaning, that it's subject to amendments,  
12 adjustments, feedback. It essentially starts a  
13 public conversation that results often in changes  
14 before final reading.

15 Q. Does the staff preparing a first  
16 reading usually consult with outside  
17 stakeholders or collect input into the first  
18 version that's, then, given the first reading?

19 A. Sometimes. Again, you know -- and you  
20 can see, based on that meeting, we'll have  
21 30-plus items coming before the Board. And some

1 items will have more engagement on the front-end  
2 than others, depending on the nature of the item  
3 and time line that we're working under.

4 Q. Okay.

5 MR. SCHOENFELD: John, can you put up  
6 the first reading?

7 BY MR. SCHOENFELD:

8 Q. And, Dr. Morrison, tell me when you  
9 have access to that.

10 (Off record discussion.)

11 THE WITNESS: I have it here.

12 BY MR. SCHOENFELD:

13 Q. Okay.

14 A. Just the cover sheet.

15 Q. So that was my question: "Is this the  
16 cover sheet?"

17 A. This is the cover sheet. This is not  
18 the actual item.

19 Q. Where is the actual item found?

20 A. If you go back to the Meeting Agenda  
21 and click the link in the text describing the

1 item, that will be the actual item.

2 Q. Okay. So do you know who specifically  
3 prepared this cover sheet?

4 A. I believe it was our general counsel.  
5 But honestly, I'm not sure if this was prepared  
6 by -- and I don't know that for sure. It could  
7 have been the department.

8 Q. Okay. The first sentence says that:

9 "The portion of the Tennessee code  
10 requires LEAs to adopt or enforce  
11 policies to ensure students gender, for  
12 purposes of participation in a public  
13 middle school or high school  
14 interscholastic athletic activity or  
15 event be determined by the student's  
16 sex, at the time of the student's  
17 birth, as indicated on the student's  
18 original birth certificate."

19 What does "gender" mean in that  
20 context, and then what does "sex" mean in that  
21 context?

1 MS. BERMEYER: Objection to form.

2 THE WITNESS: My reading is that they  
3 are interchangeable, for all intents and  
4 purposes here.

5 Gender. I -- I -- guess you can -- let  
6 me -- let me just -- take one more chance to  
7 answer your question.

8 "To adopt and enforce policies to  
9 ensure a student's gender for purposes  
10 of participation in a public middle  
11 school or high school interscholastic  
12 activity be determined by the student's  
13 sex, at the time of birth."

14 Sex being male or female; again, in  
15 terms of anatomy and physiological  
16 characteristics at the time of birth.

17 Gender being what is construed to be  
18 that sort of sexual identification.

19 And in -- in this case, both need to be  
20 one and the same for the purposes of  
21 interscholastic activities at the middle, high

1 school level.

2 BY MR. SCHOENFELD:

3 Q. The Background Section, then, goes on  
4 to say that:

5 "Chapter 909 requires the  
6 commissioner to withhold a portion of  
7 the state education finance funds from  
8 the LEA that fails or refuses to  
9 comply" with the section we've just  
10 discussed; is that right?

11 A. Correct.

12 Q. Is it -- do most rules that the state  
13 board of education is required to implement have  
14 provisions like this one, providing for a policy  
15 for when an LEA fails or refuses to comply with  
16 the substance requirement?

17 A. No.

18 MS. BERMEYER: Object to form.

19 THE WITNESS: Not all of our rules  
20 require that. And I should say not every law  
21 requires that that be part of our rules.

1 BY MR. SCHOENFELD:

2 Q. Was there an expectation that LEAs  
3 would fail or refuse to comply with the law,  
4 when this was being drafted?

5 MS. BERMEYER: Object to the form.

6 THE WITNESS: That is, sort of, a, you  
7 know -- again, legislative intent, and I can't  
8 speak to that.

9 BY MR. SCHOENFELD:

10 Q. What's your understanding of why the  
11 state board of education was required to come up  
12 with a protocol to ensure compliance with the  
13 law and establish a procedure governing the  
14 withholding of state funds, due to  
15 noncompliance?

16 MS. BERMEYER: Object to form.

17 THE WITNESS: That's where, again, I  
18 think PC40 speaks for itself. The, sort of,  
19 preamble clauses are, to our best knowledge, the  
20 legislative intent behind this legislation and  
21 the requirement for these rules. But that's all

1 I can speak to, is my understanding of what was  
2 in that original law.

3 BY MR. SCHOENFELD:

4 Q. Then it says that:

5 "The state board staff will  
6 conduct a rule-making hearing between  
7 the first and final reading to collect  
8 public comments."

9 Has that happened?

10 A. No. It's scheduled, I believe, for  
11 September 15th. So a few weeks from now. Our  
12 next meeting will be at the end of October. So  
13 this -- this rule will be on final reading at  
14 that point in time.

15 Q. I apologize. You said that the  
16 rule-making hearing is schedule for sometime in  
17 September?

18 A. September 15th, I believe.

19 Q. Can you describe to me how that  
20 rule-making hearing actually happens?

21 A. Sure. It gets public noticed, in



1 education have any sort of formal influence over  
2 the Board's decision-making or the operation of  
3 the Board?

4 A. She does not.

5 Q. Does the state commissioner ever  
6 testify before the Board?

7 A. I wouldn't consider it testimony so  
8 much as she sits with the Board, because she's  
9 prepared to answer questions related to  
10 discussion of items that are before the Board.

11 Q. Does she attend board meetings?

12 A. She does.

13 Q. Okay. What's the relationship between  
14 the state board of education and the Texas  
15 Secondary School Athletic Association?

16 A. None. We are in Tennessee.

17 Q. Sorry. The relationship between the  
18 state board of education and the Tennessee  
19 Secondary School Athletic Association?

20 A. Again, "relationship" is sort of a  
21 vague term. But we have no authority under the

1 law, meaning the state board, to regulate or  
2 confer according to TSSAA, so.

3 Q. Is the TSSAA, insofar as you know,  
4 established by state law?

5 A. Correct.

6 Q. And it's established by a law of the  
7 general assembly?

8 A. Correct.

9 Q. And does it -- does the TSSAA have any  
10 relationship to the Tennessee department of  
11 education?

12 A. I can't speak to that in terms of their  
13 interaction. There's not a formal relationship  
14 that I'm aware of.

15 Q. Okay. And does the state board -- and  
16 you may have answered this question already, but  
17 does the state board have any role in overseeing  
18 the TSSAA?

19 A. We do not.

20 Q. Does the Board ever solicit input or  
21 information from the TSSAA?

1           A.     It's very rare that we have a rule like  
2           the one in question before the Board, but  
3           certainly, our board members may ask staff to  
4           engage TSSAA on something like this to get their  
5           input as part of the public feedback process,  
6           but that's the extent to which we would be  
7           interacting with the TSSAA.

8           Q.     And TSSAA promulgate rules the way the  
9           state board of education does?

10          A.     I'm not sure.

11          Q.     Is the TSSAA required to comply with  
12          any applicable rules that the board of education  
13          promulgates?

14          A.     Again, we don't have authority over the  
15          TSSAA, so I'm struggling to think of any rules  
16          that they would have comply with, other than --  
17          again, there were some things related to COVID  
18          that -- around sports and activities, but none  
19          that I'm aware of.

20          Q.     Okay. So in the area of  
21          interscholastic athletics, LEAs and their

1 schools are required to comply both with rules  
2 promulgated by the TSSAA and with rules  
3 promulgated by the state board; is that right?

4 MS. BERMEYER: Object to form.

5 THE WITNESS: They're -- they're  
6 required to abide -- abide by rules promulgated  
7 by the state board. I am not sure if the  
8 TSSA -- TSSAA promulgates rules in the same way  
9 that we do. But they are -- TSSAA is the  
10 governing body for sports in public schools in  
11 Tennessee.

12 BY MR. SCHOENFELD:

13 Q. Okay. Are you familiar with an  
14 organization called the "Ed Trust" --

15 A. I am --

16 Q. -- Ed Trust?

17 Sorry, let me -- I think we spoke over  
18 each other. Let me just ask the question again.

19 Are you aware with an organization  
20 called the "Ed Trust" or the "Education Trust"?

21 A. Yes.

1 Q. What is it?

2 A. It's a nonprofit advocacy group. It  
3 works nationally and in Tennessee.

4 Q. What sort of work do they do?

5 A. They're looking at all kinds of data  
6 and research related to K12 public education and  
7 often through an equity lens trying to ensure  
8 the best possible opportunities for all  
9 students.

10 Q. Does the Tennessee Board of Education  
11 interact with Ed Trust in any formal way?

12 A. Not in any formal way, but sometimes  
13 through our item-review process, certainly,  
14 yeah, in that way.

15 Q. What's the "item-review process"?

16 A. Well, as I mentioned, when things are  
17 up on first reading and between final reading,  
18 we get feedback from a number of stakeholders.  
19 Sometimes groups like Ed Trust are part of that  
20 process.

21 Q. Does the state board of education

1 from Ed Trust?

2 A. Tennessee --

3 MS. BERMEYER: Yeah, object to form.

4 THE WITNESS: -- Tennessee Board of  
5 Education's response, yes.

6 BY MR. SCHOENFELD:

7 Q. Okay. And does the state board of  
8 education ever get solicitations like this from  
9 Ed Trust or other researchers?

10 A. Well, again, the department of  
11 education is the body that oversees data system  
12 that are the subject of a lot of these requests.

13 In this case, I don't recall a similar  
14 request, from Ed Trust, about these content areas  
15 that are linked here. It would be possible that  
16 a group like Ed Trust could send something to us,  
17 and depending on the nature of request, we would  
18 either be able to fulfill it or we would refer  
19 them to the department of education.

20 Q. Okay. So if you --

21 MR. SCHOENFELD: John, can you post up

1 the Excel spreadsheet?

2 THE WITNESS: Okay. This one I may  
3 need to download. Wait just a second. It's  
4 hard to see. Okay. I haven't pulled it up --  
5 but I have it up here.

6 BY MR. SCHOENFELD:

7 Q. Okay. So you'll see on Sheet 1, it has  
8 certain criteria, and then information for a  
9 number of states. And on the second tab it  
10 says, "TDOE Feedback."

11 Do you see that?

12 A. I do.

13 Q. All right. So I'm interested in the  
14 tab called "TDOE Feedback."

15 Do you understand "TDOE" to mean  
16 Tennessee Department of Education?

17 A. Yes.

18 Q. Okay. And I'm focused on criterion 2E,  
19 which is in row 8.

20 Do you see that?

21 A. Yes, I do.

1 Q. And it's asking about whether the state  
2 has policies in place that set the conditions  
3 for districts to ensure equitable and inclusive  
4 learning and extracurricular environments for  
5 K12 students.

6 Do you see that?

7 A. I do.

8 Q. And the question of whether the state  
9 has such policies, would those policies, if they  
10 existed, be state department of education  
11 policies or state board policies?

12 A. So the way they're using policies here,  
13 really, in our case, would be a rule, and that's  
14 the rule that we've been discussing. The only  
15 thing that we have in place is the one that's in  
16 the process of being promulgated.

17 Q. Okay. So apart from the rule that  
18 we've been talking about, does the State of  
19 Tennessee have policies or rules in place to set  
20 conditions to ensure equitable and inclusive  
21 learning and extracurricular environments?



1           A.     So that's a broader subset of potential  
2 policies or rules. I mean, it talks  
3 anti-bullying and other elements of ensuring  
4 equitable inclusive learning.

5                     I'd have to review our own policies to  
6 tell specifically what things might fall under  
7 those categories. So --

8           Q.     Well, sitting here today, are you aware  
9 of any rules or policies that the state board of  
10 education has promulgated that are designed to  
11 ensure equitable and inclusive learning and  
12 extracurricular environments for students?

13           A.     That's a broad umbrella for policies  
14 and rules. And so, yes, I would argue, you  
15 know, things around, sort of, discipline and  
16 extracurricular, ensuring that students have  
17 access to rigorous course work. There are a  
18 number of things around educator quality that we  
19 have policies around that would fall under,  
20 again, ensuring that students have equitable  
21 inclusive environments for learning.

1           Q.    So what state boards and policies  
2           ensure equitable and inclusive extracurricular  
3           experiences?

4           A.    I don't know that we have -- again,  
5           this is not something that I have prepared for  
6           as part this deposition.  So I am not prepare to  
7           tell you chapter and verse.

8                    Off the top of my head, I can't think of  
9           anything that speaks to extracurricular  
10          activities.  I can think of things that are more  
11          relevant to course work around, again, ensuring  
12          some of those aspects of the environment for  
13          learning.

14          Q.    Okay.  The second column is Ed Trust's  
15          input to this.  And the third column is TDOE's  
16          feedback.

17                   The second column says that Tennessee,  
18          quote, "has discriminatory legislation barring  
19          gender affirming participation of transgender  
20          students athletes."

21                   Do you see that?

1           A.    I do.

2           Q.    What do you understand Ed Trust to be  
3 saying here about the legislation that's under  
4 consideration in this case?

5           MS. BERMEYER: Object to form.

6           THE WITNESS: I mean, I think their  
7 language speaks for itself. They're referring  
8 to same law that we've been discussing today.  
9 That is my understanding of that language.

10          BY MR. SCHOENFELD:

11          Q.    Do you have any understanding of why  
12 they view it as discriminatory?

13          MS. BERMEYER: Object to form.

14          THE WITNESS: I'm not sure that that's  
15 relevant.

16          BY MR. SCHOENFELD:

17          Q.    What do you mean that's not relevant?

18          A.    Why would -- repeat your question, I  
19 guess I should say.

20          Q.    Sure. I think I said: Do you have any  
21 understanding of what they mean or why they view

1 the legislation as discriminatory?

2 MS. BERMEYER: Object to form.

3 THE WITNESS: Well, it says here, "Has  
4 discriminatory legislation barring gender  
5 affirming participation of transgender student  
6 athletes and only allows students to compete  
7 based on sex listed on an existing birth  
8 certificate."

9 So they are saying that to not allow a  
10 student who identifies as male or female but,  
11 you know, based on their sex, at birth, might  
12 be, you know, not the same as the gender  
13 identifiers that that is discriminatory. That's  
14 my understanding on what they're saying there.

15 BY MR. SCHOENFELD:

16 Q. And do you have any view as to whether  
17 that's an accurate characterization of the  
18 legislation?

19 MS. BERMEYER: Object to form.

20 THE WITNESS: I -- I don't have a view  
21 on that. I've been focused on implementing the

1 law as it's currently written.

2 BY MR. SCHOENFELD:

3 Q. Okay. What is the state board of  
4 education's role in promulgating the Tennessee  
5 Teacher Code of Ethics?

6 A. Well, it's -- again, I'd have to look  
7 back the statute the governs -- the Tennessee  
8 Code of Ethics, I have not done that in a while.  
9 But we have, in our rules and policies, a  
10 Tennessee Code of Ethics that we use primarily  
11 in relation to license or discipline cases.

12 Q. Has the Teacher Code of Ethics been  
13 revised, or adjusted, or considered during your  
14 tenure as executive director of the state board  
15 of education?

16 A. I believe that it has, but I can't tell  
17 you exactly when.

18 Q. Do you consult it routinely in the  
19 course of participating in licensure disputes?

20 A. We do reference it, for some of our  
21 cases, in licensure disciplinary conversations,

1 THE WITNESS: No. The Board is not  
2 aware.

3 BY MR. SCHOENFELD:

4 Q. Has the Board received any information  
5 in the course of the rule-making process about  
6 the number of transgender students participating  
7 in interscholastic sports or the number of  
8 students who may have been denied an opportunity  
9 to advance, as a result of the participation of  
10 transgender students in interscholastic sports?

11 A. We have not.

12 Q. Interrogatory No. 8 asks the Board to:  
13 "Describe the impact of the  
14 participation of students who are  
15 transgender and interscholastic sports;  
16 what impact there's been on cisgender  
17 students including the safety of  
18 cisgender students who participate in  
19 interscholastic sports."

20 Are you aware of any impact that the  
21 participation of students who are transgender

1 and interscholastic sports in Tennessee has had  
2 on has -- had on non-transgender students  
3 playing interscholastic sports in Tennessee?

4 A. No, I have no knowledge or awareness of  
5 that.

6 Q. And has the Board made any efforts to  
7 ascertain what the impact of that participation  
8 is?

9 A. I'm not sure how we would do that; and,  
10 no, we have not.

11 Q. So as part of the rule-making process  
12 to implement this statute, the Board hasn't  
13 undertaken any efforts to figure out whether  
14 there would be an impact of having transgender  
15 students participate in interscholastic sports  
16 on non-transgender students?

17 A. No. That's outside the scope of what  
18 we're asked to do, under the law.

19 Q. Why is that outside the scope?

20 A. We're asked to promulgate rules  
21 specifically about the commissioner's ability to

1 withhold funds from LEA who did not comply with  
2 the law.

3 Q. I see. So your view is that the  
4 delegation to the Board relates exclusively to  
5 the enforcement of the statute and not the  
6 actual substantive requirements of the statute?

7 MS. BERGMEYER: Object to form.

8 THE WITNESS: I understand our  
9 responsibility related to this law to be about  
10 promulgating rules related to the commissioner's  
11 ability to withhold funds for non-compliance  
12 with this law. That really is the role of the  
13 Board, under that legislation.

14 Q. The first reading of the bill includes  
15 a provision requiring each local board of  
16 education and each governing body of a public  
17 charter school to adopt and enforce a policy in  
18 compliance with the statute and adopt written  
19 procedures to ensure proper implementation of  
20 the statute; is that right?

21 A. Correct.



1 Q. And would those policies go to the  
2 Board for any kind of review?

3 A. No, not LEA policies.

4 Q. Who would review those for compliance  
5 with the statute?

6 A. The department of education.

7 Q. And if the department of education  
8 found that there was something deficient in the  
9 policy or procedure that the LEA adopted, would  
10 that information, then, come to the state board  
11 to reach a determination as to whether funding  
12 should be withdrawn from the LEA, or is that  
13 something that the department does to implement  
14 the policy that the state board has devised?

15 A. Yes. The department would be purely  
16 the property of the state department of  
17 education, in terms of monitoring and enforcing  
18 those LEA policies and then the ability to  
19 withhold funds for non-compliance. That's not  
20 something that comes to the Board.

21 MR. SCHOENFELD: John, can you put up

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Dawn L. Halcisak, Court Reporter and  
3 Notary Public in and for the State of Maryland,  
4 the officer before whom the foregoing Remote  
5 Deposition was taken, do hereby certify that the  
6 foregoing transcript is a true and correct  
7 record of the testimony given; that said  
8 testimony was taken by me stenographically and  
9 thereafter reduced to typewriting under my  
10 direction and that I am neither counsel for,  
11 related to, nor employed by any of the parties  
12 to this case and have no interest, financial or  
13 otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set  
15 my hand and affixed my notarial seal this 7th  
16 day of September 2022.

17 My commission expires:

18 At

19 

20 NOTARY PUBLIC IN AND FOR THE  
21 STATE OF MARYLAND

# EXHIBIT 7

1 IN THE UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF TENNESSEE  
3 NASHVILLE DIVISION

4 \_\_\_\_\_  
5 L.E., by his next friends and  
6 parents, SHELLEY ESQUIVEL and  
7 MARIO ESQUIVEL,  
8 Plaintiff,

9 v.

Case No.

10 BILL LEE, et al.,  
11 Defendants.

3:21-cv-00835

12 \_\_\_\_\_  
13 VIDEOCONFERENCE DEPOSITION OF  
14 JENNIFER HEMMELGARN

15 DATE: Friday, July 29, 2022  
16 TIME: 9:33 a.m. CDT/10:33 a.m. EDT  
17 LOCATION: Remote Proceeding  
18 Washington, DC 20005  
19 REPORTED BY: Janel Folsom, Notary Public  
20 JOB NO.: 5335467  
21  
22

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF L.E., by his next friends and  
parents, SHELLEY ESQUIVEL and MARIO ESQUIVEL:

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A P P E A R A N C E S (Cont'd)

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INDIVIDUAL MEMBERS OF TENNESSEE STATE BOARD OF  
EDUCATION IN THEIR OFFICIAL CAPACITIES, AND THE  
TENNESSEE STATE BOARD OF EDUCATION:

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A P P E A R A N C E S (Cont'd)

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A P P E A R A N C E S (Cont'd)

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20 (Exhibits retained by counsel.)

21

22

1 just ask that you wait for me to complete asking the  
2 question until you answer. And in a similar vein, I  
3 will refrain from asking my next question until you  
4 complete your answer. Is that okay?

5 A Yes.

6 Q Great. And if I ask a question and you do  
7 not understand or need further clarification, I would  
8 ask that you ask me to clarify or to elaborate.  
9 Otherwise, I will assume if you answer the question  
10 that you understood the question. Is that okay?

11 A Yes.

12 Q Okay. Great. And so sort of on a similar  
13 vein, I wanted to first discuss a few terms that I may  
14 be using during the deposition just to make sure we  
15 are on the same page about what they mean.

16 So the first is the word "transgender."  
17 When I use that word, I'm referring to an individual  
18 whose sex assigned at birth is different from the  
19 gender that that person identifies. So, for example,  
20 if someone was assigned the sex of female at birth but  
21 identifies as a male, I will refer to that person as a  
22 transgender boy or transgender male. Does that make

1 sense?

2 A Yes.

3 Q Terrific. And another term I will use is  
4 "cisgender," which means that the person's sex  
5 assigned at birth is in alignment with the gender that  
6 that person identifies in. So for example, if someone  
7 assigned the sex female at birth identifies as female,  
8 I will refer to that person as a cisgender girl or a  
9 cisgender woman. Does that make sense?

10 A Yes.

11 Q Terrific. And I will try and take a break  
12 every hour as well as a somewhat longer break around,  
13 say, 12:30 for lunch. But if you need breaks at any  
14 other time, please just let me know. And the only  
15 thing I would ask is that we take a break after I  
16 finish asking a question and then you answer that  
17 question, and then we could take a break at that  
18 point. Is that all right?

19 A Yes.

20 Q And is there anything that would prevent you  
21 from answering my questions truthfully today?

22 A No.

1           Q       Great, thank you. So now I would like to  
2 ask some questions about the overall structure of the  
3 public school system in Knox County.

4                    So first, would you please tell me what role  
5 Knox County Schools plays in overseeing the education  
6 system in Knox County?

7           A       The Board of -- the Knox County Board of  
8 Education is charged with -- I guess a way to say it  
9 is implementing the state's education system at a  
10 local level. The Knox County Board of Education  
11 develops policies that apply to the School District,  
12 and Knox County Schools employees are charged with  
13 following and implementing those policies.

14           Q       And who composes the Knox County Board?

15           A       It's a nine-member board composed of one  
16 representative from each of the nine districts and is  
17 led by a chair and a vice chair. That would be one of  
18 those nine members is a chair and one of those nine  
19 members is a vice chair.

20           Q       When you say nine districts, does that mean  
21 Knox County is geographically split into nine  
22 subcomponents?

1 A Correct.

2 Q And how are the representatives of each of  
3 those districts chosen?

4 A They are elected.

5 Q By the general public?

6 A The -- by the constituents in their  
7 district.

8 Q Got it. And how are the chair and vice  
9 chair chosen among the nine members?

10 A There is a nomination and vote  
11 among -- among the nine members.

12 Q Okay. So only the nine members vote on who  
13 is chair and who is vice chair.

14 A Correct.

15 Q Okay. And how is the -- or, sorry. Who is  
16 the head of Knox County Schools?

17 A The superintendent.

18 Q And how is the superintendent chosen?

19 A Superintendent is chosen by the Board of  
20 Education.

21 Q Okay. And does the superintendent serve for  
22 a set term?

1           A     The -- yes, as determined by the contract  
2     agreed to with the Board.

3           Q     I see. Okay. And is there a limit on how  
4     long someone can serve as superintendent?

5           A     I am not aware of one, if there is.

6           Q     Okay. And who is currently Knox County  
7     Schools superintendent?

8           A     Dr. Jon Rysewyk.

9           Q     When did he begin in that role?

10          A     I believe the official date that he began  
11     was June 4 of 2022.

12          Q     Okay. And who was his predecessor?

13          A     Robert Thomas.

14          Q     And how long did he serve in that role?

15          A     April of 2017, I believe, is when he began  
16     that role.

17          Q     Okay. And how many schools are under the  
18     jurisdiction of Knox County -- or the Knox County --  
19     or the Knox County Board.

20                         MS. JERNIGAN-JOHNSON: Object to the  
21     form.

22          A     The District is composed of 90 schools. Two

1 of those are virtual.

2 Q And so 88 are in person?

3 A Correct.

4 Q And how are those schools roughly  
5 distributed between elementary schools, middle  
6 schools, and high schools numerically?

7 A Roughly 52 -- these are physical  
8 buildings -- 52 elementary, 16 middle, 16 high, and 6  
9 alternative schools --

10 Q Okay.

11 A -- that don't fit within one of those other  
12 three categories.

13 Q Got it. So all of the schools within Knox  
14 County Schools can fit in either elementary, middle,  
15 high, or alternative? There isn't a fifth category of  
16 schools?

17 A Correct, although alternative is -- makes  
18 up -- is made up of a couple different kinds. So  
19 there is a -- a special day school in that category.  
20 There is a dedicated preschool in that category. But  
21 it is six other that don't fit within elementary,  
22 middle, or high.

1           Q     I see.  And is Farragut High School one of  
2     the schools under the jurisdiction of Knox County  
3     Schools?

4           A     Yes.

5                         MS. JERNIGAN-JOHNSON:  Object to the  
6     form.

7           A     Yes.

8           Q     What sort of oversight or control does Knox  
9     County School have over day-to-day operations of  
10    Farragut High School?

11          A     Day-to-day operations are generally overseen  
12    by the principal of the school building with the  
13    understanding that -- that all principals are  
14    following the same set of Board policies and  
15    procedures.  But general oversight of day-to-day  
16    operations would be the school principal.

17          Q     And what about oversight or control over  
18    let's call them programmatic schoolwide policies?  
19    What sort of control or oversight does Knox County  
20    Schools have over that -- those --

21                         MS. JERNIGAN-JOHNSON:  Object --

22    //



1 BY MR. STRONGIN:

2 Q -- that an individual school may issue?

3 MS. JERNIGAN-JOHNSON: Object to the  
4 form.

5 A Can you give an example of what you mean by  
6 programmatic school policies?

7 Q So a potential example, and I'm not saying  
8 any individual school has one, but let's say a school  
9 says for any student who has an unexcused -- has five  
10 unexcused absences in a quarter, that student will  
11 serve one afternoon in detention after school,  
12 something like that.

13 A The District has an attendance policy that  
14 is applied uniformly across the District and also a  
15 disciplinary policy that is applied uniformly across  
16 the District.

17 Q Okay. And so circling back to something you  
18 said earlier, the Knox County Board of Education  
19 creates -- does the Knox County Board of Education  
20 create policies that govern the schools in the  
21 District?

22 A Yes.

1 several -- there's several items with regard to  
2 interscholastic athletics that are covered inside the  
3 policy.

4 MR. STRONGIN: Okay. Great. And now I  
5 would like to introduce Exhibit 1 here. So, Lucas, if  
6 you could pull up tab 2 on the exhibit list and  
7 introduce that as Exhibit 1, that would be great. And  
8 then if you could let me know when you have it in  
9 front of you. It may take a minute.

10 (Exhibit 1 was marked for  
11 identification.)

12 MR. CAMERON-VAUGHN: It's available.

13 MR. STRONGIN: It's available?

14 MR. CAMERON-VAUGHN: Yes.

15 BY MR. STRONGIN:

16 Q Okay. Ms. Hemmelgarn, do you see the  
17 exhibit in front of you, Exhibit 1?

18 A I do. I did. Yeah, I do, yes.

19 Q Okay. And do you see where it says --  
20 there's a box near the top of the screen that says  
21 Knox County Board of Education Policy?

22 A Yes.

1 Q And then do you see under the word  
2 "education," there's a smaller box that says I-171?

3 A Yes.

4 Q Is this the I-171 policy that you were just  
5 discussing?

6 A Yes --

7 Q And is -- oh, I'm sorry.

8 A The -- the one I -- I reviewed in  
9 anticipation of the deposition did not have the  
10 redlines, but yes.

11 Q So when it did not have the redlines, did it  
12 have those words, just not in redline, or did it not  
13 have those words?

14 A It had those words, yes.

15 Q Okay. Terrific. And so you -- and so is  
16 this policy -- would you consider this policy an  
17 example of an athletics-related policy that the Knox  
18 County Board enacted?

19 A Yes.

20 Q And is this a policy that Knox County  
21 Schools enforces?

22 A Yes.

1 Q And are all schools in Knox County required  
2 to abide by this policy?

3 A Yes.

4 Q How specifically does Knox County Schools  
5 enforce this policy?

6 A Enforcement would be done by informing  
7 employees and -- and relevant persons that it exists.  
8 As far as -- that is -- that is the initial  
9 enforcement, is informing people that it exists,  
10 employees and -- and relevant persons.

11 And we have a lot of policies, so typically  
12 outside of that, enforcement comes when we learn that  
13 there has been a violation or there are questions as  
14 to how to implement.

15 Q So does Knox County Schools perform, let's  
16 call them audits or checks to see if schools are  
17 implementing the policy on its own initiative, or  
18 after that initial enforcement, does Knox County  
19 Schools tends to wait for a violation to be reported?

20 MS. JERNIGAN-JOHNSON: Object to the  
21 form.

22 A There is an expectation that all employees

1 follow Knox County Board of Education policies. There  
2 is information to employees when policies change.  
3 That -- that could be in the form of targeting a  
4 specific audience to tell them of that policy change,  
5 or it could be in the form of being available to see  
6 that at the two public readings or the two public  
7 meetings, first reading and second reading.

8 With regard to audits, I mean in the -- in  
9 the term -- I would say no to audits, but there could  
10 be -- I mean the principal at the school level, if  
11 there has been -- if the -- for example, if the  
12 principal has had to address violations of a certain  
13 policy, there may be more education for all employees  
14 on that policy. That -- that wouldn't be referencing  
15 this one specifically necessarily, just in general all  
16 of our policies.

17 Q And what would happen to a school that  
18 contravened this policy?

19 MS. JERNIGAN-JOHNSON: Object to the  
20 form.

21 A Can -- can you repeat that? I don't think I  
22 understand what you're asking.

1 Q If Knox County Schools were to learn that a  
2 school had violated the I-171 policy, would there be  
3 sanctions or consequences for the school?

4 MS. JERNIGAN-JOHNSON: Object to the  
5 form.

6 A The -- if there was a policy violation  
7 reported, the District would do an investigation to  
8 determine if there had been a policy violation and to  
9 what extent that existed. And then, yes, there would  
10 be action taken.

11 Q Is there a particular -- what would that  
12 particular action be?

13 A It would depend on the circumstances.

14 Q Okay. And so now I'd like for you to look  
15 at the second paragraph of the I-171 policy, the  
16 paragraph beginning with, "The bylaws of." Do you see  
17 that paragraph?

18 A Yes.

19 Q What is the Tennessee Secondary School  
20 Athletic Association?

21 A It is an association that governs  
22 competitive athletics across the state at the

1 secondary level. That -- that would be the most  
2 concise way that I think I could describe it.

3 Q And what role does Knox County Schools play  
4 with the Tennessee Secondary School Athletic  
5 Association?

6 MS. JERNIGAN-JOHNSON: Object to the  
7 form.

8 A TSSAA is a membership organization, so  
9 members that elect to participate are governed by the  
10 bylaws or rules of TSSAA. Knox County Schools, high  
11 schools, each of the 16 traditional high schools are  
12 members of TSSAA.

13 Q So is membership at the individual school  
14 level, then?

15 A Membership is at the individual school  
16 level, yes.

17 Q And is Farragut High School a member of the  
18 TSSAA?

19 A Yes.

20 Q Is TSSAA membership a prerequisite to a  
21 school having an interscholastic athletic program?

22 MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 A No. It -- it is a -- not to my  
3 understanding, but all traditional high schools in  
4 Knox County Schools have opted to become members in  
5 TSSAA.

6 Q Is compliance with TSSAA policies -- strike  
7 that.

8 What discretion or leeway does the Knox  
9 County Board of Education have to enact or adopt a  
10 policy inconsistent with TSSAA bylaws or policies?

11 MS. JERNIGAN-JOHNSON: Object to the  
12 form.

13 A Knox County Schools policies would not -- do  
14 not only apply to interscholastic athletics. So Knox  
15 County Schools policies would not only apply to  
16 members of TSSAA.

17 Q If Knox County Schools -- I'm sorry.

18 If the Knox County School -- County Board of  
19 Education wanted to adopt a policy pertaining to  
20 interscholastic athletics that was inconsistent with a  
21 TSSAA policy, which policy would Knox County Schools  
22 enforce?



1 MS. JERNIGAN-JOHNSON: Object to the  
2 form.

3 MS. BERGMEYER: Same objection.

4 A Knox County Schools would enforce the Knox  
5 County Board of Education policy.

6 Q Okay. And what -- let me put it this way.  
7 Do individual schools have authority or  
8 discretion to not follow TSSAA policies?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 MS. BERGMEYER: Same objection.

12 A Can you say that again, please?

13 Q What discretion or leeway do individual  
14 schools in Knox County have to not follow TSSAA  
15 policies?

16 A Member schools upon membership are choosing  
17 for interscholastic sports to be governed by TSSAA  
18 policies. As -- as far as -- I don't think I can  
19 speak on behalf of TSSAA as to what -- if that is what  
20 you are asking me. I don't -- I don't think I'm  
21 understanding your question appropriately.

22 Q I guess my question is -- why don't

1 we -- let's strike that. I will ask -- I will ask  
2 this question.

3 What -- or, sorry. What entity is  
4 responsible for enforcing TSSAA policies?

5 A TSSAA.

6 Q Does Knox County Schools enforce TSSAA  
7 policies?

8 A Not to my knowledge.

9 Q Has Knox County Board of Education adopted a  
10 policy that the interscholastic athletic programs of  
11 schools within Knox County Schools abide by TSSAA  
12 policies?

13 A The interscholastic athletics policy, the --  
14 the paragraph you were just referencing, says, "Bylaws  
15 of the TSSAA shall regulate the operation and control  
16 of secondary athletics."

17 Q So if the TSSAA changed its bylaws or  
18 policy, would that amendment to the TSSAA bylaws and  
19 policy automatically apply to the Knox County Schools  
20 without further action from the Knox County Board of  
21 Education?

22 MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 A It would apply to the members of TSSAA.

3 Q Okay. Thank you. So what -- so you  
4 testified earlier that if the TSSAA and the Knox  
5 County Board of Education adopted policies that were  
6 inconsistent with each other, the Knox County  
7 School -- Knox County Schools would enforce the policy  
8 of the Knox County Board of Education; is that  
9 correct?

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form.

12 A Yes.

13 Q In that situation where the TSSAA and Knox  
14 County Board of Education have adopted inconsistent  
15 policies, what policy should individual schools in  
16 Knox County Schools follow?

17 MS. JERNIGAN-JOHNSON: Object to the  
18 form.

19 A If -- if TSSAA and Knox County Schools  
20 had -- had policies that said different things, what  
21 should our schools follow? Is that what the question  
22 is?

1 Q Yes.

2 A Okay. The -- the schools would follow Knox  
3 County's Board of Education policies if they were  
4 consistent -- inconsistent.

5 Q Okay. Thank you. So now I'm going to  
6 switch gears a little bit away from the TSSAA and ask  
7 you, Ms. Hemmelgarn, Are interscholastic sports teams  
8 in Knox County Schools separated by sex?

9 A Some are, yes.

10 Q Are majority of teams separated by sex?

11 A Yes.

12 Q What are some examples of teams that are not  
13 separated by sex?

14 A Football is one example.

15 Q Oh, I'm sorry.

16 A That's one example that comes to mind. Do  
17 you want -- are you asking for an exhaustive list,  
18 or -- you asked for an example.

19 Q Oh, yeah. No, that's fine. If you had to  
20 estimate, would you say more than three-  
21 quarters -- would you say roughly three-quarters or  
22 more of interscholastic teams in Knox County Schools

1 are separated by sex?

2 MS. JERNIGAN-JOHNSON: Object to the  
3 form.

4 MS. BERGMEYER: Same objection.

5 A Say that again?

6 Q Would you say that roughly three-quarters or  
7 more of the interscholastic athletic teams in Knox  
8 County Schools are separated by sex?

9 MS. BERGMEYER: Same objection.

10 A I don't know a specific percentage, but I  
11 would agree that more are separated by sex than are  
12 not.

13 Q Okay. And so you gave the example of the  
14 football team as a team that is not separated by sex.  
15 What determines whether or not -- I guess -- or strike  
16 that.

17 Has football ever been a sport that has been  
18 separated by sex in Knox County, to your knowledge?

19 A To my knowledge there has never been a  
20 girls' and boys' football team.

21 Q Okay. To your knowledge have there been  
22 sports that at one time have or that had or that

1 currently have a girls' team and a boys' team but  
2 either -- sorry, strike that.

3 Do sports that have girls' and boys' teams  
4 now, have they always had girls' and boys' teams?

5 MS. JERNIGAN-JOHNSON: Object to form.

6 MS. BERGMEYER: Object to form.

7 BY MR. STRONGIN:

8 Q To your knowledge.

9 A "Always" is a strong word. I would say  
10 probably not, depending on participation. There's  
11 not -- all sports that exist right now may not have  
12 always existed at a specific school location based on  
13 participation.

14 Q Okay. So is it possible for a sport that at  
15 one time does not have separate girls' and boys' teams  
16 to, because of a participation increase, subsequently  
17 have separate boys' and girls' teams?

18 MS. JERNIGAN-JOHNSON: Object to the  
19 form.

20 MS. BERGMEYER: Same objection.

21 A Can you repeat the question?

22 Q Sure. Is it possible for a team that

1 currently is not separated into girls' and boys' teams  
2 to, in the future if more individuals are interested  
3 in participating in that sport, that separate boys'  
4 and girls' teams would develop?

5 A Is it possible? Is it possible that new  
6 sports can be added under TSSAA, like from a  
7 competition perspective? I would say, yes, it's  
8 possible.

9 Q Okay. Are teams automatically -- or, sorry.  
10 Strike that.

11 Are any of the teams that are not separated  
12 by sex have both -- do any of those teams have both  
13 boys and girls competing on the same team?

14 MS. JERNIGAN-JOHNSON: Object the form.

15 A Currently, the District is not aware of that  
16 situation occurring, any coed team.

17 Q Is the District aware of any coed teams  
18 within the last five years?

19 A There has previously been a female that  
20 played on the football team.

21 Q Okay. So in terms of -- so when you say a  
22 female has played on the football team, does that mean

1 that in a team of however many are on the football  
2 team, one member was a female and every other member  
3 was male?

4 A In -- in that instance, yes.

5 Q And are there other instances of both males  
6 and females being on the same interscholastic team in  
7 Knox County Schools?

8 A Not to my knowledge in the last five years.  
9 As far as ever, I -- I don't know.

10 Q Is there a requirement that teams be  
11 separated by sex?

12 MS. BERGMEYER: Object to form.

13 MS. JERNIGAN-JOHNSON: Object to form.

14 A Which teams are you referencing?

15 Q What is -- are there separate boys' golf and  
16 girls' golf teams in Knox County Schools?

17 A Yes.

18 Q Is the separation of the golf teams into a  
19 boys' golf team and a girls' golf team, are schools  
20 required to have separate boys' golf team and girls'  
21 golf teams?

22 MS. JERNIGAN-JOHNSON: Object to the



1 form.

2 A Schools are required to have boys play on  
3 the boys' golf team and girls play on the girls' golf  
4 team, because both of those are -- are recognized  
5 teams under TSSAA. Not all of our schools have both  
6 because of participation.

7 Q Okay. So TSSAA -- so does TSSAA make an  
8 initial determination over which sports will have both  
9 boys' and girls' teams?

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form.

12 MS. BERGMEYER: Same objection.

13 A TSSAA has a list of sports, and girls' golf  
14 and boys' golf are included on those, if that answers  
15 the question.

16 Q As opposed to just listing golf.

17 A Correct.

18 Q Okay. And then you said that some sports at  
19 some schools do not have separate boys and girls teams  
20 because of participation.

21 A Do not have one of each, one of each of  
22 those teams based on participation. They would be

1 separate at those schools, but there's not both teams  
2 at each school.

3 Q Okay. Got it. And boys and -- so do you  
4 know -- so Farragut High School has a -- does Farragut  
5 High School have a separate boys' golf team and girls'  
6 golf team?

7 A Yes.

8 Q And do all high schools in Knox County have  
9 separate boys' golf teams and girls' golf teams?

10 A No.

11 Q Do you know which schools do not have  
12 separate boys' golf teams and girls' golf teams?

13 A I -- I can't list which schools don't have  
14 both teams that -- I will say again that all of them  
15 have separate teams. There's just not enough  
16 participation at some schools to have created one or  
17 both of those teams.

18 Q When you say "not enough participation," if  
19 a single -- how much participation do you need to  
20 create a team? Is one student enough to create a  
21 team?

22 MS. BERGMEYER: Object to form.

1 MS. JERNIGAN-JOHNSON: Same objection.

2 A One student is enough to consider creating a  
3 team, yes.

4 Q And would that consideration of creating a  
5 team result in a team being created?

6 MS. JERNIGAN-JOHNSON: Object to the  
7 form.

8 MS. BERGMEYER: Same objection.

9 A A possibility of a team being created, yes.

10 Q If a school had enough boys interested in  
11 playing boys' golf to form a golf team and a single  
12 girl interested in playing golf, and the school --  
13 would a school be able to not create a girls' golf  
14 team, or would the school have to create a girls' golf  
15 team?

16 MS. JERNIGAN-JOHNSON: Object to the  
17 form.

18 MS. BERGMEYER: Same objection.

19 A I think that there would be equal  
20 consideration for both. But if there are  
21 certain -- I -- I don't know -- I don't want to answer  
22 in absolutes, because there may be certain thresholds

1 to becoming a member of that team. So I don't  
2 know -- I don't think I could answer broadly that  
3 question an absolute yes. There would be a  
4 consideration equally, but without knowing the  
5 circumstances, I don't think the District could say if  
6 one person wanted to try out for two -- for a  
7 nonexistent team for boys and for girls, if one person  
8 wanted to try out for each, I don't think I could say  
9 that there would be an absolute yes to a creation of a  
10 team, because some of it may depend on what the  
11 qualifications are to make the team, should it exist.

12 Q Okay. Do you recall testifying earlier that  
13 one girl participated on a football team in Knox  
14 County Schools?

15 A I do.

16 Q Is football a sport that TSSAA has said has  
17 a girls' and a boys' team?

18 A No.

19 Q Okay. And was football -- the years -- that  
20 girl on the football team is no longer -- is that girl  
21 who participated on the football team that you  
22 testified about, did she play on the football team

1 this past season?

2 A No.

3 Q Was the game played any differently when  
4 that girl was on the football team versus this past  
5 season when she was not?

6 MS. BERGMEYER: Object to the form.

7 A Not to my knowledge.

8 Q Okay. And were there -- were there any  
9 concerns -- did Knox County Schools have any concerns  
10 over the displacement of female athletes with that  
11 student's participation on the football team?

12 MS. JERNIGAN-JOHNSON: Object to the  
13 form.

14 MS. BERGMEYER: Object to form.

15 A Can you restate your question, please?

16 Q Sure. Was the -- was Knox County Schools  
17 concerned that having the female student who  
18 participated on the football team, that her  
19 participating on that team would reduce athletic  
20 opportunities for other female student athletes in  
21 Knox County Schools?

22 MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 MS. BERGMEYER: Same objection.

3 A I do not know.

4 Q Okay. And what -- you know what? Strike  
5 that.

6 I think we have been going for a little over  
7 an hour now, so if you would like to take a break, we  
8 can do that, maybe for five minutes?

9 A Okay. Can I clarify one of my responses?

10 Q Sure.

11 A I am not aware of any TSSAA bylaws, current  
12 TSSAA bylaws that conflict with Knox County Board of  
13 Education policies.

14 Q Okay. Thank you. So I will make a note of  
15 that.

16 MR. STRONGIN: And then, I guess, yeah,  
17 should we take a break for five minutes? Do we have  
18 breakout rooms for ...

19 THE TECH CONCIERGE: Sure.

20 UNIDENTIFIED SPEAKER: Yesterday we  
21 just muted.

22 MR. STRONGIN: Oh.

1 form.

2 MS. BERGMEYER: Same objection.

3 A Can you -- can you restate the question,  
4 please?

5 Q Sure. If a transgender student athlete  
6 prior to March 2021 wanted to participate in an  
7 interscholastic athletics team in Knox County, is  
8 there any reason to think that that transgender  
9 student's participation would not have been governed  
10 by this TSSAA/TMSAA transgender policy?

11 MS. JERNIGAN-JOHNSON: Object to the  
12 form.

13 A I'm not aware of when this policy was  
14 implemented and if it's -- how long it was in effect,  
15 if it was in effect, if it is still in effect.

16 Q Okay. Thank you. So now, Ms. Hemmelgarn, I  
17 want to turn to SB 228, which is the law at issue in  
18 this case. But before I do, would you please tell me,  
19 are you familiar with -- or, I'm sorry. Is Knox  
20 County Schools familiar with SB 228?

21 A Yes.

22 Q And are you familiar with SB 228?

1           A     Yes. I have traditionally referred to it  
2     as -- as its citation in the Tennessee code annotated,  
3     but yes.

4           Q     Okay. Great. And what is your  
5     understanding of what SB 228 -- of what SB 228 does?

6                   MS. JERNIGAN-JOHNSON: Objection. I  
7     want to object, because she is here on behalf of Knox  
8     County Schools. So are you asking her personal  
9     understanding or the District's understanding?

10           BY MR. STRONGIN:

11           Q     I will rephrase. What is the District's  
12     understanding of Knox County Schools -- or what is the  
13     District's understanding of what SB 228 does?

14           A     Sure. The --

15                   MS. JERNIGAN-JOHNSON: Thank you.

16           A     -- District's understanding is that SB 228  
17     first requires local education agencies to institute a  
18     policy, but also that essentially implements the law  
19     but that the -- the effect of it is that for gender-  
20     specific sports, students must play on the sport team  
21     that is aligned with the gender assigned at birth.

22           Q     Okay. Great.



1 MR. STRONGIN: And, Lucas, if you could  
2 please introduce tab 6 as Exhibit 5.

3 (Exhibit 5 was marked for  
4 identification.)

5 MR. CAMERON-VAUGHN: All right. It  
6 should be available.

7 BY MR. STRONGIN:

8 Q And, Ms. Hemmelgarn, if you could let me  
9 know when you have it in front of you.

10 A Okay.

11 Q Okay. Great. And I want to give you a  
12 chance to review the document. So if you could just  
13 let me know when you've had a chance to review it.

14 A Okay.

15 Q Do you recognize this document?

16 A I do.

17 Q What is the document?

18 A It is language in SB 228.

19 Q Okay. And would you please read -- it's  
20 about two-thirds, three-quarters of the way, maybe a  
21 little more, down at the bottom of the first page. Do  
22 you see section 1, and then subparagraph -- or

1 paragraph A? And I would ask for you to please read  
2 that, and then let me know when you are done.

3 A Okay. Okay.

4 Q And what did section 1(a) provide? What did  
5 that -- what did that section ...

6 A It -- do you want me to just read it or ...

7 Q All right. So what is -- what is the Knox  
8 County Schools understanding of section 1(a)?

9 A Knox County Schools understanding, I think,  
10 would be reflected in the changes to policy I-171, but  
11 it -- I mean the language is a -- "A student's gender  
12 for purposes of participation in a public middle  
13 school or high school interscholastic athletic  
14 activity or event must be determined by the student's  
15 sex at the time of the student's birth, as indicated  
16 on the original birth certificate."

17 MR. STRONGIN: Terrific. And so now,  
18 Lucas, could I ask you to please introduce tab 7,  
19 Exhibit 6.

20 (Exhibit 6 was marked for  
21 identification.)

22 //

1 minutes, either. So I am happy to defer to the group  
2 on if we want to do lunch now or wait a bit.

3 MS. JERNIGAN-JOHNSON: Do you think you  
4 have 30 minutes?

5 MR. STRONGIN: I think we can do this  
6 in 30 minutes or less.

7 MS. JERNIGAN-JOHNSON: Okay. Then I'm  
8 good. I think we are good to keep going.

9 MR. STRONGIN: Okay. Great. So let's  
10 keep going, then.

11 So now can we pull up, Lucas, go back  
12 to Exhibit 6, tab 7, please.

13 BY MR. STRONGIN:

14 Q And then, Ms. Hemmelgarn, if you could let  
15 me know when you -- or you all may be able to do that  
16 now, too, actually. I'm not sure.

17 Okay. So if you could let me know when you  
18 have Exhibit 6 up.

19 A Okay.

20 Q And would you please look at paragraph B2,  
21 and if you could read that paragraph and then let me  
22 know when you finished reading it.

1 A Okay.

2 Q And has Knox County Schools and/or the  
3 County Board adopted and enforced a policy to ensure  
4 compliance with subsection A and the rules promulgated  
5 pursuant to subdivision B(1) in the public schools  
6 that they govern?

7 MS. JERNIGAN-JOHNSON: Object to the  
8 form.

9 MS. BERGMEYER: Same objection.

10 A Yes.

11 Q Was this policy the revised I-171 policy we  
12 had discussed earlier that is Exhibit 1, tab 2?

13 A I-171 you said; right?

14 Q Yes.

15 A I don't recall which exhibited it is, but  
16 yes.

17 Q Okay. And when was that policy promulgated?

18 A Believe it was discussed at -- do you mean  
19 when did it go into effect, or when was it first --

20 Q When did it go into effect?

21 A It went into effect, if I recall, those  
22 changes did in September of 2021.

1 Q Okay. And what basis was given for enacting  
2 that policy?

3 MS. JERNIGAN-JOHNSON: Object to the  
4 form.

5 MS. BERGMEYER: Same objection.

6 A To comply with state law.

7 Q Okay. And if section 49-6-310(a) had never  
8 become operative law in Tennessee, would the Knox  
9 County Board of Education have enacted the changes to  
10 I-171 we just discussed?

11 MS. JERNIGAN-JOHNSON: Object to the  
12 form.

13 MS. BERGMEYER: Same objection.

14 A I do not know.

15 Q Okay. And if section 49-6-310(a) were to no  
16 longer be operative law in Tennessee, would Knox  
17 County Schools continue to enforce the policy changes  
18 to I-171 that it enacted in response to SB 228?

19 MS. JERNIGAN-JOHNSON: Object to the  
20 form.

21 MS. BERGMEYER: Same objection.

22 A I -- I do not know. It -- state law would

1 not be the basis for enforcement. Right now there's a  
2 citation to state law in the policy with regard to the  
3 language.

4 Q Okay. And as of now, you don't know if with  
5 that state law basis no longer operative Knox County  
6 Schools would implement the policy on another basis;  
7 is that right?

8 MS. JERNIGAN-JOHNSON: Object to the  
9 form.

10 MS. BERGMEYER: Same objection.

11 A No.

12 Q No, you don't know if Knox County Schools  
13 would continue implementing it?

14 A Correct.

15 Q Okay. And are schools under the  
16 jurisdiction of Knox County Schools currently allowed  
17 to roster student athletes on sex-separated  
18 interscholastic athletic teams according to their  
19 gender identity even if the gender identity does not  
20 align with the student's sex at the time of birth as  
21 reflected on the student's original birth certificate?

22 MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 MS. BERGMEYER: Same objection.

3 A That was a long question. Can you say that  
4 again?

5 Q Sure. So if a -- so are schools under Knox  
6 County Schools' jurisdiction able to roster a student  
7 athlete on a sex-separated sports team on the team  
8 that aligns with that student's gender identity if  
9 that gender identity is different from the sex  
10 assigned at birth on the student's original birth  
11 certificate?

12 MS. JERNIGAN-JOHNSON: Object to the  
13 form.

14 MS. BERGMEYER: Same objection.

15 A Knox County Schools -- schools under Knox  
16 County Schools' jurisdiction are only allowed to  
17 roster students on gender-specific sports team whose  
18 gender assigned on the original birth certificate  
19 matches that gender sports team.

20 Q Okay. And what steps or actions does Knox  
21 County Schools take to ensure that individual schools  
22 are complying with I-171?

1 MS. JERNIGAN-JOHNSON: Object to the  
2 form.

3 MS. BERGMEYER: Same objection.

4 A Informing school principals, athletic  
5 directors, and then athletic directors informing their  
6 coaching staff that the policy and state law exist.

7 Q Are there any additional steps that Knox  
8 County Schools takes?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 A I can't think of any right now.

12 Q Okay. And are students required to submit  
13 an original birth certificate to participate in  
14 interscholastic athletics?

15 A Students are required to submit a birth  
16 certificate at some point during the enrollment  
17 process, enrollment into Knox County Schools.

18 Q And then is that the only time they are  
19 required to submit a birth certificate?

20 A I do not know. I do not know if -- if there  
21 are -- would be a birth certificate required at  
22 a -- during enrollment in a different school, for



1 example. I don't know if that is the only time.

2 Q Okay. And have coaches been given any  
3 instruction on how to enforce this policy or this law?

4 A They've been given instruction on the law.  
5 As far as specific enforcement, I do not know.

6 Q Okay. And what would happen to a school if  
7 it violated SB 228?

8 MS. BERGMEYER: Object to form.

9 A I believe that the District -- well, if the  
10 school violated SB 228, there's a -- in the law there  
11 is a reporting path for parents that -- that are  
12 affected. But I don't -- I will put it right in front  
13 of me so I can get the exact language. But there is a  
14 reporting path for parents to report violations, so it  
15 would be addressed in that manner. But I believe that  
16 if a school violated -- if there was a true violation,  
17 that the -- potentially there could be a loss of a  
18 portion of funding to the District.

19 Q So would that loss of funding be  
20 specifically earmarked to the offending school, or  
21 would the entire District lose that portion of its  
22 funding?

1 MS. JERNIGAN-JOHNSON: Object to the  
2 form.

3 MS. BERGMEYER: Object to form.

4 A We have not had that happen, so I'm not sure  
5 what it would look like.

6 Q Would Knox County Schools or the County  
7 Board impose any sanction on the specific school  
8 beyond that loss of funding that you just discussed?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 MS. BERGMEYER: Same objection.

12 A Potentially for -- for individuals involved  
13 in violating a Board policy. We have a progressive  
14 discipline model for violation of Board policies.

15 Q What are some of the consequences of  
16 violating Board policies in that policy that you  
17 talked about in ascending order, please.

18 A Progressive discipline is oral warning, and  
19 then we have what is called a professional  
20 communication record, then a conference of concern,  
21 written reprimand, suspension without pay, and  
22 termination.

1           Q       Okay. And the consequence of losing funding  
2 for failure to comply with SB 228 what would trigger  
3 that -- strike that.

4                   Is that consequence found in Knox County  
5 law?

6                   MS. JERNIGAN-JOHNSON: Object to the  
7 form.

8                   MS. BERGMEYER: Same objection.

9                   THE WITNESS: I believe the consequence  
10 is found in state law.

11           Q       Okay. Thank you. And now I would like to  
12 ask you to have Exhibit 6 in front of you, please,  
13 which is the Tennessee Code section that I think you  
14 may have just been looking at on paper. And I would  
15 like to turn to subsection C of that exhibit, please.  
16 And let me know when you've had a chance to review  
17 that.

18           A       Sure. This is what I was trying to  
19 articulate earlier, but not very eloquently.

20           Q       And that was going to be my next question,  
21 was is this the parental reporting process you were  
22 just talking about?

1 THE REPORTER: Okay. We are back on  
2 the record at 1:38 p.m. Eastern Daylight Time. Go  
3 ahead.

4 BY MR. STRONGIN:

5 Q Thank you very much. Ms. Hemmelgarn, I want  
6 to go back to something. You testified earlier, do  
7 you recall, that if SB 228 was no longer operative  
8 Tennessee law that the state law based -- do  
9 you -- strike that.

10 Ms. Hemmelgarn, do you recall testifying  
11 that if SB 228 was no longer operative Tennessee law  
12 that state law would not be the basis for the revised  
13 I-171 policy but the I-171 revised policy may still be  
14 in effect? Do you recall testifying that?

15 MS. JERNIGAN-JOHNSON: Object to the  
16 form.

17 A I don't recall stating it in that way, no.  
18 What I recall saying -- you asked if the -- if I  
19 remember correctly, you asked if the policy would  
20 still exist if state law were changed, and I said I  
21 don't know. I mean I don't know of a reason that -- I  
22 don't know that there has been discussions or

1 consideration as to having that language absent a  
2 requirement to.

3 Q If state law changed, if SB 228 was no  
4 longer operative law, would Knox County Board -- would  
5 the Knox County Board of Education need to take an  
6 affirmative act to change the current I-171 policy?

7 MS. JERNIGAN-JOHNSON: Object to form.

8 MS. BERGMEYER: Same objection.

9 A Say that again, please?

10 Q If SB 228 was no longer operative state law  
11 in Tennessee, would the Knox County Board of Education  
12 need to take an affirmative action to change what is  
13 currently I-171?

14 MS. JERNIGAN-JOHNSON: Object to form.

15 A If the District -- if the Board of Education  
16 intended to change a Board policy based on a change in  
17 state law, then, yes, action would be required.

18 Q Okay. Thank you. So now, Ms. Hemmelgarn,  
19 I'm going to ask some questions about the plaintiff in  
20 this case, L.E., and his family. Prior to the filing  
21 of this lawsuit, had Knox County Schools had any  
22 specific interaction with L.E. and/or his parents?

1           A     Well, that aren't assigned -- all employees  
2     are employees of Knox County Schools, not employees of  
3     individual schools.

4           Q     So that are assigned to specific schools.

5           A     They are assigned to schools but not  
6     employed by the schools.

7           Q     Right, yeah.

8           A     The e-mail from mom of plaintiff in March of  
9     2021 to Dr. Bartlett and Dr. Bartlett's response  
10    probably was shared with -- with someone outside of  
11    Farragut High School.

12          Q     Okay. Got it. Thank you. Do you know whom  
13    specifically -- with whom specifically that was  
14    shared?

15          A     No. I -- I saw it at some point. I don't  
16    know who else specifically it was shared with, and  
17    I -- I don't know who else specifically it was shared  
18    with.

19          Q     Okay. And if L.E. were to attempt to  
20    participate on the boys' golf team at Farragut High  
21    School, would he be eligible to do so?

22                   MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 MS. BERGMEYER: Object to form.

3 A To my knowledge, L.E. did not attempt to  
4 participate, but participation in interscholastic  
5 athletics would be subject to state law, so the change  
6 to I-171.

7 Q So in that -- so recognizing that, would  
8 L.E. be eligible to participate on the boys' golf team  
9 at Farragut High School?

10 MS. JERNIGAN-JOHNSON: Object to form.

11 MS. BERGMEYER: Object to form.

12 A Recognizing -- when you say "recognizing  
13 that," you mean recognizing state law? Or what  
14 do -- what is "that"?

15 Q "That" is that his participation is subject  
16 to state law in the revised I-171 policy.

17 A Yeah. So --

18 MS. BERGMEYER: Same objection.

19 A -- in -- participation in interscholastic  
20 athletics would be governed by state law, and state  
21 law captured in summary form in I-171.

22 Q Okay. So given the applicability of state

1 law and the form that it is captured in the I-171,  
2 would plaintiff L.E. be eligible to play on the boys'  
3 golf team at Farragut High School?

4 MS. BERGMEYER: Object to form.

5 MS. JERNIGAN-JOHNSON: Same objection.

6 A No.

7 Q Okay. And if L.E. were a cisgender boy,  
8 would he be able to try out and, if he made it,  
9 participate on the boys' golf team?

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form.

12 MS. BERGMEYER: Same objection.

13 A If a -- if a student that was -- had an  
14 assigned gender of male on their original birth  
15 certificate attempted to try out for a male sports  
16 team, yes, they would be allowed to try out for that  
17 sports team.

18 Q And under current law, if L.E. wanted to try  
19 out for a golf team at Farragut High School, what golf  
20 team would he have to try out for?

21 MS. BERGMEYER: Object to form.

22 A L.E. --



1 MS. JERNIGAN-JOHNSON: Same objection.  
2 Sorry.

3 A Sorry. L.E. would have to try out for the  
4 gender-specific golf team that aligns with the gender  
5 assigned on the original birth certificate.

6 Q And which gender would that be for L.E.?

7 A I don't know that I have seen the original  
8 birth certificate.

9 Q Okay.

10 A Knox -- Knox County Schools likely has a  
11 copy of it, and I have not -- I have not seen it.

12 Q Okay. Thank you. And so now,  
13 Ms. Hemmelgarn, I'm going to ask you, you testified  
14 earlier that Knox -- do you recall testifying earlier  
15 that Knox County Schools has a title IX coordinator?

16 A I do, yes.

17 Q Do you recall testifying earlier that Knox  
18 County Schools has a title IX coordinator to help  
19 ensure compliance with title IX?

20 A I do.

21 Q Why does Knox County Schools abide by title  
22 IX?

1 be eligible to participate on the boys' golf team at  
2 Farragut High School?

3 MS. JERNIGAN-JOHNSON: Object to the  
4 form.

5 A No.

6 MR. STRONGIN: Thank you,  
7 Ms. Hemmelgarn. Those are all the questions I have.

8 MS. BERGMEYER: I have no questions.  
9 Thank you.

10 MS. JERNIGAN-JOHNSON: I'm sorry,  
11 Stephanie. Did you say you do have questions?

12 MS. BERGMEYER: No, I do not.

13 MS. JERNIGAN-JOHNSON: Oh, okay.  
14 Sorry. I just have a couple of questions.

15 EXAMINATION

16 BY MS. JERNIGAN-JOHNSON:

17 Q So, Ms. Hemmelgarn, we talked earlier in the  
18 day about sports opportunities in Knox County. Do you  
19 recall when we discussed that?

20 A Yes.

21 Q And you mentioned football as an example of  
22 a sport where both boys and girls can participate on

1 the same team; is that right?

2 A Yes.

3 Q Are you aware of other sports or activities  
4 that both boys and girls can participate on the same  
5 team?

6 A Yes. There are other non-gender specific  
7 sports. Do you want me to list the ones I recall?

8 Q Yes, if you can list --

9 A Okay.

10 Q -- the ones you recall.

11 A I believe that, if I recall correctly,  
12 soccer is not -- there is soccer and girls' soccer, so  
13 it is not designated boys and -- boys and girls. It's  
14 just soccer and girls' soccer. I believe that  
15 wrestling is the same and also bowling. If I remember  
16 correctly, I don't believe that baseball is designated  
17 as boys' baseball, but softball is designated as  
18 girls' softball.

19 I would have to consult the TSSAA bylaws,  
20 which I can do that, if that's okay.

21 Q Thank you.

22 A Okay. So what I am looking at is the TSSAA

1 bylaws from 2021 to 2022. So that's -- wrestling is  
2 listed as wrestling and girls' wrestling, so not boys'  
3 wrestling. Bowling, the same. Football is not  
4 designated as gender-specific. Baseball is not  
5 designated as gender-specific. Soccer is not  
6 designated as gender-specific in one season, but there  
7 is a girls' soccer as well. There are two activities  
8 that are not listed as sports under TSSAA, and that is  
9 cheerleading and dance as well.

10 Q So based on your review of the TSSAA  
11 handbook, it's your understanding that there are coed  
12 sports and activities in Knox County Schools.

13 A Opportunities, yes.

14 Q Okay. And finally, was policy I-171 revised  
15 because of the passage of Senate Bill 228 that  
16 required us -- that required Knox County to adopt a  
17 policy as reflected in that bill?

18 A Yes.

19 MS. JERNIGAN-JOHNSON: That is all the  
20 questions I have.

21 MR. STRONGIN: I have no more  
22 questions.

1 MS. BERGMEYER: No more questions,  
2 thank you.

3 THE REPORTER: Okay. If that is all we  
4 have, then do we want to give the witness a chance to  
5 read and sign?

6 MS. JERNIGAN-JOHNSON: Do you want to  
7 review and sign your transcript?

8 THE WITNESS: Yes.

9 THE REPORTER: Okay. Then we are off  
10 the record at 2:06 p.m. Eastern Daylight Time.

11 (Signature reserved.)

12 (Whereupon, at 1:06 p.m. CDT/2:06 p.m.  
13 EDT, the proceeding was concluded.)

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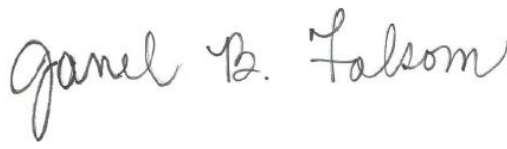
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CERTIFICATE OF DEPOSITION OFFICER

I, JANEL FOLSOM, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JANEL FOLSOM

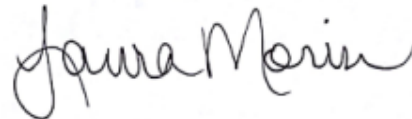
Notary Public in and for the  
Commonwealth of Virginia

Review of the transcript was requested.

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CERTIFICATE OF TRANSCRIBER

I, LAURA MORIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



LAURA MORIN

# EXHIBIT 8



1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF TENNESSEE

3 \_\_\_\_\_  
4 L.E., by his next friends and  
5 parents, SHELLY ESQUIVEL and  
6 MARIO ESQUIVEL

7 Plaintiff

8 v.

No.

9 BILL LEE, in his official

3:21-cv-00835

10 capacity as Governor of

11 Tennessee; PENNY SCHWINN, in her

12 official capacity as the

13 Tennessee Education

14 Commissioner; TENNESSEE STATE

15 BOARD OF EDUCATION; SARA HEYBURN

16 MORRISON, in her official

17 capacity as the Executive

18 Director of the Tennessee State

19 Board of Education; NICK

20 DARNELL, MIKE EDWARDS, ROBERT

21 EBY, GORDON FERGUSON, ELISSA

22 KIM, LILIAN HARTGROVE, NATE

1 MORROW, LARRY JENSEN, DARRELL  
2 COBBINS, and EMILY HOUSE, the  
3 individual members of the  
4 Tennessee State Board of  
5 Education, in their official  
6 capacities; KNOX COUNTY BOARD OF  
7 EDUCATION a/k/a KNOX COUNTY  
8 SCHOOLS a/k/a KNOX COUNTY SCHOOL  
9 DISTRICT; ROBERT M. "BOB"  
10 THOMAS, in his official capacity  
11 as Director of Knox County  
12 Schools

13 Defendants

14 -----

15 VIDEOCONFERENCE DEPOSITION OF

16 JOHN CRISTOPHER BARTLETT

17 DATE: Monday, July 25, 2022

18 TIME: 2:03 p.m.

19 LOCATION: Remote Proceeding

20 Washington, D.C. 20005

21 REPORTED BY: Janel B. Folsom, Notary Public

22 JOB NO.: 5338660

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF L.E., BY HIS NEXT FRIENDS AND PARENTS, SHELLEY ESQUIVEL AND MARIO ESQUIVEL:

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ON BEHALF OF DEFENDANTS KNOX COUNTY BOARD OF EDUCATION  
A/K/A KNOX COUNTY SCHOOLS A/K/A KNOX COUNTY SCHOOL  
DISTRICT AND ROBERT M. "BOB" THOMAS, IN HIS CAPACITY  
AS DIRECTOR OF KNOX COUNTY SCHOOLS AND WITNESS JOHN  
CRISTOPHER BARTLETT:

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videoconference)

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A P P E A R A N C E S (Cont'd)

1 ON BEHALF OF DEFENDANTS BILL LEE, IN HIS OFFICIAL  
2 CAPACITY AS GOVERNOR OF TENNESSEE; PENNY SCHWINN, IN  
3 HER OFFICIAL CAPACITY AS THE TENNESSEE EDUCATION  
4 COMMISSIONER; TENNESSEE STATE BOARD OF EDUCATION; SARA  
5 HEYBURN MORRISON, IN HER CAPACITY AS THE EXECUTIVE  
6 DIRECTOR OF THE TENNESSEE BOARD OF EDUCATION; AND NICK  
7 DARNELL, MIKE EDWARDS, ROBERT EBY, GORDON FERGUSON,  
8 ELISSA KIM, LILLIAN HARTGROVE, NATE MORROW, LARRY  
9 JENSEN, DARRELL COBBINS, AND EMILY HOUSE, THE  
10 INDIVIDUAL MEMBERS OF THE TENNESSEE STATE BOARD OF  
11 EDUCATION, IN THEIR OFFICIAL CAPACITIES:  
12

13       STEPHANIE A. BERGMAYER, ESQUIRE (by  
14       videoconference)  
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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

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Education Fund Inc. (by videoconference)

Clark L. Hildabrand, Esq., Office of Tennessee  
Attorney General (by videoconference)

Samuel L. Strongin, Esq., Office of Tennessee  
Attorney General (by videoconference)

Travis Royer, Office of Tennessee Attorney  
General (by videoconference)

Brandon Townsend, Office of Tennessee Attorney  
General (by videoconference)

Jerry Curran, Technician, CMI Production Services  
(by videoconference)

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1 Excuse me. I did play soccer. Thank you for  
2 remembering.

3 Q Got it. So you played soccer when you were  
4 in high school.

5 A Yes.

6 Q And then were the other sports you played --  
7 baseball and football -- after high school?

8 A They were summer travel leagues in -- in --  
9 during high school. I did not play anything after  
10 high school.

11 Q Got it. So the soccer team was with the  
12 high school soccer team; is that right?

13 A That's correct.

14 Q And then the baseball and football teams  
15 were separate from the high school --

16 A Yes.

17 Q -- is that right? Okay.

18 A Yes.

19 Q Understood. Thank you. And so as a coach,  
20 do you think it's beneficial for someone to  
21 participate in school sports?

22 A Yes.



1 Q Why do you think that?

2 A I think it -- it teaches a lot of life  
3 skills. It teaches discipline. It teaches teamwork.  
4 It teaches the -- a totality of life skills, provides  
5 confidence for the individual, and as -- and it  
6 provides connection with the school.

7 Q So you mentioned discipline. What other  
8 life skills do you think playing sports can provide  
9 students?

10 A Well I think it teaches you how to be a good  
11 teamwork. I take -- think it teaches you attention to  
12 detail and builds life habits. So I mean I think  
13 there's a -- there's a lot that goes into playing  
14 sports that -- that transfer to real life.

15 Q Would you say that a student who plays  
16 sports learns responsibility skills?

17 A I -- I would -- that's a -- that's a goal,  
18 that they learn responsibility skills. Yes.

19 Q And would you say a goal of sports is also  
20 for a student to build resilience in their lives?

21 A Yes.

22 Q And would you say a goal is also to form a

1 foundation for lifetime good habits specifically?

2 A Yes.

3 Q And would you say that, generally, students  
4 who participate in sports in high school will be in  
5 better physical shape as a result of participating in  
6 sports?

7 A Yes.

8 Q And would you agree that students who  
9 participate in sports in high school will also have  
10 better mental health as a result of participating in  
11 sports?

12 A Yes.

13 Q Great. And do you also have children,  
14 Dr. Bartlett?

15 A I do.

16 Q Do your children play sports?

17 A Not -- not anymore.

18 Q Not anymore. Did they previously play  
19 sports?

20 A Yes.

21 Q What sports did they play?

22 A My son played baseball, football, and

1 basketball.

2 Q Do you believe that your son obtained the  
3 benefits we just spoke about -- or at least some of  
4 them?

5 A Yes.

6 Q What benefits do you think your son received  
7 from playing sports?

8 A I think he built self-confidence. I -- I  
9 think responsibility, discipline, how to follow rules,  
10 how to follow -- how to -- how to be a good teammate.  
11 I think he learned a ton of that stuff.

12 Q Got it. And do you have any other children  
13 besides the son you're referencing?

14 A Yeah; I have my daughter.

15 Q Got it. And did your daughter also play  
16 sports?

17 A No.

18 Q No. Okay. And then you yourself mentioned  
19 you played sports. What benefits did you personally  
20 receive from sports?

21 A I think you -- the -- I think you --  
22 discipline and -- and a responsibility. I think

1 there's a lot of things you -- you learn from that,  
2 just by being a good teammate. Attention to detail.  
3 Responsibility to do your job. How to get along with  
4 others.

5 Q Right. And for these benefits we're talking  
6 about, will you agree that these benefits carry on  
7 with the student throughout their lives? They're not  
8 just limited to the period in which they play sports?

9 A Yes.

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form. You can answer. You can answer.

12 THE WITNESS: Okay.

13 MR. COSTELLO-VEGA: Yeah.

14 THE WITNESS: Yes, I do.

15 BY MR. COSTELLO-VEGA:

16 Q And actually let me ask one more question.  
17 Have you been deposed before, Dr. Bartlett?

18 A No.

19 Q Okay.

20 A Not -- not in this instance. I think it --  
21 I was in a car accident five years ago.

22 Q Okay. Sorry to hear that. Hopefully this

1 is less painful than that.

2 So just to cover a few ground rules. Your  
3 attorney will be objecting throughout the deposition.  
4 So please continue to answer the questions as she's  
5 making those objections, unless you're specifically  
6 told not to speak.

7 And of course give full and complete answers  
8 to all of my questions as we go throughout this  
9 deposition. All right.

10 So moving on now to the sports at Farragut  
11 High School. So do you agree that Farragut High  
12 School sports provide students with opportunities to  
13 build discipline?

14 A Yes.

15 Q Do you agree that participating in sports at  
16 Farragut High School provides students the ability to  
17 become more accountable and more responsible?

18 A Yes.

19 Q Do you believe that participating in sports  
20 at Farragut High School helps students build teamwork  
21 and resilience throughout their lives?

22 A Yes.

1 Q Do you agree that participating in sports at  
2 Farragut High School provides a foundation for  
3 lifelong friendships and self-esteem?

4 A Yes.

5 Q And do you agree that the benefits I just  
6 listed now are benefits that continue throughout a  
7 student's lives, not just while they're in high  
8 school?

9 A Yes.

10 Q Okay. And in your view, do you agree that  
11 even students who might not be top athletes on their  
12 team can still receive all of these benefits?

13 A Yes.

14 Q And do you agree that these benefits are  
15 given to students because they participate in sports,  
16 even if they do not win everything that they played?

17 MS. JERNIGAN-JOHNSON: Object to the  
18 form.

19 A Yes.

20 Q And to maybe clarify that a bit. Do you  
21 agree that students who participate in sports will not  
22 always win on the sports that they play?

1           A     Yes.

2                           MS. JERNIGAN-JOHNSON: Object to the  
3 form.

4 BY MR. COSTELLO-VEGA:

5           Q     Yeah, you can answer. And do you agree that  
6 students can derive benefits from sports besides the  
7 thrill of victory?

8           A     Yes.

9           Q     Okay. In your opinion, does participating  
10 in school sports help students build friendships at  
11 high school?

12          A     Yes.

13          Q     And do you agree that it's important for  
14 students at the high school level to build friendships  
15 with their peers?

16          A     Yes.

17          Q     Do you think it's important for students in  
18 high school to develop opportunities to form a  
19 community of similar interests while in high school?

20          A     Yes.

21          Q     And then do you think students at high  
22 school often feel pressure to fit in at school?

1           A     I think they do, yes.

2           Q     And do you think that playing on sports  
3 teams is a way to help those students relieve that  
4 pressure to fit in?

5                         MS. JERNIGAN-JOHNSON: Object to the  
6 form.

7           A     I -- I think it helps them build community.  
8 Just -- yeah, I mean it helps them build community. I  
9 don't like the idea of fitting in.

10          Q     Got it. That's fair. And so do you think  
11 that playing on sports in high school helps grow  
12 students' confidence?

13          A     Yes.

14          Q     And do you believe that's true of sports at  
15 Farragut High School as well?

16          A     Yes.

17          Q     And in your opinion, as a golf coach, did  
18 you often mentor students?

19          A     I'm -- I'm not a golf coach.

20          Q     I'm sorry. In your opinion, as a coach of  
21 the teams you mentioned earlier, did you mentor  
22 students?



1 A No.

2 Q Okay. Have you ever seen L.E. at school  
3 while you were also at school?

4 A Yes.

5 Q Have you ever seen L.E. appear to be  
6 distressed while at school?

7 A No.

8 Q Do you know anything else about L.E. from  
9 anyone else other than what you've shared already?

10 A No.

11 Q And it sounds like you're aware that L.E.  
12 identifies himself as a boy; is that right?

13 A That's correct.

14 Q Okay. Is L.E. treated as a boy by his peers  
15 at school?

16 A I believe so.

17 Q And then to your knowledge, do teachers and  
18 staff at Farragut High School treat L.E. as a boy?

19 A I think they treat L.E. as a student. I  
20 don't -- I don't know that there's a difference.

21 Q To clarify. To give an example, in some  
22 classes, they might refer to a student as boys or

1 girls. Is it your understanding that teachers and  
2 staff would generally refer to L.E. as a boy?

3 A I -- I -- if they did so, yes. They  
4 referred to L.E. as L. in class.

5 Q Okay. Got it. And then to your knowledge,  
6 does L.E. live his life as a boy generally?

7 A Yes.

8 Q And then are you aware of anyone in L.E.'s  
9 life who does not treat L.E. like a boy?

10 A I'm not aware of one.

11 Q Okay. So L.E.'s parents. Have you ever  
12 spoken with either Shelley or Mark [sic] Esquivel?

13 A Not that I'm aware.

14 Q And have you ever had e-mail communications  
15 with either of L.E.'s parents?

16 A I did and that -- I believe you have that  
17 instance.

18 Q Yeah. So how many times have you e-mails  
19 with Shelly or Mark [sic] Esquivel?

20 A I believe it's that one e-mail thread.

21 Q Okay.

22 MR. COSTELLO-VEGA: Sam, can we please

1 house. And -- and it signed with the governor. And  
2 we would follow all applicable state law at that  
3 point.

4 Q Got it. So is the law you're referring to  
5 the law that set requirements for participating on  
6 school sports team in public schools in Tennessee  
7 related to a student's gender?

8 A I believe that's -- that's the law that I  
9 was referring to, yes. Any law -- any law in the  
10 state -- the state voted through that would regulate  
11 this, that's what I was referring to.

12 Q Got it. And so to your understanding, are  
13 the requirements in this law that a student who is  
14 transgender is required to participate on the sports  
15 team that is associated with their sex as identified  
16 on their birth certificate?

17 MS. JERNIGAN-JOHNSON: Object to the  
18 form.

19 MS. BERGMEYER: -- here --

20 THE WITNESS: Okay.

21 BY MR. COSTELLO-VEGA:

22 Q You can go.

1           A     So yes.  Yes.

2           Q     Okay.  And so is it your understanding that  
3 L.E. would not be allowed to play on the boys' golf  
4 team under this policy at Farragut High School?

5           A     According to state law.  That's correct.

6           Q     Okay.  Were there any other practices  
7 besides following state law that you were referring to  
8 in this e-mail?

9           A     No.  I mean we -- we have -- we have  
10 internal school practices that we -- we have unisex  
11 bathroom and stuff like that.  We try to accommodate  
12 the students as they need to.

13          Q     Understood.  Does Farragut High School  
14 currently allow someone with a birth certificate  
15 showing the sex of female to play on a boys' sports  
16 team if there's a girls' sports team for that same  
17 sport?

18          A     No.

19                         MS. JERNIGAN-JOHNSON:  Object to the  
20 form.

21                         MS. BERGMEYER:  -- a --

22  //

1 BY MR. COSTELLO-VEGA:

2 Q Go ahead and answer.

3 A No. We follow state law.

4 Q Okay. Are there ever situations where  
5 someone who is a girl can play on a boys' sports team  
6 or vice versa?

7 A Yes.

8 Q Can you talk about that?

9 A We've had girls that play football. And --

10 Q And when was the last time a girl played on  
11 a football team --

12 A Last year.

13 Q -- Farragut High School?

14 A Last year.

15 Q Last year? So last year, a girl played on  
16 the Farragut High School football team?

17 A Yes.

18 Q Did you have any concerns about her playing  
19 on the football team?

20 A No.

21 Q Were there concerns by the team members  
22 themselves about her playing on the team?

1 MS. JERNIGAN-JOHNSON: Object to the  
2 form.

3 MS. BERGMEYER: -- the --

4 THE WITNESS: Not that I was made  
5 aware.

6 BY MR. COSTELLO-VEGA:

7 Q So to your knowledge, you weren't aware of  
8 concerns by the boy members of the team that a girl  
9 would be playing on the boys' football team?

10 A I was not made aware of any concerns.

11 Q And you yourself did not have any concerns  
12 about a girl playing on the boys' football team?

13 A No. No concerns at all.

14 Q Were you aware of any concerns by others in  
15 the Farragut High School community, such as parents or  
16 teachers, about a girl playing on the boys' football  
17 team?

18 A Not -- not that was expressed to me. I  
19 think there was concerns about making sure that we  
20 accommodated her in -- in the facts to make sure she  
21 had proper dressing facilities.

22 Q Understood. Have a boy or a girl ever

1 played -- let me rephrase that.

2 Has a girl ever played on the boys' football  
3 team other than this instance at Farragut High School?

4 A Not since I've been there. So I don't know  
5 anything further.

6 Q Okay. Did you have any concerns about the  
7 safety of the girl playing on the boys' football team?

8 A No; we treat her like every other player.

9 Q Got it. So moving back to this document.  
10 If you could take a look at your signature block at  
11 the end of the e-mail. It looks like it's a quote.  
12 "It's all [sic] about the students." Who said that  
13 quote?

14 A That is me.

15 Q That is you. Okay. And what do you mean  
16 by, "it's all [sic] about the students"?

17 A A lot of times in education, people make  
18 decisions that -- that aren't student-based. And --  
19 and they -- they try to -- I -- I don't -- the reason  
20 I'm in this job is for kids. I'm not in this job to  
21 make my name or make -- to build a brand or anything  
22 like that. So it -- I -- we refer to our school --

1 members of the TSSAA?

2 A I --

3 MS. JERNIGAN-JOHNSON: Object to the  
4 form.

5 A I believe so. I wouldn't -- I -- there may  
6 be -- there may be some fluke one that's not, but I  
7 don't know one.

8 Q Got it. But Farragut High School is a  
9 member of TSSAA; is that right?

10 A Yes.

11 Q And so that means that Farragut High School  
12 must comply with TSSAA policies?

13 A Yes.

14 Q Okay. And so it sounds like you have not  
15 reviewed this policy before; is that correct?

16 A That's correct.

17 Q Were you aware of any TSSAA policies  
18 governing the participation of transgender students in  
19 school sports?

20 MS. JERNIGAN-JOHNSON: Object to the  
21 form.

22 A Not prior to this issue coming up.



1 Q Okay. And so let me turn now to this  
2 policy. The first paragraph, it says, "the  
3 TSSAA/TMSAA allows participation for all students,  
4 regardless of their gender identity or expression."  
5 Do you see that?

6 A Yes.

7 Q And then in the very last sentence of this  
8 paragraph, it says, "this policy is designed to create  
9 a framework in which the participation may occur in a  
10 safe and healthy manner that is fair to all  
11 competitors." Do you see that?

12 A Yes.

13 Q And then underneath the second heading of  
14 Gender Identity Policy/Procedure, in that paragraph,  
15 it states, "all students should have the opportunity  
16 to participate in TSSAA/TMSAA activities in a manner  
17 that is consistent with their gender identity,  
18 irrespective of the gender listed on the student's  
19 records," is that right?

20 A Yes.

21 Q Okay. And so talking about this policy, to  
22 your knowledge, is this policy still the current

1 policy of the TSSAA?

2 MS. JERNIGAN-JOHNSON: Object to the  
3 form.

4 MS. BERGMEYER: Object to form.

5 A I -- I would have no knowledge of that what  
6 their policy currently is.

7 Q Do you have any knowledge that this policy  
8 was ever used at Farragut High School?

9 A I have no knowledge of that.

10 Q Who is responsible for enforcing TSSAA  
11 policies at Farragut High School?

12 A The athletic director and myself.

13 Q And so you've never, to your memory, had to  
14 enforce this policy.

15 A I've never had to enforce that policy.

16 Q In your opinion, shouldn't this policy be  
17 revised in light of the law, if it has not been  
18 already?

19 MS. JERNIGAN-JOHNSON: Object to the  
20 form.

21 MS. BERGMEYER: Object to form.

22 A In -- in my opinion, that policy isn't worth

1 the paper it's written on because of state law that  
2 supersedes that policy.

3 Q Okay. And would it be your understanding  
4 that the Knox County Schools policies would also  
5 supersede this policy?

6 A Absolutely.

7 Q Okay. So let's talk again about the  
8 benefits of sports. So earlier, we talked for quite a  
9 bit about the benefits students get from playing  
10 sports in high school.

11 Do you think that transgender students who  
12 play sports would receive the same benefits?

13 MS. JERNIGAN-JOHNSON: Object to the  
14 form.

15 A Yes.

16 Q Do you think transgender students who  
17 participate in school sports strive to improve their  
18 performance in those sports?

19 A Yes.

20 Q Do you think transgender students who play  
21 in school sports want to experience the satisfaction  
22 of victory?

1 A Yes.

2 Q Do you think transgender students who play  
3 in school sports benefit by becoming more accountable  
4 and responsible?

5 A Yes.

6 Q Do you think transgender students who  
7 participate in school sports would benefit from a  
8 higher degree of physical fitness because they play  
9 sports?

10 A Yes.

11 Q Do you think transgender students who  
12 participate in school sports would also receive mental  
13 health benefits from participating in school sports?

14 MS. BERGMEYER: -- form --

15 A Yes.

16 Q Do you think transgender students who play  
17 in school sports would benefit even if they do not win  
18 sports competitions?

19 MS. BERGMEYER: Form --

20 A Yes.

21 Q Do you think transgender students who play  
22 in school sports would have the ability to build a

1 community of their peers through playing school  
2 sports?

3 MS. JERNIGAN-JOHNSON: Object to the  
4 form.

5 MS. BERGMEYER: -- form.

6 A Yes.

7 Q Do you think transgender students who play  
8 in school sports are able to get mentorship from  
9 coaches and other athletic staff?

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form.

12 MS. BERGMEYER: -- form.

13 A Yes.

14 Q And as you've said earlier, would you agree  
15 that the mentorship that coaches provide is beneficial  
16 to students?

17 MS. JERNIGAN-JOHNSON: Object to the  
18 form.

19 MS. BERGMEYER: Object to form.

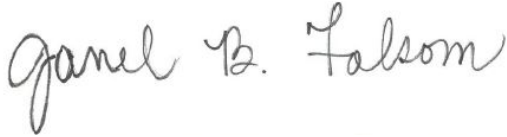
20 A Yes.

21 Q And so you would agree that the mentorship  
22 coaches provide through school sports would also

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CERTIFICATE OF DEPOSITION OFFICER

I, JANEL B. FOLSOM, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JANEL B. FOLSOM  
Notary Public in and for the  
Commonwealth of Virginia

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CERTIFICATE OF TRANSCRIBER

I, ALICE AMUSIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ALICE AMUSIN

# EXHIBIT 9



1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF TENNESSEE

3 \_\_\_\_\_  
4 L.E., by his next friends and  
5 parents, SHELLEY ESQUIVEL and  
6 MARIO ESQUIVEL

7 Plaintiff

8 v.

No.

9 BILL LEE, in his official

3:21-cv-00835

10 capacity as Governor of

11 Tennessee; PENNY SCHWINN, in her

12 official capacity as the

13 Tennessee Education

14 Commissioner; TENNESSEE STATE

15 BOARD OF EDUCATION; SARA HEYBURN

16 MORRISON, in her official

17 capacity as the Executive

18 Director of the Tennessee State

19 Board of Education; NICK

20 DARNELL, MIKE EDWARDS, ROBERT

21 EBY, GORDON FERGUSON, ELISSA

22 KIM, LILIAN HARTGROVE, NATE

1 MORROW, LARRY JENSEN, DARRELL  
2 COBBINS, and EMILY HOUSE, the  
3 individual members of the  
4 Tennessee State Board of  
5 Education, in their official  
6 capacities; KNOX COUNTY BOARD OF  
7 EDUCATION a/k/a KNOX COUNTY  
8 SCHOOLS a/k/a KNOX COUNTY SCHOOL  
9 DISTRICT; ROBERT M. "BOB"  
10 THOMAS, in his official capacity  
11 as Director of Knox County  
12 Schools

13 Defendants

14 -----

15 VIDEOCONFERENCE DEPOSITION OF

16 JONATHAN FRANKLIN HIGGINS

17 DATE: Monday, July 25, 2022

18 TIME: 11:15 a.m.

19 LOCATION: Remote Proceeding

20 Washington, D.C. 20005

21 REPORTED BY: Janel B. Folsom, Notary Public

22 JOB NO.: 5338660

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF L.E., BY HIS NEXT FRIENDS AND PARENTS, SHELLEY ESQUIVEL AND MARIO ESQUIVEL:

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ON BEHALF OF DEFENDANTS KNOX COUNTY BOARD OF EDUCATION A/K/A KNOX COUNTY SCHOOLS A/K/A KNOX COUNTY SCHOOL DISTRICT AND ROBERT M. "BOB" THOMAS, IN HIS CAPACITY AS DIRECTOR OF KNOX COUNTY SCHOOLS:

JESSICA G. A. JERNIGAN-JOHNSON, ESQUIRE (by videoconference)

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A P P E A R A N C E S (Cont'd)

1  
2 ON BEHALF OF DEFENDANTS BILL LEE, IN HIS OFFICIAL  
3 CAPACITY AS GOVERNOR OF TENNESSEE; PENNY SCHWINN, IN  
4 HER OFFICIAL CAPACITY AS THE TENNESSEE EDUCATION  
5 COMMISSIONER; TENNESSEE STATE BOARD OF EDUCATION; SARA  
6 HEYBURN MORRISON, IN HER CAPACITY AS THE EXECUTIVE  
7 DIRECTOR OF THE TENNESSEE BOARD OF EDUCATION; AND NICK  
8 DARNELL, MIKE EDWARDS, ROBERT EBY, GORDON FERGUSON,  
9 ELISSA KIM, LILLIAN HARTGROVE, NATE MORROW, LARRY  
10 JENSEN, DARRELL COBBINS, AND EMILY HOUSE, THE  
11 INDIVIDUAL MEMBERS OF THE TENNESSEE STATE BOARD OF  
12 EDUCATION, IN THEIR OFFICIAL CAPACITIES:

13       STEPHANIE A. BERGMAYER, ESQUIRE (by  
14       videoconference)  
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22

A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Sasha Buchert, Esq., Lambda Legal Defense and  
Education Fund Inc. (by videoconference)

Thomas F. Costello-Vega, Esq., WilmerHale, LLP  
(by videoconference)

Clark L. Hildabrand, Esq., Office of Tennessee  
Attorney General (by videoconference)

Brandon Townsend, Office of Tennessee Attorney  
General (by videoconference)

Jerry Curran, Technician, CMI Production Services  
(by videoconference)

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## I N D E X

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By Mr. O'Toole	94

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1 and sex.

2 Q Okay. So the wellness course includes sex  
3 education, as well as physical and mental health? Is  
4 that --

5 A Yes.

6 Q -- right? Okay. But physical education is  
7 more like a gym class?

8 A Yes.

9 Q Okay. But you can opt out of the physical  
10 education class by playing a varsity sport. Is that  
11 right?

12 A Yes.

13 Q But you cannot opt out of the wellness  
14 class. Is that right?

15 A No, sir.

16 Q Okay. When do students generally take the  
17 wellness class?

18 A Well this upcoming year, I think we're --  
19 it's going back to a sophomore class. But in the  
20 years prior, it was the freshman class.

21 Q Okay. You are the golf coach of both the  
22 boys' team and the girls' team, correct?

1           A     Yes, sir.

2           Q     And as you said, you're the only golf coach  
3 at Farragut High School currently, right?

4           A     Yes, sir. I've got a volunteer helping me  
5 right now, while I'm on vacation.

6           Q     Okay. What are your responsibilities as the  
7 golf coach?

8           A     To set up practices, conduct practices, set  
9 up matches, and give lineups for matches, and oversee  
10 matches and district tournament and region tournament.

11          Q     Okay. Sounds like a lot to do alone. And  
12 does Farragut High School have a junior varsity golf  
13 team?

14          A     The golf season is tricky. So we don't  
15 technically have a junior varsity team, but if we  
16 needed to play a JV match or two, we probably could.

17          Q     What do you mean that the season is tricky?

18          A     You get 14 dates to play golf matches. And  
19 in -- in those 14 days are included are JV matches.  
20 So most teams don't have JV matches.

21                 We don't play JV matches 'cause they have to  
22 played on the same day and most teams don't have two



1           A       ESPN, Sports Illustrated, Golf Digest,  
2 things like that.

3           Q       Okay. Do you read Golf Digest to help you  
4 as a coach of golf?

5           A       And as a player of golf.

6           Q       Okay. How long have you been playing golf?

7           A       Fifteen years.

8           Q       Do you do it as a hobby?

9           A       Yes.

10          Q       Have you ever played golf professionally?

11          A       No.

12          Q       Okay. In your review of sports trade press,  
13 have you ever read articles about the benefits of  
14 sports for high school students?

15          A       Not that I'm aware of, no.

16          Q       Okay.

17                   MR. O'TOOLE: I'd like to introduce as  
18 Exhibit 1 -- which is tab 2, Sasha. It's an article  
19 from NFHS.

20                   Just let me know when you have it up in  
21 the Exhibit Share, Mr. Higgins.

22        //

1 (Exhibit 1 was marked for  
2 identification.)

3 THE WITNESS: Yes.

4 MR. O'TOOLE: You got it?

5 BY MR. O'TOOLE:

6 Q Have you seen this document before?

7 A Not that I'm aware of, no.

8 Q Okay. You can take the time to review it.  
9 I'm just going to sort of use this as a framework for  
10 our conversation.

11 A Mm-hmm.

12 Q If you can look at the first page, in the  
13 first paragraph, beginning with, "the NFHS"?

14 A Mm-hmm.

15 Q It says, "the NFHS, based in Indianapolis,  
16 Indiana, is the national leader and advocate for high  
17 school athletics, as well as fine and performing arts  
18 programs." Do you see that?

19 A Yes.

20 Q Okay. And then in the next paragraph, the  
21 first line says, "the NFHS writes playing rules for  
22 high school sports and provides guidance on a

1 multitude of national issues." Do you see that?

2 A Yes.

3 Q Is that generally consistent with your  
4 knowledge of what the NFHS does?

5 A Yes.

6 Q Okay. And then if you can go to the second  
7 page.

8 A Yes.

9 Q And the second paragraph, starting with,  
10 "participating"?

11 A Yes.

12 Q It says, "participating in high school  
13 athletics has long-lasting, definitive benefits,  
14 especially when athletic leaders create an environment  
15 that challenges and rewards the growth mindset." Do  
16 you see that?

17 A Yes.

18 Q Do you agree, generally, with that premise  
19 that participation in high school sports has  
20 definitive benefits for students?

21 A I do.

22 Q Okay. And what are some of those benefits

1 that you observed your students getting from playing  
2 sports?

3 A As I said, with myself, I think discipline,  
4 accountability, responsibility, teamwork. These are  
5 all things that I preach to my kids that they'll need  
6 as they grow older.

7 Q Great.

8 A How to deal with adversity. Things of that  
9 nature.

10 Q Mm-hmm. So resilience, for example?

11 A Yes.

12 Q Okay. And this may be obvious, but  
13 participating in high school sports also has physical  
14 benefits, correct?

15 A Yes.

16 Q What sorts of competitive skills do you  
17 think make a good basketball player?

18 A What's their work ethic like, their  
19 determination. Really, that's -- to be a good  
20 basketball player in high school level, that's about  
21 all you really need. Can you work hard? And can  
22 you -- are you determined to get better?

1           Q     Also just like to go back to this article.  
2     In the third paragraph, it says, "three of the most  
3     important participation takeaways that students  
4     continue to practice after graduation are, one, a  
5     stronger sense of self-confidence in building  
6     relationships with others and having an expanded  
7     capacity for empathy; two, developing a better  
8     understanding of self and in so doing understanding  
9     how their actions affect others; and three, building  
10    foundations for lifelong fitness habits." Do you see  
11    that?

12           A     Yes.

13           Q     Do you generally agree that those are some  
14    of the benefits students may derive from participating  
15    in sports?

16           A     Yes. Yes.

17           Q     All right. Great. Back to basketball. In  
18    basketball, athletes often come into physical contact  
19    with one another; is that right?

20           A     Yes.

21           Q     So for example, if you and I were playing  
22    and you went for a shot and I hit you, you may --

1 there may a foul declared, correct?

2 A Yes.

3 Q And that physical interference could injure  
4 you or me, correct?

5 A Yes.

6 Q But you, in your personal capacity as a  
7 basketball player, you understand that risk of injury  
8 any time you take the court, right?

9 A Yes.

10 Q And you willingly take on that risk; is that  
11 right?

12 A Yes.

13 Q In golf, players generally don't come into  
14 physical contact with one another; is that right?

15 A No.

16 Q And that's because, generally, golfers take  
17 their turn to swing on a particular hole, right?

18 A Yes.

19 MS. JERNIGAN-JOHNSON: Object to the  
20 form.

21 BY MR. O'TOOLE:

22 Q So it's rare for two golfers to end up

1 hitting each other, for example, right?

2 A Yes.

3 Q Okay. So would you say that in golf, the  
4 risk of injury due to physical contact is less than it  
5 is in basketball?

6 A Yes.

7 Q What competitive skills would you say make a  
8 good golfer?

9 A Determination, hard work, mental toughness.  
10 And then the physical attributes of being a good  
11 athlete -- swing speed, strength, etc., etc., etc.

12 MR. O'TOOLE: I'd like to introduce  
13 Exhibit 2. Sasha, that's tab 3. These are excerpts  
14 from the Farragut Golf Twitter account.

15 (Exhibit 2 was marked for  
16 identification.)

17 THE WITNESS: Okay.

18 MR. O'TOOLE: Just let me know when you  
19 have those up.

20 THE WITNESS: Yes.

21 BY MR. O'TOOLE:

22 Q Do you recognize these as excerpts from the

1 transgender student could not try out for your boys'  
2 golf team?

3 A No.

4 Q Okay.

5 MR. O'TOOLE: I'd like to introduce as  
6 Exhibit 6 -- it's tab 8, Sasha. Just let me know when  
7 you have it up.

8 (Exhibit 6 was marked for  
9 identification.)

10 THE WITNESS: Yes.

11 BY MR. O'TOOLE:

12 Q Have you seen this document before?

13 A Yes.

14 Q Okay. What do you know about this document?

15 A It's the Knox County's policy for sports.

16 Q Okay. And are you given this policy before  
17 the start of a new school year to review?

18 A No.

19 Q But this policy's accessible to you?

20 A Yes.

21 Q Okay. And how so?

22 A I -- I can go get it if I need to, but,



1 generally, we talk to Coach Dodgen. Dodgen -- Coach  
2 Dodgen lets us know new things we need to be on the  
3 lookout for.

4 Q Okay. So this is an example of a policy  
5 where you would check with Coach Dodgen to see to make  
6 sure that you were aligned with that policy; is that  
7 right?

8 MS. JERNIGAN-JOHNSON: Object to the  
9 form.

10 A This is a policy in which he tells us each  
11 year, "there's been changes to the policy."

12 Q Okay. So if you look at the top and, as you  
13 can see, in this document there's some red lettering  
14 and some black lettering. If you look at the top  
15 right-hand corner, there's a box called Review.

16 A Yep.

17 Q And 5-17 is crossed out.

18 A Mm-hmm.

19 Q And then 7 dash [sic] 21 looks like it's  
20 been added, right?

21 A Yes.

22 Q Do you understand that to mean July 21?

1 A Yes.

2 Q Okay. And in lines 15 to 18, there's some  
3 red text.

4 A Yes.

5 Q Do you understand that to be an addition to  
6 this policy?

7 A Yes.

8 Q Okay. And so it says here, "a student's  
9 gender for purposes of participation in middle or high  
10 school athletics is determined by the student's sex at  
11 the time of the student's birth."

12 "A valid original birth certificate must be  
13 provided for this purpose." Do you see that?

14 A Yes.

15 Q When a policy changes, how quickly does  
16 Mr. Dodgen usually let you know that the policy has  
17 changed?

18 A Not -- if it pertains to my sport, probably  
19 pretty soon.

20 Q Okay. Now, is this policy sports-specific?

21 A No.

22 Q So it would apply to all sports, correct?

1 A Yes.

2 Q Okay. So this change it looks like was  
3 implemented in July 2021, right?

4 A Mm-hmm, yes.

5 Q So you would expect Mr. Dodgen to have  
6 informed you shortly thereafter of this policy change;  
7 is that right?

8 A Probably at our coaches' meeting during that  
9 first week of school.

10 Q Okay. And is the first week of school in  
11 August?

12 A I think last year we started July 29th. So  
13 somewhere around there, yes.

14 Q Okay. So around roughly July 2021 is when  
15 you would've seen this updated or been communicated  
16 this updated policy; is that --

17 A Yes.

18 Q -- accurate? Okay. Prior to this addition,  
19 did you ever require a student to present their birth  
20 certificate to try out for your golf team?

21 A No.

22 Q Do you currently require a student to

1 present their birth certificate to try out for your  
2 golf team?

3 A I have not.

4 Q Okay. Do you know of other coaches who  
5 have?

6 A I do not.

7 Q In your capacity as a Farragut High School  
8 coach though, you are obligated to comply with Knox  
9 County Board of Education policies, right?

10 A Yes.

11 Q Okay. So if you are not requiring a student  
12 to present their birth certificate, that may be a  
13 technical violation of this policy, right?

14 MS. JERNIGAN-JOHNSON: Object to the  
15 form.

16 A I'm not sure.

17 Q Under this policy, where it says, "a  
18 student's gender for purposes of participation in  
19 middle or high school athletics is determined by the  
20 student's sex at the time of the student's birth,"  
21 that means that if a student who was born female tries  
22 out for your boys' golf team, they are not eligible to

1 participate on that boys' golf team, right?

2 A Mmm. Based on that, yes.

3 Q Okay. And when you say, "yes," you mean  
4 they are not eligible, correct?

5 A Yes.

6 Q And under this policy, would you agree that  
7 a female student would not be eligible to try out for  
8 the football team?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 BY MR. O'TOOLE:

12 Q You can answer.

13 A I'm not sure.

14 Q What would be different between trying out  
15 for your boys' golf team and trying out for the  
16 football team?

17 A I'm not sure. I don't coach golf -- I mean  
18 coach football.

19 Q Okay. But with respect to your golf team,  
20 if a female student tried to try out for the boys'  
21 team, to comply with that policy, that female student  
22 would not be able to be eligible to try out for your

1 golf team, right?

2 MS. JERNIGAN-JOHNSON: Object to the  
3 form.

4 A For my boys' team, yes. They would not be  
5 eligible.

6 Q Okay. And you'll notice that there's some  
7 footnotes here; it's on the second page.

8 A Mm-hmm.

9 Q Footnote TCA --

10 A Yeah.

11 Q -- Section 496310 [sic].

12 A Yes.

13 Q Do you know what that's a reference to?

14 A No.

15 Q Okay. So before the addition of this  
16 language in red to the Knox County Board of Education  
17 policy, were you aware of any restrictions on  
18 transgender students' ability to try out for your golf  
19 team?

20 A No.

21 MS. JERNIGAN-JOHNSON: Object to the  
22 form.

1 A No.

2 Q What about trying out for any team at  
3 Farragut High School?

4 MS. JERNIGAN-JOHNSON: Object to the  
5 form.

6 A I was not.

7 Q And this addition to the policy -- strike  
8 that.

9 This language in the Knox County Board of  
10 Education policy as revised differs from the language  
11 that was in Exhibit 5 -- the TSSAA Transgender  
12 Policy -- right?

13 MS. JERNIGAN-JOHNSON: Object to the  
14 form.

15 MS. BERGMEYER: Form.

16 THE WITNESS: Yes.

17 MR. O'TOOLE: Yeah.

18 BY MR. O'TOOLE:

19 Q Because that TSSAA Transgender Policy would  
20 have allowed a student like L.E. to try out for your  
21 golf team if they met the eligibility requirements,  
22 right?

1 MS. BERGMEYER: -- to form.

2 A I'm not sure.

3 Q Okay. Let's go back to Exhibit 5. Just let  
4 me know when you have it open.

5 A I do.

6 Q Okay. So on the bottom of page 1, it says  
7 Steps Required for Consideration to Participate?

8 A Mm-hmm, yes.

9 Q And it lists a number of requirements,  
10 including Notice to the School, Notice to the  
11 TSSAA/TMSAA, Necessary Documentation, Referral to  
12 Gender Identity Eligibility Committee, and  
13 Notification, right?

14 A Yes.

15 Q And then above that, under Gender Identity  
16 Policy and [sic] Procedure, it says, "all students  
17 should have the opportunity to participate in  
18 TSSAA/TMSAA activities in a manner that is consistent  
19 with their gender identity, irrespective of the gender  
20 listed on a student's records," right?

21 A Yes.

22 Q And then it says, "once the student has been



1 granted eligibility to participate in the sport  
2 consistent with his or [sic] her gender identity, the  
3 eligibility is granted for the duration of the  
4 student's participate and does not need to be renewed  
5 every sports season or school year," right?

6 A Yes.

7 Q So under this policy, a student like L.E. --  
8 who identified as female but wants to try out for your  
9 boys' golf team -- would have been able to if they met  
10 these eligibility requirements, right?

11 MS. JERNIGAN-JOHNSON: Object to the  
12 form.

13 A That's what that means, yes.

14 Q Okay. But it's your understanding that  
15 under the revised Knox County Board of Education  
16 policy, that that is no longer true, right?

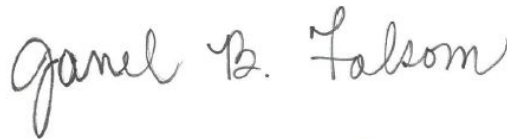
17 A Yes.

18 Q Mr. Higgins, are you aware of any student  
19 who has not been able to join either your team or  
20 another team at Farragut High School because their  
21 spot on the team was taken by a transgender student?

22 A I am not aware, no.

CERTIFICATE OF DEPOSITION OFFICER

I, JANEL B. FOLSOM, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JANEL B. FOLSOM

Notary Public in and for the  
Commonwealth of Virginia

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CERTIFICATE OF TRANSCRIBER

I, ALICE AMUSIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ALICE AMUSIN

# EXHIBIT 10

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

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L.E., by his next friends \*  
And parents \*  
  
Plaintiff \*  
  
V. \*  
  
BILL LEE, in his official \*  
Capacity as Governor of \*  
Tennessee; PENNY SCHWINN, \*  
In her official capacity as \*  
The Tennessee Education \*  
Commissioner; TENNESSEE \*  
STATE BOARD OF EDUCATION; \*  
SARA HEYBURN MORRISON in \*  
Her official capacity as \*  
The executive Director of \*  
The Tennessee State Board \*  
Of Education; NICK DARNELL \*  
MIKE EDWARDS ROBERT EBY \*  
GORDON FERGUSON, ELISSA, \*  
KIM LILLIAN HARTGROVE, \*  
NATE MORROW, LARRY JENSEN \*  
DARRELL COBBINS, and EMILY \*  
HOUSE, the individual \*  
Members of the Tennessee \*  
State Board of Education, \*  
In their official \*  
Capacities; KNOX COUNTY \*  
BOARD OF EDUCATION a/k/a \*  
KNOX COUNTY SCHOOLS a/k/a \*  
KNOX COUNTY SCHOOL \*  
DISTRICT; ROBERT M. "BOB" \*  
THOMAS, in his Official \*  
Capacity as Director of \*  
Knox County Schools \*  
  
Defendants \*  
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DEPOSITION OF DONALD DODGEN  
APPEARING REMOTELY FROM  
KNOXVILLE, TENNESSEE

July 28, 2022  
10:30 a.m.

REPORTED BY:  
Dawn L. Halcisak, CLR  
APPEARING REMOTELY FROM CRISFIELD, MARYLAND

R E M O T E   A P P E A R A N C E S

ON BEHALF OF PLAINTIFF KNOX COUNTY BOARD OF  
EDUCATION AND BOB THOMAS:

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1 R E M O T E A P P E A R A N C E S (Cont'd.)

2  
3 ON BEHALF OF L.E., by his next friends and  
4 parents SHELLEY ESQUIVEL and MARIO ESQUIVEL  
5 & ACLU OF TENNESSEE:

6 STELLA YARBROUGH, ESQUIRE (No. 33637)

7 P.O. Box 120160

8 Nashville, Tennessee 37212

9 (615) 320-7142

10 syarborough@aclu-tn.org

11  
12 ALSO PRESENT:

13 FOR KNOX COUNTY LAW DIRECTOR'S OFFICE:

14 Bob Thomas, Director of Knox County Schools

15 Coach Donald Dodgen

16  
17 ATTORNEY GENERAL'S OFFICE:

18 Anne Levit

19 Mr. Swaine

20 Executive Director Morrison

21 State Board Members

22 Veda Newman, Law Clerk



R E M O T E   A P P E A R A N C E S (Cont'd.)

Lucas Cameron-Vaugh, ACLU

VERITEXT:

Jerry CURran, Concierge Tech

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(Exhibits attached to transcript.)

1 Q. Are you aware that L.E. plays golf?

2 A. No.

3 Q. Are you aware that L.E. played golf on  
4 the Farragut municipal team?

5 A. No.

6 Q. And are you aware that, in this case,  
7 L.E. alleges that he's unable to try out for the  
8 Farragut High School boys' golf team, due to the  
9 passing of SB228?

10 A. No.

11 Q. So I'd like to talk to you a little  
12 about the athletic department, at Farragut High  
13 School.

14 How many different sports teams are  
15 there at Farragut High School?

16 A. We have a total of 22.

17 Q. That's quite a few.

18 Are you able to tell me what they are?

19 A. Yes.

20 Q. Could you tell me?

21 A. Football, baseball, softball, tennis  
22 boys and girls; softball, volleyball, track and

1 field, boys and girls; soccer, boys and girls;  
2 wrestling, boys and girls; cheerleading, dance,  
3 swim, boys and girl; Lacrosse, boys and girls.

4 I'm thinking. How many is that?

5 Q. That's 17.

6 A. 17.

7 Q. Cross-country?

8 A. I can't remember -- I'm trying to  
9 remember. I'm counting boys and girls. Like my  
10 track is boys and girls, which I count as two.  
11 Golf -- golf, boys and girls. In my mind, I've  
12 gone blank.

13 Q. For the football and baseball, are  
14 those boys-only teams?

15 A. We had a young lady on the football  
16 team last year, as a freshman.

17 Q. Okay. I'm going to put a pin in there  
18 and we'll come back and talk about that.

19 Is baseball a boys-only team?

20 A. Yes.

21 Q. Is softball a girls-only team?

22 A. Yes.

1 A. Yes.

2 Q. And, more generally speaking, on any  
3 team that are only girls, do those female  
4 players ever get injured while playing?

5 A. Yes.

6 Q. What kind of injuries have you seen  
7 girls, who play sports at Farragut High School,  
8 sustain while playing sports?

9 A. Ankle injuries, wrist injuries,  
10 concussions.

11 Q. So we touched on this briefly but, to  
12 your knowledge, last year, there was a female  
13 football player; is that correct?

14 A. Yes.

15 Q. And she was a freshman in high school?

16 A. Yes.

17 Q. I suppose football season is about to  
18 begin, correct?

19 A. Yes.

20 Q. Do you know if she plans on playing  
21 this year?

22 A. Not this year.

1 Q. Do you know why?

2 A. She wanted to concentrate on wrestling  
3 and Lacrosse.

4 Q. What position did she play on that  
5 football team?

6 A. Offensive line.

7 Q. And can you explain what an offensive  
8 line person does?

9 A. Blocks for the quarterback,  
10 runningbacks, blocks for passing plays.

11 Q. What do you mean by "blocks?"

12 A. The opponent on the defensive side, you  
13 have tackling guard on the defensive side. The  
14 offensive lineman would block the guards and try  
15 to open a hole up for the running back, or  
16 you're going to block the quarterback to keep  
17 the defense from getting to the quarterback.

18 Q. What is a player doing with their body  
19 when they're blocking?

20 A. Yeah. There's contact, you know, with  
21 the shoulder pads, arms, and hands.

22 Q. Does someone who is an offensive

1 lineman often tackle other players?

2 A. Yes.

3 Q. Do they often get tackled themselves?

4 A. Yes.

5 Q. So that would be a high-contact

6 position?

7 A. Yes.

8 Q. By "high contact," I mean a position  
9 where you are physically tackling other players  
10 and getting tackled; is that right?

11 A. Football is a contact sport.

12 Q. Do football players ever suffer  
13 injuries when they're playing football.

14 A. Yes.

15 Q. To your knowledge, have you seen  
16 Farragut High School football players sustain  
17 injuries?

18 A. Yes.

19 Q. What kind of injuries have they  
20 sustained?

21 A. Broken bones, turned ankles, knees,  
22 shoulders, and concussions.



1 football?

2 A. Yes.

3 Q. And I asked you about the female  
4 offensive line-person from Farragut High School,  
5 but I'm going to ask you about the player from  
6 Central High school.

7 Are you aware of any reports that the  
8 player from Central High School was injured when  
9 she played on the boys football team?

10 A. No.

11 Q. I'd like to ask you a couple of  
12 questions, now, about golf.

13 Is golf a contact sport?

14 A. No.

15 Q. And how do you define "contact"?

16 A. When two players run into each other.

17 Q. Okay. Does every golf player on the  
18 team have the same level of skill?

19 A. I do not know.

20 Q. Or maybe I can ask that question about  
21 basketball.

22 When you're coaching a basketball team,

1 Exhibit 5, please.

2 (Off record discussion.)

3 (DODGEN Exhibit No. 5 marked for  
4 identification and attached to the transcript.)

5 BY MS. YARBROUGH:

6 Q. Mr. Dodgen, can you see this document?

7 A. Yes. Yes.

8 Q. What is it?

9 A. It's the transgender policy.

10 Q. It's the T, double S, double A or  
11 the --

12 A. Yes.

13 Q. -- TMS, double A transgender policy?

14 A. Yes.

15 MS. JOHNSON: Just let her finish her  
16 questions.

17 THE WITNESS: I'm sorry.

18 BY MS. YARBROUGH:

19 Q. Again, as an athletic director and  
20 former coach, you were required to abide by the  
21 T, double S, double A policy that you're  
22 viewing, correct?

1 A. Yes. All.

2 Q. And in the first paragraph, it says  
3 that:

4 "The T, double S, double A TMS  
5 double A allows participation for all  
6 students regardless of their -- gender,  
7 identity, or expression," right?

8 A. Yes.

9 Q. And it says:

10 "All students should have the  
11 opportunity to participate in TSSAA,  
12 TMSAA activities in a manner that is  
13 consistent with their gender identity,  
14 irrespective of the gender listed on  
15 the student's record," right?

16 A. Yes.

17 Q. And under the policy, L.E. would have  
18 been allowed to try out for the boys' golf team,  
19 correct?

20 A. I assume state policy overrules TS  
21 double A. I might be wrong.

22 Q. So it's your understanding that the

1 state law overrules TSSAA policy?

2 A. Yes.

3 Q. And that if the state law SB228 did not  
4 exist that this policy would apply?

5 MS. BERGMEYER: Object to the form.

6 MS. JOHNSON: Object to the form.

7 THE WITNESS: Yes.

8 BY MS. YARBROUGH:

9 Q. And that if only the TSSAA policy were  
10 in effect, that L.E. would be allowed to try out  
11 for the boys' golf team, correct?

12 MS. JOHNSON: Object to the form.

13 MS. BERGMEYER: Object to the form.

14 THE WITNESS: Yes.

15 (Off record discussion.)

16 BY MS. YARBROUGH:

17 Q. You testified earlier that in your role  
18 as athletic director, you've not directly  
19 interacted or you have not coached any  
20 transgender students, right?

21 A. Yes.

22 Q. So you, at the time, that this policy

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Dawn L. Halcisak, Court Reporter and  
3 Notary Public in and for the State of Maryland,  
4 the officer before whom the foregoing Remote  
5 Deposition was taken, do hereby certify that the  
6 foregoing transcript is a true and correct  
7 record of the testimony given; that said  
8 testimony was taken by me stenographically and  
9 thereafter reduced to typewriting under my  
10 direction and that I am neither counsel for,  
11 related to, nor employed by any of the parties  
12 to this case and have no interest, financial or  
13 otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set  
15 my hand this 23rd day of August, 2022.

16  
17  
18 My commission expires:  
19 August 4, 2023

20 

21 NOTARY PUBLIC IN AND FOR THE  
22 STATE OF MARYLAND

# EXHIBIT 11

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE**

L.E.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3:21-cv-00835
	)	
BILL LEE, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**DECLARATION OF MARK REEVES**

The declarant Mark Reeves states:

1. I am the Executive Director of the Tennessee Secondary School Athletic Association (TSSAA) and have served as Executive Director of the TSSAA since July 1, 2022. Prior to that, I served for fourteen years as an assistant executive director for the TSSAA. Before joining the TSSAA staff as an assistant executive director, I was an educator in the Robertson County, Tennessee, school system.
2. TSSAA’s membership includes approximately 470 high schools and more than 400 middle schools spread across the state. TSSAA has a staff of eighteen full-time employees and one part-time employee, all of whom work from TSSAA’s office in Hermitage, Tennessee. Approximately half of TSSAA’s staff members are clerical employees.
3. TSSAA is a voluntary association of member schools that began in 1925 and was incorporated as a not-for-profit corporation in 1967. TSSAA is governed by its Constitution and Bylaws. The TSSAA Constitution and Bylaws are available on TSSAA’s website at <https://cms-files.tssaa.org/documents/tssaa/2021-22/handbook/2021-22TSSAABylaws.pdf>.

4. TSSAA is governed by two governing bodies, each of which consists of twelve (12) members elected by the member schools. The Legislative Council is responsible for writing and amending the Bylaws of the Association. The Board of Control is responsible for administering those Bylaws. The Executive Director is employed by the Board of Control and is responsible for the day-to-day administration of the organization.

5. The Tennessee Middle School Athletic Association (TMSAA) is an unincorporated affiliate of TSSAA. The TMSAA does not have separate governing authorities from TSSAA. The TMSAA is governed by the TSSAA Legislative Council and Board of Control, and the TSSAA Executive Director is responsible for the day-to-day administration of the TMSAA. The TMSAA Constitution and Bylaws are available on TSSAA's website at <https://cms-files.tssaa.org/documents/tssaa/2021-22/handbook/2021-22TMSAABylaws.pdf>.

6. TSSAA has routinely allowed girls to participate in boys' sports as long as they played by the same rules (e.g., girls playing on the boys' golf team must play from the same tees from which the boys play). Consequently, the participation of transgender boys in interscholastic athletics would have posed no issue for TSSAA in the absence of state law prohibiting such participation.

7. TSSAA does not have any information regarding any instance where a transgender girl has sought eligibility to participate in girls' interscholastic sports at a Tennessee middle school or high school. Several years ago TSSAA developed a Transgender Policy (Exhibit A to the Complaint) in order to deal with such participation should the issue arise; but TSSAA has not been presented with an eligibility issue that called for the use of that Policy.

8. TSSAA had no expenditures in relation to S.B. 228. TSSAA had no involvement in the passage of that Act and took no position relative to it. TSSAA does not receive funding

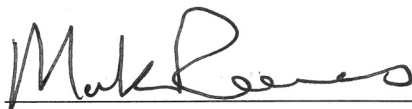


from advocacy organizations. Other than a small sponsorship agreement with the Tennessee Highway Safety Office, TSSAA does not receive any State funds.

9. TSSAA has no documents responsive to the subpoenas served on TSSAA and TMSAA other than the TSSAA and TMSAA Constitution and Bylaws and the Transgender Policy referenced above.

I declare under penalty of perjury that the foregoing statements are true.

Dated this 13th day of July, 2022.

  
\_\_\_\_\_  
Mark Reeves

# EXHIBIT 12

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

Judge Crenshaw

Magistrate Judge Alistair E. Newbern

**DECLARATION OF SAMUEL STEINBRUEGGE, LCSW**

I, Samuel Steinbruegge, do hereby declare as follows:

1. I am a licensed clinical social worker, licensed in the States of Tennessee and Alaska. I hold a Master of Science degree in social work from the University of Tennessee. I am a member of the World Professional Association for Transgender Health ("WPATH"), and I have earned certification as a WPATH Global Education Initiative Certified Member, indicating that I have completed specialized education and demonstrated enhanced understanding of the WPATH Standards of Care for caring for and treating transgender clients. I have seven years of clinical experience working with transgender children, adolescents, and adults. I have provided transgender-specific training and education for other professionals and businesses for five years.

2. I began working with L.E. on January 28, 2021. I first completed a thorough biopsychosocial assessment. L.E. disclosed symptoms of gender dysphoria, including a strong desire to be rid of primary sex characteristics; a strong desire to have the primary sex characteristics of another gender; a strong desire to be another gender; a strong desire to be


treated as another gender; and a strong conviction that one has the typical feelings and reactions of another gender.

3. L.E.'s gender dysphoria caused clinically significant distress in social functioning, as evidenced by shyness around his peers. L.E. disclosed that he had known he was a boy since 5th grade. L.E. disclosed that he wanted his voice to be deeper and to grow a mustache. His developing chest caused him significant discomfort. L.E. verbalized that he is a boy and would like to be seen as and treated as a male by others. L.E.'s symptoms met criteria for the DSM-V diagnosis of gender dysphoria in adolescence.

4. The assessment indicated that L.E.'s family was supportive of him, and the family had adequate resources and knowledge to support L.E.'s mental health and gender transition from female to male. A timely referral was made to a pediatric endocrinologist for evaluation for gender-affirming puberty suppressing medication for the treatment of gender dysphoria. L.E. continued to have outpatient therapy sessions to provide support for his mental health as he continued to process and express his gender identity, navigate social gender transition more publicly (at school), and identify his goals for gender transition. Outpatient therapy also was utilized to provide psychoeducation about gender dysphoria, its treatments (including risks and benefits), and process potential impacts on future fertility with L.E. and his parents.

5. Based on the above, I have diagnosed L.E. with gender dysphoria.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 4, 2022.

  
\_\_\_\_\_  
Samuel Steinbruegge, LCSW

# EXHIBIT 13

**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

**RESPONSE OF DEFENDANTS KNOX COUNTY BOARD OF EDUCATION  
a/k/a KNOX COUNTY SCHOOLS a/k/a KNOX COUNTY SCHOOL DISTRICT,  
AND ROBERT M. “BOB” THOMAS (NOS. 1 – 25) TO  
PLAINTIFF’S FIRST SET OF REQUESTS FOR ADMISSION**

In response to the Requests for Admission served upon Defendants Knox County Board of Education a/k/a Knox County Schools a/k/a Knox County School District and Robert M. “Bob” Thomas, in his official capacity as Director of Knox County Schools, states as follows:

**DEFINITIONS**

Words in CAPITALS are defined as follows:

1. ACTION means the above-captioned litigation instituted by L.E. on November 4, 2021.
2. COMPLAINT means the complaint L.E. filed initiating this ACTION.
3. L.E. means L.E. and/or his parents, Shelley Esquivel and/or Mario Esquivel.
4. CISGENDER means a PERSON whose GENDER IDENTITY aligns with the sex they were assigned at birth.

5. COMMUNICATION means any transmission of information from one PERSON to another by any means in the form of facts, ideas, inquiries, or otherwise.
6. COUNTY BOARD means Knox County Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.
7. COUNTY DIRECTOR means Robert M. “Bob” Thomas in his official capacity as Director of the COUNTY BOARD, and includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to him in his official capacity. It also means any PERSON who assumes any of Robert M. “Bob” Thomas’s official positions or responsibilities in part, whether temporarily or permanently.
8. FEDERAL FINANCIAL ASSISTANCE means the definition of “Federal financial assistance” provided in 34 C.F.R. § 106.2(g).
9. GENDER IDENTITY is synonymous with the meaning used in paragraphs 24-25 of the COMPLAINT.
10. INTERSCHOLASTIC SPORTS means athletic competitions between students of schools at all educational levels prior to college, including but not limited to elementary school, secondary school, middle school, and high school.
11. PERSON means any natural person or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.

12. POLICY means any policy, procedure, rule, protocol, guideline, regulation, practice, or other principle or course of action.
13. S.B. 228 means Tennessee House Bill 3 of the 2021-2022 112th General Assembly, Tennessee Senate Bill 228 of the 2021-2022 112th General Assembly, or any implementing POLICY thereunder.
14. STATE OF TENNESSEE includes the State as an entity, as well as the State's governors, attorneys general, agencies, legislators, officials, affiliates, attorneys, accountants, consultants, representatives, and agents.
15. TRANSGENDER BOY means a PERSON who has a male GENDER IDENTITY, and had a female sex assigned at birth.
16. YOU, YOUR, or YOURS means the COUNTY BOARD and the COUNTY DIRECTOR, collectively.

### **INSTRUCTIONS**

1. YOU are requested to answer the Requests set forth below separately and completely in writing under oath. YOUR response hereto is to be signed and verified by the PERSON making it, and the objections signed by the attorney making them, as required by Federal Rule of Civil Procedure 36(a).
2. YOUR response shall specifically admit or deny a Request, or set forth in detail the reasons why YOU cannot truthfully admit or deny the Request. A denial must fairly respond to the substance of the matter. If a Request is not admitted, YOU must state each and every reason why such Request is not admitted.



3. If a Request is admitted with qualifications(s), YOU must specify the portion(s) of the Request that are true, and state each and every reason why such Request is admitted with qualifications.
4. If a portion of the Request is denied, YOU must specify the portion(s) of the Request that are true, and state each and every reason why such Request is denied in part.
5. The response to each Request shall include such information as is within YOUR custody, possession, or control, or that of YOUR attorneys, investigators, agents, employees, experts retained by YOU or YOUR attorneys, or other representatives.
6. YOU shall not give lack of information or knowledge as a reason for failure to admit or deny a Request unless YOU state that YOU made reasonable inquiry and the information known or readily obtainable to YOU is insufficient to enable YOU to admit or deny the Request.
7. If objection is made to any portion of a Request, the reasons therefore shall be stated in full with specificity, and the unobjectionable portions of the Request shall be admitted or denied. The fact that a Request covers a matter which YOU believe presents a genuine issue for trial may not, on that ground alone, provide the basis for an objection.
8. If YOU or YOUR counsel assert that any information responsive to any request set forth below is privileged or otherwise protected from discovery, YOU are requested to set forth the privilege claimed and the facts on which YOU rely to support the claimed privilege.
9. If, in responding to the Requests for Admission set forth below, YOU encounter any ambiguities when construing the Request, Instruction, or Definition, YOU shall set

forth in YOUR response the matter deemed ambiguous and the construction used in responding.

10. These Requests are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial response, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rules of Civil Procedure.

### **REQUESTS FOR ADMISSION**

#### **REQUEST NO. 1:**

Admit that L.E. was assigned the sex of female at birth.

**RESPONSE: Admitted.**

#### **REQUEST NO. 2:**

Admit that L.E. has a male GENDER IDENTITY.

**RESPONSE: It is Admitted that L.E. currently identifies as a male. These Defendants are unable to respond to this request as written because the definition of GENDER IDENTITY as set forth by the Plaintiffs, incorporating the definitions included in paragraphs 25-26 of the Complaint, are beyond the scope of these Defendants' knowledge. As this is a matter of differing expert opinion, no amount of reasonable inquiry would enable these Defendants to form a basis of knowledge to respond to this request.**

#### **REQUEST NO. 3:**

Admit that L.E. is a TRANSGENDER BOY.

**RESPONSE: Admitted.**

**REQUEST NO. 4:**

Admit that L.E. has been diagnosed with gender dysphoria.

**RESPONSE:**        **These Defendants cannot truthfully admit or deny this request, as no medical records have been furnished to them by which they could make a reasonable inquiry regarding any diagnosis which L.E. may have received. Furthermore, these Defendants have no right to obtain such records independently, as they are protected under various state and federal privacy laws.**

**REQUEST NO. 5:**

Admit that golf does not involve contact between participants.

**RESPONSE:**        **It is Admitted that golf is not considered a “contact sport.” Some incidental contact between participants is, however, common in golf (e.g., shaking hands or brushing against each other).**

**REQUEST NO. 6:**

Admit that S.B. 228 prohibits L.E. from participating on boys’ athletics teams at all public secondary schools located in Knox County, Tennessee, if the public secondary school also has a girls’ athletic team for the same sport.

**RESPONSE:**        **Admitted.**

**REQUEST NO. 7**

Admit that S.B. 228 does not prohibit CISGENDER girls from participating on boys' athletics teams at public secondary schools located in Knox County, Tennessee if the public secondary school does not have a girls' athletic team for the same sport.

**RESPONSE: Denied as stated. Certain sports, such as football, are not divided into "boys" and "girls" teams and anyone is permitted to try out for those sports. For sports that are divided into "boys" and "girls" teams, if no "girls" team was available at the school, KCS would work to develop a "girls" team in some capacity.**

**REQUEST NO. 8:**

Admit that S.B. 228 does not prohibit TRANSGENDER BOYS from participating on boys' athletics teams at public secondary schools located in Knox County, Tennessee if the public secondary school does not have a girls' athletic team for the same spot.

**RESPONSE: Denied as stated. Certain sports, such as football, are not divided into "boys" and "girls" teams and anyone is permitted to try out for those sports. For sports that are divided into "boys" and "girls" teams, if no "girls" team was available at the school, KCS would work to develop a "girls" team in some capacity.**

**REQUEST NO. 9:**

Admit that YOU must comply with S.B. 228 unless enjoined from doing so by a court.

**RESPONSE: Admitted.**

**REQUEST NO. 10:**

Admit that YOU are required to promulgate policies ensuring compliance with S.B. 228 unless enjoined from doing so by a court.

**RESPONSE: Admitted.**

**REQUEST NO. 11:**

Admit that any policies that YOU promulgate pursuant to S.B. 228 cannot conflict with the plain language of S.B. 228.

**RESPONSE: Admitted.**

**REQUEST NO. 12:**

Admit that S.B. 228 prohibits YOU from adopting or enforcing a policy that would allow L.E. to participate on the boys' golf team at Farragut High School.

**RESPONSE: Admitted.**

**REQUEST NO. 13:**

Admit that YOU are required to ensure that Farragut High School complies with S.B. 228 assuming a court has not enjoined it from doing so.

**RESPONSE: Admitted.**

**REQUEST NO. 14:**

Admit that there are no golf teams designated as "coed or mixed gender" that compete interscholastically offered by public secondary schools located in Knox County, Tennessee.

**RESPONSE: Admitted.**

**REQUEST NO. 15:**

Admit that prior to the enactment of S.B. 228, CISGENDER boy public secondary school students were prohibited from participating on a public secondary school's girls' athletic team in Knox County, Tennessee, if the school also had a boys' athletic team for the same sport.

**RESPONSE: Admitted.**

**REQUEST NO. 16:**

Admit that S.B. 228 prohibits any TRANSGENDER BOY student at any public secondary school in Knox County, Tennessee from joining a boys' athletic team offered by his school, if the school also has a girls' athletic team for the same sport.

**RESPONSE: Admitted.**

**REQUEST NO. 17:**

Admit that S.B. 228 does not prohibit a CISGENDER boy student at Farragut High School from joining a boys' athletic team offered at Farragut High School.

**RESPONSE: Admitted.**

**REQUEST NO. 18:**

Admit that students derive social benefits from participating in INTERSCHOLASTIC SPORTS in Knox County, Tennessee.

**RESPONSE: Admitted.**

**REQUEST NO. 19:**

Admit that students derive psychological benefits from participating in INTERSCHOLASTIC SPORTS in Knox County, Tennessee.

**RESPONSE: Admitted.**

**REQUEST NO. 20:**

Admit that INTERSCHOLASTIC SPORTS benefit students.

**RESPONSE: Admitted.**

**REQUEST NO. 21:**

Admit that students who participate in INTERSCHOLASTIC SPORTS receive benefits regardless of whether they win or lose.

**RESPONSE: Admitted.**

**REQUEST NO. 22:**

Admit that YOU receive FEDERAL FINANCIAL ASSISTANCE.

**RESPONSE: Admitted.**

**REQUEST NO. 23:**

Admit that when enforcing COUNTY BOARD and COUNTY DIRECTOR rules and policies, YOU are a state actor for purposes of 42 U.S.C. § 1983.

**RESPONSE: Admitted.**

**REQUEST NO. 24:**

Admit that YOU must comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq.

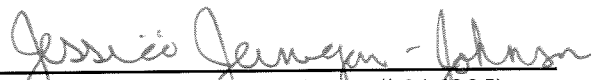
**RESPONSE: Admitted.**

**REQUEST NO. 25:**

Admit that YOU must comply with the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

**RESPONSE: Admitted.**

Respectfully submitted this the 28th day of July, 2022.

  
DAVID M. SANDERS (BPR # 016885)  
Senior Deputy Law Director  
JESSICA JERNIGAN-JOHNSON  
Deputy Law Director  
Suite 612, City-County Building  
400 Main Street  
Knoxville, TN 37902  
(865) 215-2327

*Counsel for Defendants, Knox County Board  
of Education, Knox County Schools and  
Dr. Jon Rysewyk*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record by e-mail:

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Stella Yarbrough  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF TENNESSEE  
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EDUCATION FUND, INC.  
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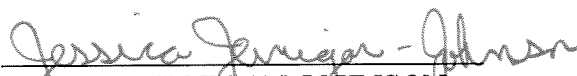
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This the 28th day of July, 2022.

  
JESSICA JERNIGAN-JOHNSON

# EXHIBIT 14

**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 FIRST SET OF  
INTERROGATORIES TO  
DEFENDANTS PENNY SCHWINN,  
TENNESSEE STATE BOARD OF  
EDUCATION, SARA HEYBURN  
MORRISON, and the INDIVIDUAL  
MEMBERS OF THE TENNESSEE  
STATE BOARD OF EDUCATION  
(NOS. 1 - 8)**

**RESPONSE OF THE TENNESSEE STATE BOARD OF EDUCATION**

The Tennessee State Board of Education, its Executive Director, in her official capacity, and Members, in their official capacity, (“the Board”) objects and responds to Plaintiff’s First Set of Interrogatories as follows. The Board objects to the definition of “interscholastic sports” as overbroad because it (1) includes elementary schools and colleges, schools to which Tenn. Code Ann. § 49-6-310 does not apply, and (2) is not limited to public middle school or high school interscholastic athletic activities or events, to which Tenn. Code Ann. § 49-6-310 applies, because it also includes athletic competitions simply among students who attend public schools. Additionally, it objects to the use of masculine pronouns to refer to L.E. because the gender-classification of student athletes is at issue in this case. Accordingly, this response refers to Plaintiff without the use of pronouns.

The Board also objects to the definition of “Board Director” and “State Board” as overbroad and unduly burdensome to the extent it would require a response by each Board employee to the interrogatories below. In addition to the Executive Director and Board Member Defendants, the following persons have been identified as persons who may have information relevant to this lawsuit: Nathan James, Deputy Executive Director for Legislative and External Affairs; Amy Owen, Deputy Executive Director of Policy and Research; and Angela Sanders, General Counsel. The Executive Director, Board Member Defendants, and above-named officials respond to the information available to them as provided by Fed. R. Civ. P. 33.

**INTERROGATORY NO. 1:** Identify all PERSONS who provided information in preparation of YOUR Answer to the Complaint, and for each such PERSON, state the following:

- (a) Their name, address, and telephone number;
- (b) Their relationship to YOU and/or L.E.; and
- (c) A detailed description of such information.

**RESPONSE:**

Angela Sanders, General Counsel, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 253-5707. The Board objects to providing a detailed description of such information to the extent it is privileged as attorney-client communication or attorney-work product. Notwithstanding that objection, Ms. Sanders provided information as to the allegations about the Board.

**INTERROGATORY NO. 2:** Identify all COMMUNICATIONS, including but not limited to, any complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches, CONCERNING students who are transgender participating in INTERSCHOLASTIC SPORTS in Tennessee.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. General Counsel Angela Sanders received a phone call from Kenneth Walker, General Counsel, Shelby County Schools on July 7, 2021.

**INTERROGATORY NO. 3:** Identify the number of students who are transgender that YOU are aware of who play or have played INTERSCHOLASTIC SPORTS in Tennessee, and for each student, please specify the sport(s) played by the student and, if applicable, the current grade of that student.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. The Board does not know the identity of transgender students except for Plaintiff L.E.

**INTERROGATORY NO. 4:** Identify all students who participated in or are participating in INTERSCHOLASTIC SPORTS in Tennessee who have been denied the opportunity to advance in their respective sports, including by obtaining college scholarships, as a result of students who are transgender participating on sports teams.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. The Board does not know the identity of those students.

**INTERROGATORY NO. 5:** Identify all PERSONS responsible for promulgating POLICIES or rules to implement S.B. 228.

**RESPONSE:**

The entities governing the public schools are responsible for adopting policies.

**INTERROGATORY NO. 6:** Identify all the governmental interests advanced by S.B. 228 and how they are advanced by S.B. 228.

**RESPONSE:**

The Board objects that this interrogatory seeks legal determinations and to the extent it seeks information privileged by attorney-work product. Notwithstanding these objections and subject to them, the legislature provided some governmental interests in the whereas clauses of Senate Bill 228 and those interests are advanced by safe and orderly participation in interscholastic athletic activity as provided for in the law.

**INTERROGATORY NO. 7:** Identify all steps YOU have taken to develop POLICIES CONCERNING the implementation and enforcement of S.B. 228, including rulemaking.

**RESPONSE:**

None.

**INTERROGATORY NO. 8:** Describe any impacts the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including the opportunities for cisgender students to participate in school sports, advance in their respective sports, obtain college scholarships, and the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. The Board will rely on experts and disclose them pursuant to Fed. R. Civ. P. 26 and the case management order entered in this lawsuit.



Respectfully Submitted,

HERBERT H. SLATERY III  
Attorney General and Reporter

s/ Stephanie A. Bergmeyer

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(615) 741-6828

*Attorney for Governor Lee, Commissioner  
Schwinn, Dr. Morrison, the individual  
members of the Tennessee State Board of  
Education, in their official capacities, and  
the Tennessee State Board of Education*

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served by agreement through e-mail on May 13, 2022, to:

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AMERICAN CIVIL LIBERTIES UNION  
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Taylor Brown  
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Thomas F. Costello-Vega  
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Samuel.Strongin@wilmerhale.com

s/ Stephanie A. Bergmeyer  
Stephanie A. Bergmeyer

# EXHIBIT 15

**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 FIRST SET OF  
INTERROGATORIES TO  
DEFENDANTS PENNY SCHWINN,  
TENNESSEE STATE BOARD OF  
EDUCATION, SARA HEYBURN  
MORRISON, and the INDIVIDUAL  
MEMBERS OF THE TENNESSEE  
STATE BOARD OF EDUCATION  
(NOS. 1 - 8)**

**RESPONSE OF DR. PENNY SCHWINN, COMMISSIONER,  
TENNESSEE DEPARTMENT OF EDUCATION**

Commissioner Penny Schwinn, in her official capacity, objects and responds to Plaintiff’s First Set of Interrogatories as follows. Commissioner Schwinn objects to the definition of “interscholastic sports” as overbroad because it (1) includes elementary schools and colleges, schools to which Tenn. Code Ann. § 49-6-310 does not apply, and (2) is not limited to public middle school or high school interscholastic athletic activities or events, to which Tenn. Code Ann. § 49-6-310 applies, because it also includes athletic competitions simply among students who attend public schools. Additionally, the Commissioner objects to the use of masculine pronouns to refer to L.E. because the gender-classification of student athletes is at issue in this case. Accordingly, this response refers to Plaintiff without the use of pronouns.

Commissioner Schwinn objects to the definition of “Commissioner” as overbroad and unduly burdensome to the extent it would require a response by each officer and employee of the Department to the interrogatories below. The following persons have been identified as persons who may have information relevant to this lawsuit and the responses provided below are limited to the Commissioner’s knowledge and their knowledge:

Chelsea Crawford  
Chief of Staff

Charlie Bufalino  
Assistant Commissioner  
Policy & Legislative Affairs

Jack Powers  
Director of Policy  
Policy & Legislative Affairs

Jay Klein  
Director of Legislative Affairs  
Policy & Legislative Affairs

Robin Yeh  
Policy Analyst  
Policy & Legislative Affairs

Rachel Suppé  
Deputy General Counsel  
Office of General Counsel

Shaundraya Hersey  
Staff Attorney  
Office of General Counsel

Victoria Robinson  
Director of Communications

**INTERROGATORY NO. 1:** Identify all PERSONS who provided information in preparation of YOUR Answer to the Complaint, and for each such PERSON, state the following:

- (a) Their name, address, and telephone number;
- (b) Their relationship to YOU and/or L.E.; and
- (c) A detailed description of such information.

**RESPONSE:**

Christy Ballard, General Counsel, and Rachel Suppé, Deputy General Counsel. Their address is 710 James Robertson Parkway, Nashville, Tennessee 37243, and telephone number is (615) 741-2921. Commissioner Schwinn objects to providing a detailed description of the information to the extent it is privileged as attorney-client communication or attorney-work product. Notwithstanding that objection, counsel provided information as to the allegations about the Commissioner and Department of Education.

**INTERROGATORY NO. 2:** Identify all COMMUNICATIONS, including but not limited to, any complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches, CONCERNING students who are transgender participating in INTERSCHOLASTIC SPORTS in Tennessee.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department received e-mails from school officials, which are produced in response to Request for Production No. 1.

**INTERROGATORY NO. 3:** Identify the number of students who are transgender that YOU are aware of who play or have played INTERSCHOLASTIC SPORTS in Tennessee, and for each student, please specify the sport(s) played by the student and, if applicable, the current grade of that student.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department is aware of more than one transgender student who participated or participates in interscholastic athletic activities or events.

**INTERROGATORY NO. 4:** Identify all students who participated in or are participating in INTERSCHOLASTIC SPORTS in Tennessee who have been denied the opportunity to advance in their respective sports, including by obtaining college scholarships, as a result of students who are transgender participating on sports teams.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department does not know the identity of those students.



**INTERROGATORY NO. 5:** Identify all PERSONS responsible for promulgating POLICIES or rules to implement S.B. 228.

**RESPONSE:**

The entities governing the public schools are responsible for adopting policies. The Department is responsible for: the Tennessee School for the Blind; Tennessee Schools for the Deaf; the Alvin C. York Agricultural Institute; and the Achievement School District.

**INTERROGATORY NO. 6:** Identify all the governmental interests advanced by S.B. 228 and how they are advanced by S.B. 228.

**RESPONSE:**

Commissioner Schwinn objects that this interrogatory seeks legal determinations and to the extent it seeks information privileged by attorney-work product. Notwithstanding these objections and subject to them, the legislature provided some governmental interests in the whereas clauses of Senate Bill 228 and those interests are advanced by safe and orderly participation in interscholastic athletic activity as provided for in the law.

**INTERROGATORY NO. 7:** Identify all steps YOU have taken to develop POLICIES CONCERNING the implementation and enforcement of S.B. 228, including rulemaking.

**RESPONSE:**

The Department revised its interscholastic athletics policies for: Tennessee School for the Blind; Tennessee Schools for the Deaf; the Alvin C. York Agricultural Institute; and the Achievement School District.

**INTERROGATORY NO. 8:** Describe any impacts the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including the opportunities for cisgender students to participate in school sports, advance in their respective sports, obtain college scholarships, and the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

**RESPONSE:** In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department will rely on experts and disclose them pursuant to the Fed. R. Civ. P. and case management order entered in this lawsuit.

Respectfully Submitted,

HERBERT H. SLATERY III  
Attorney General and Reporter

s/ Stephanie A. Bergmeyer

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*Attorney for Governor Lee, Commissioner  
Schwinn, Dr. Morrison, the individual  
members of the Tennessee State Board of  
Education, in their official capacities, and  
the Tennessee State Board of Education*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of this Response has been served by agreement through e-mail on May 13, 2022, to:

Stella Yarbrough  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF TENNESSEE  
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**CERTIFICATE OF SERVICE**  
**(continued)**

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s/ Stephanie A. Bergmeyer  
Stephanie A. Bergmeyer

# EXHIBIT 16

**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,*

Case No. 3:21-cv-00835

v.

BILL LEE, in his official capacity  
as Governor of Tennessee, *et al.*,

*Defendants.*

**PLAINTIFF’S RESPONSES TO DEFENDANTS PENNY SCHWINN, SARA HEYBURN  
MORRISON, AND THE TENNESSEE STATE BOARD OF EDUCATION’S  
SECOND SET OF INTERROGATORIES**

Plaintiff, by and through his attorneys, and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the Local Rules of this Court, responds and objects to Defendants Penny Schwinn and Sara Heyburn Morrison, in their official capacities, and the Tennessee State Board of Education’s (collectively, “Defendants”) Second Set of Interrogatories as follows:

**GENERAL RESPONSES**

1. Plaintiff’s investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Plaintiff’s right to rely on other facts or documents at trial.

2. By making the accompanying responses and objections to Defendants’ interrogatories, Plaintiff does not waive, and hereby expressly reserves, his right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy,

materiality, and privilege. Further, Plaintiff makes the responses and objections herein without in any way implying that he considers the requests and interrogatories, and responses to the requests and interrogatories, to be relevant or material to the subject matter of this action.

3. To the extent responsive documents exist, Plaintiff will produce responsive documents only to the extent that such documents are in his possession, custody, or control, as set forth in the Federal Rules of Civil Procedure. Plaintiff's possession, custody, or control does not include any constructive possession that may be conferred by Plaintiff's right or power to compel the production of documents or information from third parties.

4. A response to an interrogatory stating objections and/or indicating that documents will be produced shall not be deemed or construed that there are, in fact, responsive documents; that Plaintiff performed any of the acts described in the interrogatory or definitions and/or instructions applicable to the interrogatory; or that Plaintiff acquiesces in the characterization of the conduct or activities contained in the interrogatory or definitions and/or instructions applicable to the interrogatory.

5. Plaintiff expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

6. Publicly available documents that are not in Plaintiff's possession including, but not limited to, newspaper clippings, court papers, and documents available on the Internet, will not be produced.



## **GENERAL OBJECTIONS**

1. Plaintiff objects to each instruction, definition, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

2. Plaintiff objects to each interrogatory that is overly broad, vague, unduly burdensome, or seeks information beyond the scope of discovery and disproportionate to the needs of the case.

3. Plaintiff objects to each interrogatory that seeks information that is in the possession of, known to, or otherwise equally available to Defendants.

4. Plaintiff objects to each interrogatory to the extent that it seeks information and/or documents duplicative of information and/or documents already produced to Defendants in the course of this litigation or produced in response to Defendants' First Set of Requests for Admissions or First Set of Requests for Production of Documents.

5. Plaintiff objects to each interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Plaintiff occur, it is inadvertent and shall not constitute a waiver of any privilege.

6. Plaintiff incorporates by reference every general objection set forth above into each specific interrogatory response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request. Moreover, Plaintiff does not waive his right to amend his responses.

**OBJECTION TO INSTRUCTIONS AND DEFINITIONS**

1. Plaintiff objects to Instruction No. 6 to the extent that it calls for disclosure of information protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege.

**SPECIFIC OBJECTIONS AND RESPONSES TO THE INTERROGATORIES**

**INTERROGATORY NO 1:**

Provide the date(s) on which L.E. received a diagnosis of gender dysphoria or L.E.'s parents became aware of that diagnosis.

**RESPONSE:**

Plaintiff objects to the extent the interrogatory seeks information disproportionate to the needs of this case, and intrudes upon Plaintiff's medical privacy.

Subject to Plaintiff's objection, and without waiver thereof, Plaintiff responds as follows:  
Plaintiff was diagnosed with gender dysphoria on January 28, 2021.

**INTERROGATORY NO 2:**

Provide the date on which L.E. began to social transition.

**RESPONSE:**

Plaintiff began his social transition in or around September 2020.

**INTERROGATORY NO 3:**

Provide the date on which L.E. began pubertal suppression medication.

**RESPONSE:** Plaintiff objects that this interrogatory seeks information disproportionate to the needs of the case, and intrudes upon Plaintiff's medical privacy.

Subject to Plaintiff's objections, Plaintiff responds that he began pubertal suppression on or about April 23, 2021.

**INTERROGATORY NO 4:**

Provide all interscholastic athletic events, clubs, or teams L.E. has participated in while in middle or high school.

**RESPONSE:** L.E. objects that this Interrogatory is overbroad, unduly burdensome, and seeks information disproportionate to the needs of the case. Plaintiff also objects that this Interrogatory is beyond the scope of and irrelevant to the matter.

Subject to these objections, and without waiver thereof, L.E. participated on the Farragut Middle School girl's golf team, which he joined prior to his transition.

**INTERROGATORY NO 5:**

Provide the name(s) and date(s) of any matches or tournaments L.E. played while part of the Farragut Middle School golf team.

**RESPONSE:** Plaintiff objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportionate to the needs of the case. Plaintiff also objects that this interrogatory is beyond the scope of and irrelevant to the matter.

Subject to these objections, and without waiver thereof, L.E. responds as follows:

7 Mar 2020 Girls Jamboree @ Beverly Park

10 Mar 2020 vs Bearden @ Concord Park

19 Mar 2020 vs Hardin Valley @ Fox Den CC

23 Mar 2020 vs Halls @ Beaver Brook CC

26 Mar 2020 vs Bearden @ Fox Den CC

28 Mar 2020 Girls Jamboree @ Beverly Park

2 Apr 2020 vs CAK @ Fox Den CC

9 Apr 2020 vs Halls @ Fox Den CC

**INTERROGATORY NO 6:**

Identify other transgender athletes that L.E. or L.E.'s parents are aware of.

**RESPONSE:** Plaintiff objects to the term “athlete” as vague, as that term is undefined in Defendant’s Requests. Plaintiff therefore adopts a reasonable interpretation of that term in this response. Plaintiff objects on the grounds that calling for “other transgender athletes” is overbroad and unduly burdensome. Additionally, Plaintiff objects that this Interrogatory is beyond the scope of and irrelevant to the matter.

Subject to Plaintiff’s objections, and without waiver thereof, Plaintiff represents that he and his parents are not aware of other transgender individuals participating in interscholastic athletics in Knox County.

**INTERROGATORY NO 7:**

Provide the date(s) that L.E. obtained attorney representation for this lawsuit.

**RESPONSE:** L.E. objects to this Request to the extent that it seeks information protected from disclosure by attorney-client privilege.

Subject to Plaintiff’s objection, and without waiver thereof, L.E. began having confidential and attorney-client privileged communications with counsel in approximately March 2021.

**INTERROGATORY NO 8:**

Identify all LGBTQ groups, events, or activities that L.E. or L.E.'s parents participate or affiliate with or have participated or affiliated with over the past five years.

**RESPONSE:** Plaintiff objects to the terms “LGBTQ groups, events, or activities,” “affiliate” and “participate” as vague, as those terms are undefined. Plaintiff therefore adopts a reasonable interpretation of those terms in his response. L.E. also objects to this Interrogatory as

overbroad, unduly burdensome, and not proportionate to the needs of the case. Additionally, Plaintiff objects that this Interrogatory is beyond the scope of and irrelevant to the matter.

Subject to these objections, and without waiver thereof, L.E. or L.E.'s parents are or have been involved with the following LGBTQ groups over the past five years: Gay-Straight Alliance (GSA); Knox Pride Rainbow Teen Social Group; and GLSEN SHINE (student leadership team).

**INTERROGATORY NO 9:**

Identify all persons, including but not limited to, teachers, coaches, school officials, press members, or advocacy organizations, who L.E. or L.E.'s parents have discussed this lawsuit or L.E.'s plan to try out or participate with the school golf team.

**RESPONSE:** L.E. objects to this Interrogatory to the extent that it seeks information protected from disclosure by attorney-client privilege. Additionally, Plaintiff objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportionate to the needs of the case. Additionally, Plaintiff objects that this Interrogatory is beyond the scope of and irrelevant to the matter.

Subject to Plaintiff's objections, and without waiver thereof, L.E. or L.E.'s parents discussed this lawsuit or participation in the school golf team with the following people:

- Latashia Posey, Willie Posey, Josh Graham, Matt Gentry, Curtis Cooper, Robert Branson, Joey Morton, Austin Morton, Elaine Herron, Brad Herron Jr, Brad Herron Sr., Maria Herron, Dylan Herron, Marcy Wesolwski, Mary Ann Robinson, Christi Weaver, Chrissie Batts, Misty Stamm, Rachel Winstead, Stephanie Flanagan, John Camp, Karen Brunner, Diane Ward, Ashleigh Stein, Angie Wholihan, Darlene Lampman, Sarah Lyon, Karleah Schroeder, Lily Burdine, Stephanie Burdine, Tracey Randolph, Talia Cunetto, Joel Beall, Jared Austin, Julie Kliegman, A

Martinez, Emily Adams, Abby Kousouris, Vinay Simlot, Diane Miller, Jeff Miller, Daniel Blevins, Suzanne Strudwick, Dave Codling, John Bartlett, Abigail Blackmon, Yvonne Bremer, Christopher Marchini.

**INTERROGATORY NO 10:**

Identify all golf coach(es) who did not lend support to L.E., including but not limited to the “early golf coach” mentioned in the Golf Digest article dated April 26, 2022.

**RESPONSE:** Plaintiff objects to the term “support” as vague, as that term is undefined. Plaintiff therefore adopts a reasonable interpretation of that term in this response. Additionally, Plaintiff objects that this Interrogatory is beyond the scope of and irrelevant to the matter.

Subject to Plaintiff’s objections, and without wavier thereof, the “early golf coach” referenced in the April 26, 2022 Golf Digest article is Dave Codling.

**INTERROGATORY NO 11:**

Identify all golf databases L.E. uses for score tracking or handicap tracking and all usernames, account numbers, or identification numbers assigned to L.E.

**RESPONSE:** Plaintiff objects to the terms “score tracking” and handicap” as vague, as the terms are undefined. Plaintiff therefore adopts reasonable interpretations of those terms in this response. Plaintiff also objects that this Interrogatory is beyond the scope of and irrelevant to this matter.

Subject to Plaintiff’s objections, Plaintiff responds that he does not use any databases for score tracking or handicap tracking.

Dated: July 25, 2022

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Respectfully submitted,

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