

Appeal Nos. 20-35813, 20-35815

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LINDSAY HECOX and JANE DOE, with her
next friends Jean Doe and John Doe,
Plaintiffs-Appellees,

v.

BRADLEY LITTLE, *et al.*,
Defendants-Appellants,

and

MADISON KENYON and MARY MARSHALL,
Intervenors-Appellants.

On Appeal from the United States District Court
for the District of Idaho
District Court Case No. 1:20-cv-00184-DCN
Hon. David C. Nye

**PLAINTIFFS-APPELLEES LINDSAY HECOX AND KAYDEN HULQUIST'S
MOTION TO SUPPLEMENT THE RECORD**

Pursuant to this Court's inherent equitable authority, Plaintiffs-Appellees Lindsay Hecox and Jane Doe (Kayden Hulquist) move to supplement the record to include the attached Declaration of Lindsay Hecox, which is cited in Plaintiffs-Appellees' opposition.

On September 13, 2022, this Court directed the parties to brief “(1) the issue of whether the district court correctly determined the mootness issue,” and “(2) the issue of Hecox's standing.” (Dkt. 162.) This Court also ordered that it should “be updated with all relevant facts regarding Hecox's eligibility and status as they are confirmed.” (*Id.* at 2.) In accordance with that Order, Lindsay's declaration contains facts regarding Lindsay's academic and athletic status that will assist this Court in determining that Lindsay's claim is not moot and that she has standing. Where, as here, the declaration will assist the Court in determining its jurisdiction, supplementing the record on appeal is permitted. *See, e.g., Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1020 n.3 (9th Cir. 2010) (permitting supplementation of the record on appeal so that the Court could determine its jurisdiction); *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (permitting

supplementation of the record on appeal where “developments [might] render a controversy moot and thus divest [the Court] of jurisdiction”).

Dated: September 23, 2022

Respectfully submitted,

/s/ Kathleen Hartnett

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2022, I electronically filed the foregoing response with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

/s/ Kathleen Hartnett
Kathleen Hartnett
Counsel for Plaintiffs-Appellees

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DECLARATION OF LINDSAY HECOX

I, Lindsay Hecox, depose and say as follows:

1. I have personal knowledge of the facts herein. I am a plaintiff in this case.

My Enrollment and Academic Progress at Boise State University (BSU)

2. I am enrolled at BSU.
3. I qualified for in-state tuition at BSU in January 2022.
4. I was enrolled in nine credits during the Spring 2022 semester. I completed three of those credits and received incompletes for the remaining six.
5. I was unable to complete Spring 2022 schoolwork because my father died during the middle of the Spring 2022 semester. My grief affected everything, including my ability to focus and stay motivated to complete my schoolwork. I needed to take care of myself and my emotions first and my schoolwork second.
6. My professors at BSU, who understood that I was grieving the loss of my father, allowed me to take incompletes in their courses. I have until May 2023 to complete that coursework and receive six credits. I am working to complete those credits now with the support of an academic coach.
7. I enrolled in 13 credits this Fall 2022 semester.
8. I may have to adjust my schedule this semester. I will likely have to withdraw from one of my three-credit courses.
9. I am continuing to grapple with all that I have to bear: the loss of my father, no family support in Idaho, recovering from completing three physical moves over the course of the last few months, and some financial stress because I have not earned much income this year. I do, however, have enough in my savings accounts to pay for my tuition and I do expect to earn more income and receive more financial aid in the near future.

10. I also contracted COVID-19 at the beginning of the Fall 2022 semester. I had a fever, a sore throat, and cough, experienced shortness of breath and extreme fatigue, and was in a state of brain fog.

11. While my professors were understanding as I recovered from COVID-19, my illness and recovery put me behind in my coursework. I missed three days of school and schoolwork. All four of my classes met at least once during those three days; one of them met twice (the one I may have to withdraw from now). During that period of time, I fell behind in my schoolwork and am struggling to catch up now.

12. I have been working with an academic coach and the Dean of Students to devise a plan to continue making satisfactory progress toward my degree. I feel optimistic about completing my coursework and the required number of credits for NCAA eligibility before next fall's tryouts. I plan to be enrolled in the coming spring semester as well as next fall.

My Participation on the BSU Women's Cross Country Team Again

13. I did not try out for the BSU Women's Cross Country Team for Fall 2022, due to my recovery from COVID-19, as well as the emotional and focus challenges I have been facing since my father's death, having to move one more time late this summer, and needing to focus on my coursework, including completing the six credits from the Spring 2022 semester and taking on thirteen credits during this Fall 2022 semester. I also believed that even if I tried out and made the team this fall, I might have been unable to join due to my having had to take incompletes in Spring 2022. I decided not to try out after I contracted COVID-19. Experiencing the symptoms of COVID-19 and dealing with all the other stressors I had going into the Fall 2022 semester, I felt that it would be unwise to try out for the team.

14. Even though I decided not to try out for the cross country team this fall, I still intend to try out for the cross country team as soon as I am able. Since failing to make the team in 2020, I have been training as if I am on the team. I now run more miles more consistently than I have previously and I run with people of my skill level or better. When I tried out for the BSU cross country team the first time, I had only been running on my own or with casual running groups. Since then, I have been training with the Boise Area Runners and with the Boise High School Cross Country/Track Team, which I also coach. I have been mimicking BSU women's cross country team training regimen, including the kind of mileage I think they are doing and the workouts and drills they are doing because I know I will need that base of high mileage and skills going into the tryouts and be on the team. I believe that this work I am currently doing will mean that I will not have such a steep jump up when I make the team.

15. My testosterone levels are well below the levels required to meet NCAA eligibility for cross country and track.

16. I intend to do what I need to do academically so I can be NCAA eligible as soon as possible.

17. I want to try out for the BSU Women's Cross Country Team at least one more time. I definitely want to do so in Fall 2023 because it could be my very last opportunity. I want to show myself that I can be competitive in a sport I love. I love running and I will always love running. But I also found it late, in high school, and I am still in the process of seeing out my potential.

My Participation in BSU Women's Club Soccer

18. I joined the BSU Women's Club Soccer Team during the Spring 2022 semester.

19. I loved playing on the team. It is a healthy outlet for me.

20. I am playing for the BSU Women's Club Soccer Team right now. Practices started on August 29.

21. I intend to play for the BSU's Women's Club Soccer Team this semester, next semester, and through the remainder of my time at BSU.

22. Playing for the team allows me to connect with people, compete, and improve at a sport that I wasn't great at going into it. The others on the team played soccer in their high school years. I did not. I started behind and I enjoy the process of getting better at something, and seeing the small improvements. And I love the camaraderie of being on a team.

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

Executed this 21 day of September, 2022.

Lindsay Hecox

Lindsay Hecox

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 23, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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