

No. 22-1927

IN THE
United States Court of Appeals
for the Fourth Circuit

**CHRISTOPHER FAIN and SHAUNTAE ANDERSON, individually and on
behalf of all others similarly situated,**

Plaintiffs-Appellees,

v.

**WILLIAM CROUCH, in his official capacity as Cabinet Secretary of the
West Virginia Department of Health and Human Resources; CYNTHIA
BEANE, in her official capacity as Commissioner of the West Virginia Bureau
for Medical Services; and WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES,**

Defendants-Appellants.

On Appeal from the U.S. District Court for the Southern District of West Virginia
No. 3:20-cv-00740

**UNOPPOSED MOTION OF PLAINTIFFS-APPELLEES FOR
LEAVE TO FILE A SUPPLEMENTAL APPENDIX**

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Counsel for Plaintiffs-Appellees

COME NOW the Plaintiffs-Appellees, and for their Unopposed Motion for Leave to File a Supplemental Appendix, state as follows:

1. In preparing their Responsive Brief, Plaintiffs-Appellees have discovered that two pages of a deposition transcript were inadvertently omitted from the parties' Joint Appendix. A heavily redacted version of these pages currently appears in the Joint Appendix (JA1314-1315), but the unredacted version¹ contains important testimony related to the standing of Plaintiff-Appellee Shauntae Anderson. Plaintiffs-Appellees respectfully move the Court for leave to file a Supplemental Appendix with the two additional pages of unredacted deposition testimony. The proposed Supplemental Appendix is filed concurrently herewith.

2. It is vital for this Court to have access to all relevant factual information while it reviews this case. Accordingly, Plaintiffs-Appellees seek to supplement the record with two pages of deposition testimony by Ms. Anderson introducing information regarding the medical providers who would refer Ms. Anderson for gender-confirming surgical care were it not barred by West Virginia Medicaid's exclusion for "transsexual surgery."

3. Pursuant to Local Rule 30(c), these pages are a matter of record because they were filed in the district court at ECF No. 262-4.

¹ The portion of Ms. Anderson's deposition transcript that Plaintiffs-Appellees seek to supplement the record with contains more limited redactions of protected health information.

4. Counsel for Defendants-Appellants has been notified of the filing of this motion. Counsel does not oppose the granting of this motion.

5. Good cause exists to grant this motion for leave to file a Supplemental Appendix since the omission of these pages was inadvertent, the Supplemental Appendix will consist of only two additional pages of deposition testimony, and the motion is unopposed.

Dated: November 30, 2022

Respectfully submitted,

/s/ Avatara Smith-Carrington

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing filing complies with the typeface requirements of Federal Rule of Appellate Procedure (“Rule”) 32(a)(5) and the type-style requirements of Rule 32(a)(6).

1. Exclusive of the exempted portions of the motion, as provided in Fed. R. App. P. 32(f), the brief contains 275 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font. As permitted by Rule 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: November 30, 2022

/s/ Avatara Smith-Carrington

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2022, I filed the foregoing document through the Court's CM/ECF system, which will serve an electronic copy on all registered counsel of record.

Dated: November 30, 2022

/s/ Avatara Smith-Carrington

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