

In The
United States Court Of Appeals
For The Fourth Circuit

CHRISTOPHER FAIN; 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 for the West Virginia Bureau for Medical Services; WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, Bureau for Medical Services,
Defendants – Appellants.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**JOINT APPENDIX – Volume I of VI
(Pages 1 – 590)**

**Kimberly M. Bandy
Lou Ann S. Cyrus
Caleb B. David
Roberta F. Green
SHUMAN MCCUSKEY
SLICER PLLC
P. O. Box 3953
Charleston, WV 25339
(304) 345-1400**

Counsel for Appellants

**Anna P. Prakash
NICHOLS KASTER, LLP
4700 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 256-3200**

Counsel for Appellees

**Tara L. Borelli
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
1 West Court Square
Suite 105
Decatur, GA 3003
(470) 225-5341**

Counsel for Appellees

**Nora W. Huppert
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
65 East Wacker Place
Suite 2000
Chicago, IL 60613
(847) 345-2094**

Counsel for Appellees

**Carl S. Charles
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
120 Wall Street
Suite 105
New York, NY 10005
(404) 897-1880**

Counsel for Appellees

**Avatara A. Smith-Carrington
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
1776 K Street, NW
8th Floor
Washington, DC 20006
(202) 804-6245**

Counsel for Appellees

TABLE OF CONTENTS**Volume I of VI**

	Page
District Court Docket Sheet [3:20-cv-00740].....	JA1
Class Action Complaint	
filed November 12, 2020 (DE1)	JA36
Defendants’ Memorandum of Law in Support of Motion for Partial Dismissal of Plaintiffs’ Class Action Complaint	
filed January 11, 2021 (DE25).....	JA75
<u>Exhibits to</u>	
Motion to Dismiss	
filed February 2, 2021 (DE32):	
A. Affidavit of Angela Wowczuk	
sworn February 2, 2021(DE32-1).....	JA94
B. Affidavit of Brian Thompson	
sworn February 1, 2021 (DE32-2)	JA98
C. Affidavit of UniCare Health Plan of West Virginia, Inc.	
sworn January 29, 2021 (DE32-3)	JA100
Memorandum Opinion and Order	
Denying Defendant Cheatham’s Motion to Dismiss the Complaint and Defendants William Crouch, Cynthia Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services’ Motion for Partial Dismissal of Plaintiffs’ Class Action Complaint and Motion to Dismiss and granting Plaintiffs’ Motion for Leave to file a Sur-Reply	
filed May 19, 2021(DE57)	JA101

First Amended Class Action Complaint
filed October 28, 2021 (DE140)JA117

Defendants' Answer to Plaintiff's
First Amended Class Action Complaint
filed November 12, 2021 (DE151).....JA162

Certificate of Service for the
Expert Disclosure Report of Dan H. Karasic, M.D.
filed January 14, 2022 (DE182)JA210

Plaintiffs' Motion for Class Certification
Pursuant to Fed. R. Civ. P. 23
With Attachments,
filed May 31, 2022 (DE248)JA212

Attachments:

1. **Declaration of the Employment Law Center, PLLC**
dated May 31, 2022 (DE248-1)JA215

2. **Declaration of Nicole J. Schladt in Support of**
Plaintiffs' Motion for Class Certification,
With Exhibit A
dated May 31, 2022 (DE248-2)JA217

- A. **Nichols Kaster, PLLP Firm Resume (DE248-3).....JA220**

Attachments to
Plaintiffs’ Motion for Class Certification
Pursuant to Fed. R. Civ. P. 23
filed May 31, 2022 (DE248), Continued:

- 3. Declaration of Avatara Smith-Carrington in Support of Plaintiffs’ Motion for Class Certification, With Exhibits A – E
 - dated May 31, 2022 (DE248-4)JA257
 - A. Resume of Avatara Smith-Carrington (DE248-5)JA265
 - B. Resume of Tara L. Borelli (DE248-6)JA268
 - C. Resume of Carl S. Charles (DE248-7)JA279
 - D. Resume of Sasha J. Buchert (DE248-8).....JA281
 - E. Resume of Nora Huppert (DE248-9).....JA282

Plaintiffs’ Motion for Summary Judgment,
With Attachments,
filed May 31, 2022 (DE250)JA284

Attachments:

- A. Declaration of Christopher Fain
sworn April 27, 2022 (DE250-1).....JA287
- B. Declaration of Shauntae Anderson
sworn April 19, 2022 (DE250-2).....JA293

Exhibits to
Plaintiffs' Motion for Summary Judgment,
filed May 31, 2022 (DE250), Continued:

- C. Declaration of Walt Auvil,
With Exhibits**
- sworn May 31, 2022 (DE250-3) JA299
1. **Defendants' Response to Plaintiff's
First Set of Requests for Admissions
dated August 27, 2021 (DE250-4)..... JA303**
2. **Defendants' Response to Plaintiff's
First Set of Interrogatories
dated August 27, 2021 (DE250-5)..... JA309**
3. **Defendants' Response to Plaintiff's
Second Set of Interrogatories
dated October 25, 2021 (DE250-6) JA317**
4. **Defendants' First Supplemental Response to
Plaintiff's First Set of Interrogatories
dated November 30, 2021 (DE250-7) JA324**
5. **Defendants' Second Supplemental Response to
Plaintiff's Second Set of Interrogatories
dated November 30, 2021(DE250-8) JA330**
- 5(a). **Defendants' Ninth Supplemental Response to
Plaintiff's First Set of Requests for Production
dated March 25, 2022 (DE250-9) JA338**

Exhibits to

- C. Declaration of Walt Auvil,
sworn May 31, 2022 (DE250-3), Continued:**
- 6. Redacted Excerpt of Deposition of
Christopher Fain
taken April 28, 2022 (DE250-10) JA346**
 - 7. Excerpt of Deposition of Shauntae Anderson
taken April 22, 2022 (DE250-11) JA362**
 - 8. Excerpt of Deposition of Secretary Bill J. Crouch
taken March 17, 2022(DE250-12) JA374**
 - 9. Excerpt of Deposition of
Commissioner Cynthia Beane
taken March 29, 2022 (DE250-13) JA396**
 - 10. Excerpt of Deposition of Dr. James Becker
taken March 30, 2022 (DE250-14) JA464**
 - 11. Excerpt of Deposition of Frederick Lewis
taken April 14, 2022 (DE250-15) JA493**
 - 12. Excerpt of Deposition of Becky Manning
taken April 12, 2022 (DE250-16) JA514**
 - 13. Excerpt of Deposition of Brian Thompson
taken April 13, 2022 (DE250-17) JA537**
 - 14. Excerpt of Deposition of Sarah Young
taken March 11, 2022 (DE250-18) JA549**
 - 15. Excerpt of Deposition of Dr. Dan H. Karasic, M.D.
taken April 15, 2022 (DE250-19) JA580**

TABLE OF CONTENTS**Volume II of VI**

	Page
<u>Exhibits to</u>	
C. Declaration of Walt Auvil, sworn May 31, 2022 (DE250-3), Continued:	
16. Expert Report of Dan H. Karasic, M.D. (public version, portions redacted) dated January 13, 2022 (DE250-20)	JA591
17. Expert Rebuttal Report of Dan H. Karasic, M.D. dated March 17, 2022 (DE250-21)	JA645
18. Excerpt of Deposition of Dr. Loren S. Schechter, M.D. taken March 28, 2022 (DE250-22)	JA683
19. Expert Report of Loren S. Schechter, M.D. dated January 8, 2022 (DE250-23)	JA690
20. Expert Rebuttal Report of Loren S. Schechter, M.D. dated March 17, 2022 (DE250-24)	JA774
21. Excerpt of Deposition of Dr. Johanna Olson-Kennedy, M.D., M.S. taken April 25, 2022 (DE250-25)	JA867
22. Expert Rebuttal Report of Dr. Johanna Olson-Kennedy, M.D., M.S. dated March 17, 2022 (DE250-26)	JA872

Exhibits to

**C. Declaration of Walt Auvil,
sworn May 31, 2022 (DE250-3), Continued:**

- 23. Excerpt of Bureau for Medical Services
Manual, Chapter 100
undated (DE250-27)JA931**
- 24. Excerpt of Bureau for Medical Services
Manual, Chapter 519
undated (DE250-28)JA936**
- 25. Aetna, The Health Plan, and UniCare
Composite Exhibit, Excerpted
undated (DE250-29)JA944**
- 26. InterQual Composite Exhibit
dated April 2021 (DE250-30)JA967**
- 27. Bureau for Medical Services, “Medicaid 101 An
Overview of West Virginia’s Medicaid Program”
undated (DE250-31)JA1015**
- 28. Medicaid.gov, “Mandatory &
Optional Medicaid Benefits”
visited November 23, 2021 (DE250-32).....JA1035**
- 29. Excerpt of State Fiscal Year 2021 Model Purchase
of Service Provider Agreement Between
West Virginia and Aetna Better Health of W.V.
dated May 6, 2021 (DE250-33)JA1039**

Exhibits to

C. Declaration of Walt Auvil,

sworn May 31, 2022 (DE250-3), Continued:

- 30. Excerpt of State Fiscal Year 2021 Model Purchase of Service Provider Agreement Between West Virginia and UniCare W.V.
dated May 6, 2021 (DE250-34)JA1043**

- 31. Excerpt of State Fiscal Year 2021 Model Purchase of Service Provider Agreement between West Virginia and The Health Plan
dated April 21, 2021 (DE250-35)JA1047**

- 32. Email re: “[External] Gender Dysphoria Question”
dated October 13, 2020 (DE250-36)JA1051**

- 33. Cost of Care Composite Exhibit, Excerpted
dated January 2019 (DE250-37)JA1052**

TABLE OF CONTENTS**Volume III of VI**

	Page
Defendants' Motion for Summary Judgment, With Exhibits, filed May 31, 2022 (DE252).....	JA1076
 <u>Exhibits:</u>	
1. Excerpts of Deposition of Sarah Young, With Exhibits taken March 11, 2022 (DE252-1).....	JA1083
2. Excerpts of Deposition of Secretary Bill Crouch taken March 17, 2022 (DE252-2).....	JA1163
3. Excerpts of Deposition of Commissioner Cynthia Beane, With Exhibits taken March 29, 2022 (DE252-3).....	JA1173
4. Redacted Excerpts of Deposition of Shauntae Anderson taken April 22, 2022 (DE252-4).....	JA1291
5. Redacted Excerpts of Deposition of Christopher Fain taken April 28, 2022 (DE252-5).....	JA1322
6. Redacted Affidavit of Jennifer Myers sworn April 29, 2022 (DE252-6).....	JA1370
7. Excerpts of Deposition of Brian Thompson, With Exhibits taken April 13, 2022 (DE252-7).....	JA1378

Exhibits to
Defendants' Motion for Summary Judgment,
filed May 31, 2022 (DE252), Continued:

- 8. Excerpts of Deposition of Dr. Dan Karasic,
With Exhibits,
taken April 15, 2022 (DE252-8).....JA1408
- 9. Excerpts of Deposition of Dr. James Becker
taken March 30, 2022 (DE252-9).....JA1448
- 10. Excerpts of Deposition of Frederick Lewis
taken April 4, 2022 (DE252-10).....JA1453
- 12. Excerpts of Deposition of Becky Manning,
With Exhibits
taken April 12, 2022 (DE252-12).....JA1468
- 14. Excerpts of Deposition of Jennifer Myers,
With Exhibits
taken April 8, 2022 (DE252-14)JA1498

TABLE OF CONTENTS**Volume IV of VI**

	Page
<u>Exhibits to</u> Defendants' Motion for Summary Judgment, filed May 31, 2022 (DE252), Continued:	
15A. Deposition of Loren S. Schechter, M.D., With Exhibits taken March 28, 2022 (DE252-15).....	JA1533
15C. Certificate of Service for the Expert Rebuttal Report of Loren S. Schechter, M.D. filed March 18, 2022 (DE252-17)	JA1762
Littman Article Entitled "Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners" dated October 19, 2021 (DE252-17).....	JA1764
16. Excerpts of Deposition of Johanna Olson-Kennedy, M.D., With Exhibits taken April 25, 2022 (DE252-18)	JA1781
17. Affidavit of Sarah Young dated May 27, 2022 (DE252-19)	JA1818
18A. Excerpts of Deposition of Dr. Stephen Levine taken April 27, 2022 (DE252-20).....	JA1821
18B. Vandebussche, "Detransition-Related Needs and Support: A Cross-Sectional Online Survey" undated (DE252-21).....	JA1833

**Plaintiffs’ Motion to Exclude Expert
Testimony of Stephen B. Levine, M.D.,
With Exhibits,**

filed May 31, 2022 (DE254)JA1853

Exhibits:

- 1. Declaration of Carl S. Charles
sworn May 31, 2022 (DE254-1)JA1856**
 - A. Expert Disclosure Report of
Dr. Stephen B. Levine, M.D.
dated February 18, 2022 (DE254-2).....JA1860**
 - B. Excerpt of Deposition of Dr. Stephen Levine Fain
taken April 27, 2022 (DE254-3)JA1957**
 - C. Excerpt of Deposition of Dr. Stephen Levine,
in relation to *Kadel v. N.C. State Health Plan for
Teachers and State Employees*
taken September 10, 2021 (DE254-4)JA2007**
 - D. Excerpt from Transcript of the Bench Trial in
Soneeya v. Turco, Bench Trial Day 1,
dated April 8, 2019 (DE254-5)JA2066**
 - E. Excerpt Deposition of Cynthia Beane
taken March 29, 2022 (DE254-6)JA2068**
 - F. Excerpt of Deposition of Dr. Stephen Levine
in Relation to *Claire v. Florida Department of
Management Services*
taken December 21, 2020 (DE254-7)JA2073**

Exhibits to

1. Declaration of Carl S. Charles
sworn May 31, 2022 (DE254-1), Continued

- G. Dahlen, *et al.* Article “International Clinical Practice Guidelines for Gender Minority/Trans People: Systematic Review and Quality Assessment”
visited April 26, 2022 (DE254-8)JA2085

- H. Statement of Marci L. Bowers, M.D., “Dear Colleagues, Clients and Friends”
undated (DE254-9)JA2096

- I. Printout from the Cass Review website
“About the Review” page
undated (DE254-10)JA2099

- J. Excerpt of Expert Rebuttal Report of Dr. Johanna Olson-Kennedy, M.D., M.S.
dated March 17, 2022 (DE254-11)JA2102

- K. Excerpt from the Published Ph.D. Thesis,
“On Gender Dysphoria” Written by
Cecilia Dhejne, Ph.D.
dated March 31, 2017 (DE254-12)JA2107

- L. Dhejne, *et al.* Article “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden”
dated February 2011(DE254-13).....JA2111

Exhibits to

1. **Declaration of Carl S. Charles
sworn May 31, 2022 (DE254-1), Continued**

- M. **Simonsen, *et al.* Article “Long-Term Follow-Up of
Individuals Undergoing Sex-Reassignment
Surgery: Somatic Morbidity and Cause of Death”
dated March 2016 (DE254-14)JA2119**

TABLE OF CONTENTS**Volume V of VI**

	Page
<u>Exhibits to</u>	
1. Declaration of Carl S. Charles sworn May 31, 2022 (DE254-1Continued	
N. Excerpt from the Diagnostic and Statistical Manual of Mental Disorders, Version 5 undated (DE254-15)	JA2129
O. Excerpt of Deposition of Dan Karasic, M.D. taken April 15, 2022 (DE254-16)	JA2138
P. InterQual Criteria Sheets for Gender-Confirming Surgeries (Hysterectomy and Phalloplasty) dated April 2021 (DE254-17)	JA2143
Q. Littman Article "Correction: Parent Reports of Adolescents and Young Adults Perceived to Show Signs of a Rapid Onset of Gender Dysphoria" dated March 19, 2019 (DE254-18)	JA2159
R. Bauer, <i>et al.</i> Article "Do Clinical Data from Transgender Adolescents Support the Phenomenon of 'Rapid-Onset Gender Dysphoria'?" undated (DE254-19)	JA2164
S. Defendants' Response to Plaintiff's Second Set of Interrogatories filed October 25, 2021 (DE254-20)	JA2170

Exhibits to

- 1. Declaration of Carl S. Charles
sworn May 31, 2022 (DE254-1Continued)

- T. Excerpt of Deposition of Dr. Stephen Levine
in relation to *B.P.J. v. West Virginia*
State Board of Education
taken March 30, 2022 (DE254-21) JA2177

Plaintiffs’ Memorandum of Law in Support of Motion to Exclude
Expert Testimony of Stephen B. Levine, M.D.
filed May 31, 2022 (DE255) JA2187

Order
Granting Joint Motion to File Exhibits Under Seal
filed June 1, 2022 (DE256) JA2211

Corrected Stipulation of Plaintiffs and Defendants
filed June 10, 2022 (DE258) JA2212

Defendants’ Response in Opposition to
Plaintiffs’ Motion for Class Certification
filed June 14, 2022 (DE259) JA2217

Defendants’ Response to Plaintiffs’ Motion to Exclude
Expert Testimony of Stephen B. Levine, M.D.,
With Exhibit,
filed June 14, 2022 (DE260) JA2241

- A. de Vries, *et al.* “Young Adult Psychological Outcome
After Puberty Suppression and Gender Reassignment”
visited October 7, 2016 (DE260-1) JA2265

Exhibits to
Defendants’ Response in Opposition to
Plaintiffs’ Motion for Summary Judgment
filed June 14, 2022 (DE261):

- 19A. Defendants’ Third Supplemental Response to
Plaintiff’s First Set of Requests for Production
filed November 30, 2021 (DE261-1)..... JA2276
- InterQual Composite Exhibit
dated October 2021 (DE261-1) JA2281

- 19B. InterQual Composite Exhibit
dated October 2021 (DE261-2)..... JA2351

Exhibits to
Plaintiffs’ Opposition to Motion for Summary Judgment
filed June 14, 2022 (DE262):

- 1. Supplemental Declaration of Walt Auvil,
With Exhibits 34 & 35
dated June 14, 2022 (DE262-1) JA2416

- 34. InterQual, 2012.2 Procedures Adult Criteria,
Reduction Mammoplasty, Male (DE262-2) JA2418

- 35. InterQual, 2021 Reduction Mammoplasty,
Male (Adolescent) (DE262-3) JA2422

Plaintiffs’ Reply Memorandum of Law in Support of Motion to Exclude Expert Testimony of Stephen B. Levine, M.D., With Exhibits,
filed June 21, 2022 (DE266).....JA2428

Exhibits:

- 1. Declaration of Carl. S. Charles,
With Exhibit U
sworn June 21, 2022 (DE266-1).....JA2452
- U. Excerpt of Deposition of
Dr. Johanna Olson-Kennedy
taken April 25, 2022 (DE266-2)JA2454

Reporter’s Transcript of Proceedings Before The Honorable Robert C. Chambers,
on July 13, 2022 (DE269)JA2464

Memorandum Opinion and Order Granting Plaintiffs’ Motion for Class Certification
filed August 2, 2022 (DE270).....JA2552

Memorandum Opinion and Order Granting Plaintiffs’ Motion for Summary Judgment and Denying Defendants’ Motion for Summary Judgment
filed August 2, 2022 (DE271).....JA2562

Judgment Order
filed August 17, 2022 (DE273).....JA2592

Defendants’ Notice of Appeal
filed August 31, 2022 (DE277).....JA2594

TABLE OF CONTENTS**Volume VI of VI – Under Seal**

	Page
Ex. A: Expert Disclosure Report of Dan H. Karasic, M.D. dated January 13, 2022 (DE257).....	JA2598
Ex. B: Affidavit of Jennifer Myers sworn April 29, 2022 (DE257-1).....	JA2652