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February 28, 2023

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *Lindsay Hecox and Jane Doe with her next friends Jean Doe and John Doe v. Bradley Little, et al., and Madison Kenyon and Mary Marshall, Nos. 20-35813, 20-35815*

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee Lindsay Hecox writes to inform the Court that on February 22, 2023, in *B.P.J. v. West Virginia State Board of Education et al.*, the U.S. Court of Appeals for the Fourth Circuit granted B.P.J.'s motion for an injunction pending appeal and stayed the district court's order dissolving the preliminary injunction that had allowed B.P.J. to participate in middle school sports for the last year-and-a-half. No. 23-1078, Dkt. 50 (4th Cir. Feb. 22, 2023) (attached hereto as Ex. A). As a result, West Virginia's categorical ban against transgender women and girls playing school sports again cannot be applied to B.P.J., pending appeal.

Plaintiff's recent letter brief noted B.P.J.'s pending motion for a stay pending appeal in the Fourth Circuit. (Dkt. No. 194 at 12-13.) In granting B.P.J.'s motion, the Fourth Circuit "construe[d]" B.P.J.'s "motion for stay pending appeal . . . as a motion for an injunction pending appeal" and granted her request for relief. (Ex. A at 2.) In so doing, the Fourth Circuit necessarily concluded that B.P.J. made the "strong showing that [she is] likely to succeed on the merits" that is required for an injunction pending appeal to issue. *Grimmett v. Freeman*, 2022 WL 3696689, at *1 (4th Cir. Aug. 25, 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)).

The Fourth Circuit's grant of an injunction pending appeal to B.P.J. is consistent with the several other decisions striking down anti-transgender sports bans discussed in Plaintiff's letter brief. (See Dkt. No. 194 at 10-12.)

Sincerely,

/s/ Kathleen R. Hartnett

Kathleen R. Hartnett

EXHIBIT A

FILED: February 22, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1078 (L)
(2:21-cv-00316)

B.P.J., by her next friend and mother; HEATHER JACKSON

Plaintiffs - Appellants

v.

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON COUNTY
BOARD OF EDUCATION; WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION; W. CLAYTON BURCH, in his official capacity as
State Superintendent; DORA STUTLER, in her official capacity as Harrison
County Superintendent

Defendants - Appellees

and

THE STATE OF WEST VIRGINIA; LAINEY ARMISTEAD

Intervenors - Appellees

ORDER

Upon consideration of submissions relative to Appellants' motion for stay

pending appeal relief requested by February 26, 2023, which the court construes as a motion for an injunction pending appeal, the court grants the motion and stays the district court's January 5, 2023, order dissolving its preliminary injunction.

Entered at the direction of the panel: Judge Harris and Judge Heytens. Judge Agee dissents from the court's order.

For the Court

/s/ Patricia S. Connor, Clerk