

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

B.E. and S.E., minor Children by their Mother, legal guardian, and next friend, L.E.,] Appeal from the United States] District Court for the Southern] District of Indiana, Terre Haute] Division
Plaintiffs-Appellees,]]
v.] CASE NO. 2:21-cv-00415-JRS-MG]]
VIGO COUNTY SCHOOL CORPORATION; PRINCIPAL, TERRE HAUTE NORTH HIGH SCHOOL, in his official capacity,] Honorable James R. Sweeney II,] Judge.]]
Defendants-Appellants.] APPEAL NO. 22-2318]]

A.C., a minor child by his next friend, mother and legal guardian, M.C.,] Appeal from the United States] District Court for the Southern] District of Indiana, Indianapolis] Division
Plaintiff-Appellee,]]
v.] Case No. 1:21-cv-2965-TWP-MPB]]
METROPOLITAN SCHOOL DISTRICT OF MARTINSVILLE, and PRINCIPAL, JOHN R. WOODEN MIDDLE SCHOOL, in his official capacity,] Honorable Tanya Walton Pratt,] Chief Judge.]]
Defendants-Appellants.] APPEAL NO. 22-1786]]

APPELLANTS' UNOPPOSED MOTION TO CONSOLIDATE APPEALS

Pursuant to Fed. R. App. P. 3(b)(2), the Vigo County School Corporation and Principal of Terre Haute North Vigo High School and the Metropolitan School

District of Martinsville and the Principal of John R. Wooden Middle School move to consolidate the pending appeals under Appeal numbers 22-2318 and 22-1786.

1. In both cases on appeal, Appellants raise identical issues for the Court: Whether Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution mandate that schools provide students with access to restrooms (and locker rooms) that match their gender identities, or whether schools may continue to maintain facility distinctions based on the sex and physical anatomy of students. Both Appellants ask whether *Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 858 F.3d 1034 (7th Cir. 2017), was correctly decided and whether it controls the respective outcomes in their cases.

2. In both appeals, the district courts entered injunctions against the respective schools to require them to provide the respective plaintiff-students with access to facilities that match their gender identities (in *A.C.* the access involves bathrooms only, while the *B.E.* case involves bathrooms and locker rooms (but not showers)). The appellants in both cases appeal the respective injunctions.

3. In both appeals, the respective appellants and appellees are represented by the same attorneys; and the same attorneys represented (and still represent) their respective clients in the cases at the district court level.

4. In *A.C.*, the parties have submitted their primary briefs and Appellants' Reply Brief is due by August 17, 2022. Additionally, Appellants filed a Petition for Hearing En Banc on July 27, 2022, that is pending before the Court.

5. In *B.E.*, Appellants' Brief and short appendix are due September 12, 2022; Appellees' Brief is due October 12, 2022; and Appellants' Reply Brief is due November 2, 2022. With or without consolidation, Appellants will pursue a Petition for Hearing En Banc in the *B.E.* matter as well for the same reasons set forth in the *A.C.* matter.

6. In light of the fact that both cases raise identical issues on appeal, it would promote efficiency and eliminate redundancy for the parties and the Court to consolidate the cases, briefing schedules, and oral arguments for these overlapping issues.

7. Counsel for appellants in both cases contacted counsel for appellees in both cases to discuss this Motion to Consolidate, and appellees' counsel does not object to consolidation.

WHEREFORE, the Vigo County School Corporation and Principal of Terre Haute North Vigo High School and the Metropolitan School District of Martinsville and the Principal of John R. Wooden Middle School respectfully request the Court consolidate the above-captioned appeals and enter an order setting forth the briefing schedule for the consolidated appeal.

Respectfully submitted,

/s/ Philip R. Zimmerly

Philip R. Zimmerly (#30217-06)

– COUNSEL OF RECORD

Jonathan L. Mayes (#25690-49)

Mark A. Wohlford (#31568-03)

Bose McKinney & Evans LLP

111 Monument Circle, Suite 2700

Indianapolis, IN 46204

317-684-5000 Fax: 317-684-5173
pzimmerly@boselaw.com
jmayes@boselaw.com
mark.wohlford@boselaw.com

Attorneys for Defendants-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2022, a copy of the foregoing “Appellants’ Unopposed Motion to Consolidate Appeals” was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s CM/ECF system.

Kenneth J. Falk, Esq. Stevie J. Pactor, Esq. ACLU of Indiana 1031 East Washington Street Indianapolis, IN 46202 kfalk@aclu-in.org spactor@aclu-in.org	Kathleen Bensberg, Esq. Indiana Legal Services, Inc. 1200 Madison Avenue Indianapolis, IN 46225 Kathleen.bensberg@ilsi.net
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s/ Philip R. Zimmerly _____
Philip R. Zimmerly

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