Richard Eppink (Bar No. 7503)
AMERICAN CIVIL LIBERTIES UNION
OF IDAHO FOUNDATION
P. O. Box 1897
Boise, ID 83701
T: (208) 344-9750 ext. 1202
REppink@acluidaho.org

Gabriel Arkles*
James Esseks*
Chase Strangio*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad St.,
New York, NY 10004
T: (212) 549-2569
garkles@aclu.org
jesseks@aclu.org
cstrangio@aclu.org

Kathleen Hartnett*
COOLEY LLP
101 California Street 5th Floor
San Francisco, CA 94111-5800
T: (415) 693-2000
F: (415) 693-2222
khartnett@cooley.com

Elizabeth Prelogar*
COOLEY LLP
1299 Pennsylvania Avenue, NW Suite 700
Washington D.C. 20004-2400
T: (202) 842-7800
F: (202) 842-7899
eprelogar@cooley.com

Andrew Barr*
COOLEY LLP
380 Interlocken Crescent, Ste. 900
Broomfield, CO 80021-8023
T: (720) 566-4000
F: (720) 566-4099
abarr@cooley.com

Catherine West*
LEGAL VOICE
907 Pine Street, Unit 500
Seattle, WA 98101
T: (206) 682-9552
F: (206) 682-9556
cwest@legalvoice.org

* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LINDSAY HECOX, et al.,

Plaintiffs,

v.

BRADLEY LITTLE, et al.,

Defendants.

No. 1:20-cv-184-CWD

DECLARATION OF ANDREW BARR IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Andrew Barr, declare under penalty of perjury of the laws of the United States of America that the following is true and correct, and state:

1. I am an attorney with the law firm Cooley LLP, counsel of record for Plaintiffs Lindsay Hecox and Jane Doe, with her next friends, Jean Doe and John Doe. I have been admitted *pro hac vice* in this Court for this action. The following is true of my own personal knowledge, and, if called as a witness, I would and could testify competently thereto.

2. As set forth below, I have transcribed excerpts of the Idaho Legislature's testimony regarding H.B. 500 as accurately as possible. Each excerpt that I transcribed is described in the respective Exhibit using the timestamp of testimony as available on the Idaho Legislature's public recordings. I have also provided a hyperlink to the Idaho Legislature's website where the recordings are available for public review. As of the date of this filing, each of the hyperlinks is in working order. I have also saved copies of recordings for each of the excerpts of testimony set forth in the Exhibits and am happy to provide that to the Court or opposing counsel upon request.

3. Attached hereto as Exhibit A is a true and correct transcription of excerpts from testimony heard during the House State of Affairs Committee Meeting on February 19, 2020. A recording of the testimony is available at: http://164.165.67.41/IIS/2020/House/Committee/State%20Affairs/200219_hsta_0900AM-Meeting.mp4 (last accessed April 29, 2020).

4. Attached hereto as Exhibit B is a true and correct transcription of excerpts from testimony heard during the House State of Affairs Committee Meeting on February 20, 2020. A recording of the testimony is available at: http://164.165.67.41/IIS/2020/House/Committee/State%20Affairs/200220_hsta_0800AM-Meeting.mp4 (last accessed April 29, 2020).

5. Attached hereto as Exhibit C is a true and correct transcription of excerpts from testimony heard during the House Floor Meeting and Vote on February 26, 2020. A recording of the testimony is available at: http://164.165.67.41/IIS/2020/House/Chambers/HouseChambers02-26-2020.mp4 (last accessed April 29, 2020).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 29, 2020

Andrew Barr, Esq.

EXHIBIT A

House Senate Affairs Committee

DATE: Wednesday, February 19, 2020
TIME: 9:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Harris, Vice Chairman Armstrong, Representatives Crane, Palmer, Barbieri, Holtzclaw, Monks, Zito, Scott, Andrus, Hartgen, Young, Smith, Gannon, Green, Ehardt

Excerpts of testimony on House Bill 500:

Time Stamp	Testimony
18:42 - 19:14	[Representative Ehardt]: I come to you today with this piece of legislation, with this legislation designed to do one thing. This legislation is designed to continue to protect opportunities for girls and women in sports. Every girl deserves a chance to pursue her dreams to compete and excel in athletic opportunities. Forcing girls and women to compete against biological boys and men has too often made us spectators in our own sports.
41:35 – 43:06	[Representative Ehardt]: Mr. Chairman, Representative Green. I believe that if you read what is listed in the Idaho High School Activities Association, and if you read the actual policy of the NCAA that you will see that these are actually not similar, the Idaho High School Activities Association provides for a means for a transgender student athlete to start a process with a doctor for a year before competing, ironically, there's no follow-up. It literally could start with one shot. But aside from that, the NCAA's policy is a permissive policy and that permissive policy states that a trans female student athlete being treated with testosterone suppression medication for gender identity disorder or gender dysphoria and transsexualism for the purposes of NCAA competition may continue to compete on a man's team, but may not compete on a women's team without changing it to a mixed team status until completing one year of testosterone suppressant treatment. This is a permissive statement. It is not required by the NCAA, but it allows for a path forward should a team decide to allow for a biological man to compete with their team. That is the policy of the NCAA.

Time Stamp	Testimony
49:27 – 50:31	[Representative Green]: I want to go back and revisit this non-discrimination policy and if I can look in the audience, I suspect the director of the Idaho High School Athletic Association is in attendance. And so I [could] be asking similar questions but to Representative as it pertains to the current statute or the current rule in place for students. Can you tell us the time where in Idaho that we have had an appeal process where a student felt that they were being harmed by the current rule in place. [Chairman Harris]: I'll let you answer that question as it applies to the current bill before us. [Representative Ehardt]: Mr. Chairman, Representative Green. I think it's important to answer this-this way. Obviously, there's a clause in place that was preemptive. And we are going to replace it with something that's preempted because it's happening all over the country. When is the time to deal with an issue like this when we have a student athlete who's already on the team and now we're asking to remove them and replace them with the young gal that should have been on the team.

EXHIBIT B

House Senate Affairs Committee

DATE: Thursday, February 20, 2020
TIME: 8:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Harris, Vice Chairman Armstrong, Representatives Crane, Palmer, Barbieri, Holtzclaw, Monks, Zito, Scott, Andrus, Hartgen, Young, Smith, Gannon, Green, Ehardt

Excerpt of testimony on House Bill 500:

Time Stamp	Testimony
1:26:10 - 1:27:18	[Representative Ehardt]: There will be lawsuits and they will be coming from the parents of girls whose spots were taken by biological boys. Connecticut, the Connecticut story is not the only story out there, but it is a story that Idaho should pay very much attention to. Three fantastic young women, who are talented, have had their opportunities taken away by two biological boys that had competed on the boys' side and now identify as girls and have broken and hold [] 15 state championships that nine other girls had held prior to the last two years. This will happen quickly. The discrimination factor is that these girls are no longer allowed to compete for that Championship because the determination is basically being outlined by the inherent advantages that boys and men have.

EXHIBIT C

House of Representatives

Fifty-Second Legislative Day
Second Regular Session
Sixty-Fifth Legislature

DATE: Wednesday, February 26, 2020
TIME: 10:30 A.M.

Excerpts of debate on House Bill 500:

Time Stamp	Testimony
41:29 – 42:44	[Representative Ehardt]: This bill does not prevent biological boys and men from competing in sports. It doesn't. Make no mistake. They are allowed to identify as whatever they want because this is not about identification or how we feel. This is about competing in the biological sex in which we were born. They would just have to compete on the side of those biological boys and men with whom they look or, about whom they look alike. Now, let me briefly also take you through a couple of things. Remember there are physical advantages the boys and men have. They have bigger body size, longer limbs, stronger base that is designed for mass power movement. They have denser, stronger bones, tendons, ligaments. They have a larger and stronger heart, larger lungs with a greater lung volume per mass. Higher red blood count, higher hemoglobin. They also have natural higher levels of testosterone. These help with things with muscle fiber carbohydrates, on and on and on, but particularly the ability to generate higher speed and power during physical activity. No amount of hormone will eliminate those advantages. No amount of hormone will ever eliminate those advantages. Make no mistake.
1:36:56 - 1:40:43	[Representative Ehardt]: Mr. Speaker. Thank you. Yes, let me remind you first and foremost that this bill is about preserving opportunities for girls and women. The opportunities that first came to light in 1972 with a federal law called Title IX. I would like to take just a moment and address a couple -- a couple things, but I do feel like I've answered it and answered it very clearly though things are continually brought back up the clear answers are there. In regards to the three options when it comes to tests testing, aside from the medical form, it does if you read before it does say may not shall and let me just address a couple of the things mentioned. First, in regards to the Idaho High School Activities Association and their current policy. The current policy is, I had spoken with the executive director Ty Jones on this actually about a year and a half ago as we discussed the current policy. It's fairly vague. It allows for a young man who wants to compete on the women's side on the girl's side to start to

Time Stamp	Testimony
	start the process with the drugs and that's all they have to do with the doctor's notification is start and then wait a year. They may take shots or whatever is required once a week, once a month, or once. That's it. Let me also share with you what also would come within the last two and a half three years, before the Idaho High School Activities Association, according to the Human Rights Campaign our policy is not enough. And what they're wanting to do is just be able to identify however they want with nothing required. So, just in addressing that which was brought up in regards to the policies of the Idaho High School Activities Association, let me address if I may the Commerce Clause and how this would affect that. It doesn't. This is -- this would be Idaho's policy. It would only affect Idaho's student athletes. Currently, there is a biological runner at the University of Montana who had competed very well on the men's side in track and he [] is now competing on the women's side had decided to compete on the women's side and has done very well. He competes in the Big Sky [Conference]. This does not, when they come here to Idaho, when they go to Pocatello to compete at my alma mater Idaho State they get to. We don't get to dictate that. We only get to say that for Idaho our student athletes have to be got biological girls and women. Again, let me remind you that the NCAA policy is a permissive policy and it allows for us to determine this. When it comes to this kind of legislation. Guess what? Currently, it's being introduced in 13 states and another seven are on board to introduce it. Because this is happening throughout the United States. So I found out last night it's come to Idaho which we knew it was going to be here within the next year or two anyway. Again, this is about opportunities for girls and women in preserving that which we hold so dear. It has been mentioned that they'll be lawsuits. My friends, there will be lawsuits and guess from where they're coming. Just like the three young women in Connecticut. These lawsuits will be coming from the parents of those girls whose opportunities have been displaced by biological boys and men. Make no mistake about it.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dan Skinner
danskinner@cssklaw.com
cssklaw@cssklaw.com
Attorney for Boise School District,
Individual members of the Board of Trustees of Boise School District,
Coby Dennis

Steven L. Olsen
steven.olsen@ag.idaho.gov
W. Scott Zanzig
scott.zanzig@ag.idaho.gov
Dayton P. Reed
dayton.reed@ag.idaho.gov
Attorneys for Bradley Little,
Sherri Ybarra,
Individual members of the State Board of Education,
Boise State University,
Marlene Tromp,
Individual members of the Idaho Code Commission

DATED this 30th day of April, 2020.

/s/ Richard Eppink