

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

JANIE DOE, by her next friends and parents, JILL  
DOE and JOHN DOE,

Plaintiff,

v.

HANOVER COUNTY SCHOOL BOARD,

ROBERT J. MAY in his official capacity as Chair of  
the Hanover County School Board, and

MICHAEL B. GILL in his official capacity as  
Superintendent of Hanover County Public Schools,

Defendants.

Civil Action No. 3:24-cv-00493

**COMPLAINT**

**NATURE OF THE ACTION**

1. Janie is an eleven-year-old girl who will be entering the seventh grade this Fall. Her favorite sport is tennis. She would like to try out for, and if successful play on, the girls' tennis team at her middle school. Without this Court's intervention, Janie has no possibility of playing on the girls' tennis team, regardless of her skill.

2. Janie is a transgender girl, which means that she is a girl who was assigned the sex of male at birth. The Hanover County School Board, Robert J. May (Chair of the School Board), and Michael B. Gill (Superintendent of Hanover County Public Schools) have denied, and will continue to deny, Janie the opportunity to participate on the girls' tennis team at her middle school because of her gender identity.

3. Indeed, after Janie tried out for and earned a spot on the girls' tennis team as a sixth grader in August 2023, the School Board sought "medical documentation or

verification” evidencing Janie’s “consistent expression as a female.”<sup>1</sup> Shortly thereafter, in September 2023, the School Board “voted unanimously against permitting [Janie] to participate on the middle school girls’ tennis team.”<sup>2</sup>

4. Then, in November 2023, the School Board amended its extracurricular activities policy, § 7-4.1 of the Hanover County School Board Policy Manual (the “Policy”), to categorically bar transgender students like Janie from participating on school sports teams consistent with their gender identity. The revised Policy states that “[f]or any school programs, events, or activities (including extracurricular activities) that are separated by biological sex, *the appropriate participation of students will be determined by biological sex rather than gender or gender identity.*”<sup>3</sup>

5. It would be stigmatizing for Janie—just as it would be for a cisgender (non-transgender) girl—to be forced to be the only girl on the boys’ tennis team. And for transgender girls, being designated a boy in this way can cause significant psychological harm. The School Board has effectively denied Janie the opportunity to participate in interscholastic athletics altogether.

6. The School Board has deprived Janie not only of the athletic training and physical health benefits that school sports provide, but also of the many social, educational, and emotional benefits borne from participation in interscholastic athletics.

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<sup>1</sup> Letter from Defendant May to John Doe and Jill Doe (Sep. 5, 2023) [hereinafter, Defendant May’s September 5 Letter], attached as Exhibit 1.

<sup>2</sup> Letter from Defendant May to John Doe and Jill Doe (Sep. 14, 2023) [hereinafter, Defendant May’s September 14 Letter], attached as Exhibit 2.

<sup>3</sup> Hanover Cnty. Sch. Bd., Policy Manual § 7-4.1 [hereinafter, Policy Manual] (emphasis added), [https://hcps.us/about\\_us/policy\\_manual](https://hcps.us/about_us/policy_manual), attached as Exhibit 3.

7. Moreover, the Policy contravenes guidance from numerous bodies that govern participation in sport at all levels—from elite athletic competition to local, recreational matches. The International Olympic Committee, National Collegiate Athletic Association, United States Tennis Association, and Virginia High School League have all promoted policies that enable transgender athletes to participate in competitions consistent with their gender identity. None call for an athlete’s eligibility to participate in competition to be based on the athlete’s sex assigned at birth.

8. The School Board has couched its exclusionary actions under the guise of “ensuring fairness in competition for all participants.” But the School Board, in both practice and policy, reaches far beyond this stated purpose. It sweepingly excludes all transgender students from participating in any athletic teams consistent with their gender identity, regardless of the circumstances. The School Board’s true intent is laid bare by its many trans-exclusionary actions in recent years that are unrelated to student athletics, such as: requiring transgender students to submit a request to use school bathrooms that align with their gender identity and giving the School Board the authority to approve or deny such requests; mandating that school staff refer to students using the pronouns identified in student records unless school administrators receive a written request from both a student and their parent; and banning books from school libraries that feature discussions of gender identity.

9. In both practice and policy, Defendants have discriminated, and will continue to discriminate, against Janie on the basis of sex and transgender status in violation of the right to equal protection guaranteed by the Fourteenth Amendment of the United States Constitution and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* Unless enjoined, the Policy will deny Janie equal educational opportunities and the multiple long-term benefits of participation in interscholastic athletics. Allowing the School Board to

single out Janie for exclusion will perpetuate discrimination against her and exacerbate the psychological harm she has already suffered as a result of this stigmatization.

10. Janie therefore seeks declaratory and injunctive relief from this Court to allow her to try out for and, if successful, participate on her middle school's girls' tennis team.

### **PARTIES**

#### **Plaintiff**

11. Janie is an eleven-year-old girl who lives in Hanover County, Virginia. She appears in this case through her mother and next friend, Jill Doe, and her father and next friend, John Doe. Janie is a transgender girl and has a gender dysphoria diagnosis. Janie attends a middle school within Hanover County Public Schools. Defendants have barred Janie from participating on the girls' tennis team at her middle school because she is transgender.

#### **Defendants**

12. Hanover County School Board, a/k/a County School Board of Hanover County, is the policy-making body for the Hanover County Public Schools. *See* Va. Code Ann. § 22.1-78; Policy Manual § 1-1.1. The School Board is a corporate body authorized by article VIII, section 7 of the Constitution of Virginia and by sections 22.1-28 and 22.1-71 of the Code of Virginia. The School Board is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law as to the allegations in this complaint. The School Board maintains its offices at 200 Berkley Street, Ashland, Virginia 23005.

13. Robert J. May is the Chair of the School Board. Defendant May was appointed to a four-year term on the School Board by the Hanover County Board of Supervisors. *See* Policy Manual § 1-2.3. On July 11, 2023, the School Board elected Defendant May to be its Chair for the 2023-2024 school year. *See* Va. Code Ann. § 22.1-76; Policy Manual § 1-3.1. As Chair of the School Board, Defendant May's duties are to

“preside at all meetings of the School Board, to perform such other duties as may be prescribed by law or by action of the School Board, to sign all legal documents approved by the School Board and to serve as an ex officio member of all School Board committees.” *Id.* at § 1-3.2. Defendant May is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law as to the allegations in this complaint. Defendant May resides in Virginia. He is sued in his official capacity.

14. Michael B. Gill is the Superintendent of Hanover County Public Schools, appointed by the School Board. *See* Va. Code Ann. § 22.1-60; Policy Manual § 5-8.3. As superintendent, Defendant Gill is “the executive officer of the School Board and [is] responsible for seeing that all policies of the School Board are carried out in the Hanover County Public Schools.” Policy Manual § 5-8.3; *see also* Va. Code Ann. § 22.1-70. Defendant Gill is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law as to the allegations in this complaint. Defendant Gill resides in Virginia. He is sued in his official capacity.

#### **JURISDICTION AND VENUE**

15. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution, and under Title IX of the Education Amendments of 1972.

16. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under laws of the United States, including laws providing for the protection of civil rights, and because this suit seeks redress for the deprivation, under color of state law, for rights secured by the United States Constitution.

17. Venue is proper in the Eastern District of Virginia under 28 U.S.C. § 1391(b)(1) and (2) because the Defendants reside in the District and because a substantial part of the events or omissions giving rise to the claims occurred in the District.

18. This Court has the power to enter a declaratory judgment and to provide injunctive relief pursuant to Federal Rules of Civil Procedure 57 and 65, and 28 U.S.C. §§ 2201 and 2202.

19. This Court has personal jurisdiction over Defendants because they are domiciled in Virginia and because their denial of Janie's federal constitutional and statutory rights occurred within Virginia.

### **FACTUAL ALLEGATIONS**

#### **Gender Identity and Gender Dysphoria**

20. Gender identity is a well-established medical and psychological term that refers to a person's fundamental, internal sense of gender. It is a core characteristic that everyone possesses. For some youth, gender identity appears fixed and is expressed at an early age.

21. A person's gender identity is a fundamental component of their identity. It cannot be voluntarily altered by social or medical intervention. Attempts to change a person's gender identity to align it with the person's birth-assigned sex are not only futile but psychologically harmful.

22. According to medical consensus, there is a substantial biological component to gender identity. A person's sex encompasses numerous biological characteristics, such as genes, chromosomes, gonads, one's production of and reaction to specific hormones, internal and external genitalia, secondary sex characteristics, and gender identity.

23. At birth, a sex designation is typically made based on an observation of the infant's external genitalia. The sex designation is usually listed on the infant's birth

certificate. For most people, their gender identity aligns with their sex assigned at birth. However, transgender people have gender identities that do not align with the sex assigned to them at birth. For this reason, the Endocrine Society has said the term “biological sex” is an “imprecise” term that “should be avoided.”<sup>4</sup>

24. Misalignment between gender identity and sex assigned at birth can create severe distress for transgender people. The American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5-TR) uses the diagnostic term “gender dysphoria” for the clinically significant distress that results from “a marked incongruence between one’s experienced/expressed gender and their assigned gender” at birth.<sup>5</sup>

25. Gender dysphoria is a serious medical condition. If left untreated, it can result in anxiety, depression, self-harm, and suicidality.

26. To avoid these serious harms, the widely accepted standards of care recommend recognizing and affirming a person’s gender identity.

27. The protocols for the treatment of gender dysphoria are set forth in clinical practice guidelines of the Endocrine Society, the leading professional association of endocrinologists in the United States, and the standards of care issued by the World Professional Association for Transgender Health.<sup>6</sup> These protocols are recognized as

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<sup>4</sup> Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3875 (2017).

<sup>5</sup> *What is Gender Dysphoria?*, Am. Psychiatric Ass’n, <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> (last visited July 2, 2024).

<sup>6</sup> See Hembree et al., *supra* note 4; Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int’l J. Transgender Health S1 (2022).

authoritative standards for the treatment of gender dysphoria by every major medical and mental health professional association in the United States. These groups also agree that this treatment is safe, effective, and medically necessary for many individuals with gender dysphoria.

28. Treatment under these protocols is individualized based on the needs and circumstances of the patient.

29. For prepubertal children, treatment is limited to therapy and social transition, which is the process by which a person expresses themselves consistent with their gender identity in their day-to-day life, such as through the use of one's name, pronouns, manner of dress and grooming, use of single-sex facilities, and participation in single-sex activities.

30. When young people with gender dysphoria reach the onset of puberty, pubertal suppression may be medically indicated. Such treatment, which pauses endogenous puberty, has the impact of limiting the influence of a person's endogenous hormones on their body. For example, a girl who is transgender and undergoes pubertal suppression will not experience the impact of testosterone that would be typical if she underwent her endogenous puberty. Similarly, a boy who is transgender and undergoes pubertal suppression will not experience the impact of estrogen that would be typical if he underwent his endogenous puberty.

31. For older adolescents, gender-affirming hormone therapy may be provided. For transgender girls, this means undergoing estrogen therapy and suppression of testosterone. For transgender boys, this means undergoing testosterone therapy. Surgical interventions are generally not indicated until after a patient has reached the age of majority, with the exception of chest surgery in some cases for young men who are transgender.

32. When transgender girls are treated with puberty suppression followed by testosterone suppression and estrogen therapy, their bodies develop the skeletal structure, fat



distribution, muscle development, breasts, and lack of facial hair typical of other girls their age. Similarly, when transgender boys are treated with puberty suppression followed by testosterone therapy, their bodies develop the skeletal structure, fat distribution, muscle development, chest, and facial hair typical of other boys their age.

33. For people with gender dysphoria, being able to live consistently with their gender identity is essential to their health and well-being. When they are forced to live in a manner inconsistent with their gender identity, it undermines their ability to socially transition and, thus, exacerbates their gender dysphoria. Excluding a transgender girl from activities designated for girls, such as school sports, or requiring her to take part in single-sex activities for boys, is extremely harmful and can create serious health repercussions.

#### **The Benefits of Participation in School Sports**

34. Interscholastic athletics offer students not only the opportunity to develop their athletic skills and participate in competition, but also a range of academic, social, emotional, and health benefits, as well as life skills, that provide a foundation for success throughout their lives.

35. Participation in sports is correlated with academic achievement, with student athletes generally experiencing better academic achievement than students who are not athletes.<sup>7</sup>

36. Through participation in sports, students learn to better manage academic and social pressures. Participation in sports provides students the opportunity to make friends and become part of a supportive community of teammates and peers, easing social pressures to

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<sup>7</sup> See, e.g., Lumpkin & Favor, *Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas in 2008-2009*, 4 J. Sport Admin. & Supervision 41, 57 (2012); Holt et al., *Benefits and Challenges Associated with Sport Participation by Children and Parents from Low-income Families*, 12 Psych. Sport & Exercise 490, 497 (2011).

“fit in.”<sup>8</sup> It also reduces the effects of risk factors, such as stressful life events, that lead to increases in depression.<sup>9</sup> Learning how to manage these pressures at a young age provides benefits to student athletes throughout their lives—even after their participation in sports has ended.

37. Participation in athletics also allows students to build teamwork and discipline skills. Students learn the importance of working as part of a group to achieve a common goal, and the necessity of each individual member’s role in bringing about success. Students also experience the success and personal fulfillment achieved from discipline, hard work, and perseverance through countless hours of practice.

38. Through sports, students develop social skills and emotional maturity that allow them to create and sustain life-long friendships. Athletes spend considerable time with their teammates, often experiencing high-pressure situations together that lead to deeper and more meaningful social bonds and friendships. Accordingly, children who participate in sports are found to have reduced social anxiety and higher self-esteem.<sup>10</sup> These benefits impact students throughout the entirety of their lives.

39. Coaches and athletic support staff provide students who participate in sports access to meaningful mentorship and guidance.<sup>11</sup> This mentorship extends beyond school athletics, guiding students through academics and life.

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<sup>8</sup> See Boone & Leadbeater, *Game On: Diminishing Risks for Depressive Symptoms in Early Adolescence Through Positive Involvement in Team Sports*, 16 J. Rsch. on Adolescence 79, 87-88 (2006).

<sup>9</sup> See *id.*

<sup>10</sup> See Findlay & Coplan, *Come Out and Play: Shyness in Childhood and the Benefits of Organized Sports Participation*, 40 Can. J. Behav. Sci. 153, 158-159 (2008).

<sup>11</sup> See Holt et al., *supra* note 7, at 496; Boone & Leadbeater, *supra* note 8, at 88.

40. Students who participate in athletics also derive physical and mental health benefits from sports. In general, students who play sports in school have fewer physical and mental health problems than those who do not.<sup>12</sup> Students who participate in sports further learn how to regulate their emotions, and experience significantly lower levels of emotional problems and distress as a result.<sup>13</sup> Participation in sports at a young age also encourages continued participation as an adult, in turn reducing the morbidity and mortality of many diseases that arise later in life.<sup>14</sup>

41. Athletic participation also teaches young people how to overcome challenges and develop problem-solving skills, providing pathways to success later in life. Athletic participation tests student athletes' resilience and helps them confront and overcome adversity. This equips students with the ability to excel in high-stakes and impressive professional roles after their athletic careers have ended. Participation in school sports provides numerous benefits to students, creating a strong foundation for success both in and outside of school.

#### **Current Policies of the United States and International Sports Bodies**

42. The world's preeminent bodies that oversee athletic competition promote policies enabling transgender people to participate in sporting events consistent with their gender identities. None base an athlete's eligibility to participate on their sex assigned at birth.

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<sup>12</sup> See Steiner et al., *Adolescents and Sports: Risk or Benefit?*, 39 *Clinical Pediatrics* 161, 163-164 (2000).

<sup>13</sup> See Donaldson & Ronan, *The Effects of Sports Participation on Young Adolescents' Emotional Well-Being*, 41 *Adolescence* 369, 382-385 (2006).

<sup>14</sup> Malm et al., *Physical Activity and Sports—Real Health Benefits: A Review with Insight into the Public Health of Sweden*, 7 *Sports* 1, 13-14 (2019).

43. In November 2021, following a two-year consultation process with more than 250 athletes and concerned stakeholders, the International Olympic Committee (“IOC”) released its *Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations* (the “Framework”).<sup>15</sup> The Framework’s first guiding principle is that “[e]veryone, regardless of their gender identity, expression and/or sex variations should be able to participate in sport safely and without prejudice.”<sup>16</sup>

44. The IOC Framework recognizes that most high-level organized sports competitions are staged with men’s and women’s categories competing separately; accordingly, it outlines principles “to ensure that competition in each of these categories is fair and safe and that athletes are not excluded solely on the basis of their transgender identity or sex variations.”<sup>17</sup>

45. The Framework does not issue regulations that define the eligibility criteria for every sport; that, the IOC recognizes, “must be in the remit of each sport and its governing body.”<sup>18</sup> The Framework advises, however, that “[a]ny restrictions arising from eligibility criteria should be based on robust and peer reviewed research.”<sup>19</sup>

46. Collegiate athletics have followed suit. The National Collegiate Athletic Association (“NCAA”) is a member-led organization—with more than 500,000 college

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<sup>15</sup> *Fairness, Inclusion and Non-Discrimination in Olympic Sport*, Int’l Olympic Comm., <https://olympics.com/ioc/human-rights/fairness-inclusion-nondiscrimination> (last visited July 2, 2024).

<sup>16</sup> *Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations 2*, Int’l Olympic Comm. (2021), <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 4.

athletes and nearly 1,100 member schools—that establishes rules and policies for college sports.<sup>20</sup> Numerous colleges and universities in Virginia—including the University of Virginia, Virginia Commonwealth University, George Mason University, Virginia Tech, and the College of William & Mary—are members of the NCAA.<sup>21</sup>

47. In January 2022, the NCAA Board of Governors voted to align the NCAA’s policy on transgender student-athlete participation for college sports with the IOC Framework.<sup>22</sup> The revised policy provides for “a sport-by-sport approach to transgender participation that preserves opportunity for transgender student-athletes while balancing fairness, inclusion and safety for all who compete.”<sup>23</sup>

48. As of May 2024, a transgender woman is eligible to participate in NCAA women’s tennis competitions where: (1) a medical professional confirms the student-athlete has received hormone suppression treatment for at least one calendar year;<sup>24</sup> and (2) the student-athlete demonstrates that her testosterone level is below 5 nmol/L.<sup>25</sup>

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<sup>20</sup> *Overview*, NCAA, <https://www.ncaa.org/sports/2021/2/16/overview.aspx> (last visited July 2, 2024).

<sup>21</sup> *Directory*, NCAA, <https://web3.ncaa.org/directory/memberList?type=1> (last visited July 2, 2024).

<sup>22</sup> *Board of Governors Updates Transgender Participation Policy*, NCAA (Jan. 19, 2022), <https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx>.

<sup>23</sup> *Id.*

<sup>24</sup> See NCAA, *Transgender Student-Athlete Participation Policy: Phase Two: 2022-23 and 2023-24 Academic Years Eligibility Review Form*, Instructions 3, [https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSAEligibilityReviewForm.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSAEligibilityReviewForm.pdf) (last visited July 2, 2024).

<sup>25</sup> See NCAA, *Transgender Student-Athlete Eligibility Review Procedures* (May 2024), <https://www.ncaa.org/sports/2022/1/28/transgender-student-athlete-eligibility-review-procedures.aspx>; NCAA, *Transgender Student-Athlete Participation Policy Sport-Specific Testosterone Thresholds and Championship Eligibility Deadlines: Spring Sports 3* (May 2024),

49. The testosterone threshold applied by the NCAA for women's tennis is based on the eligibility criteria for transgender women set by the International Tennis Federation.<sup>26</sup>

### **Janie's Gender Identity**

50. Janie is a girl who is transgender, which means that she is a girl who was assigned the sex of male at birth.

51. Janie has known from a very young age that she is a girl. By August 2020, at seven years old, Janie expressed a definitive preference for she/her pronouns and requested to start the third grade wearing only girls' clothes. Janie's family supported her choice to live authentically as the girl that she is.

52. Since Fall 2020, Janie has attended school as a girl and used a first name, Janie, that aligns with her gender identity.

53. In 2021, Janie changed her name legally and was issued a birth certificate by the Virginia Department of Health reflecting her sex as female.

54. In August 2021, following a year-long evaluation, a clinical psychologist formally diagnosed Janie with gender dysphoria and advised that puberty blockers would be indicated when she reached the appropriate stage of puberty. Janie's endocrinologist confirmed this diagnosis in May 2022.

55. In September 2022, at the age of nine, Janie received a histrelin implant. This medication suppresses Janie's endogenous hormones and prevents further development of puberty associated with testosterone.

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[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSADeadlinesAndThresholdsSpring2025.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSADeadlinesAndThresholdsSpring2025.pdf).

<sup>26</sup> *Transgender Policy 1*, Int'l Tennis Fed'n, <https://www.itftennis.com/media/2163/itf-transgender-policy.pdf> (last visited July 2, 2024).

56. Since she started living as her authentic self at the beginning of the third grade, Janie's elementary school teachers have roundly commended her as a bright and engaged student:

- "I'm so proud of [Janie]. Her confidence is infectious, and she has become someone that our entire class knows that they can count on." – Janie's third grade teacher.
- "[Janie] continues to be a ray of [] sunshine in our classroom. She comes into class each day with a smile on her face and a positive attitude. She is a team player and is always willing to help her peers." – Janie's fourth grade teacher.
- "It has been an absolute pleasure getting to know [Janie] this year and having her in my class! I love her inquisitive nature and ability to get along well with everyone she meets." – Janie's fifth grade teacher.

#### **School Board Excludes Janie From the Girls' Tennis Team in Fall 2023**

57. Janie loves tennis. In summer 2023, she participated in six weeks of private lessons and attended a week-long camp. As she entered her new middle school, Janie was excited to try out for the girls' tennis team alongside her best friend at the beginning of the 2023-2024 school year.

58. On or about August 29 and August 31, 2023, Janie tried out for the girls' tennis team.

59. On August 31, 2023, Janie's parents learned through Schoology (an internet application that allows parents to access Hanover County Public Schools information about their enrolled children) that Janie had made the team.

60. However, on September 5, 2023, Janie's parents received a letter from Defendant May, stating:

I have been advised that your student, [Janie], tried out for and was selected to participate as a member of the [middle school's] girls' tennis team. It has also come to the School Board's attention that [Janie] was born male although now identifies as female.

In light of the recently released *Virginia Department of Education's Model Policies on Ensuring Privacy, Dignity and Respect for all Students and Parents in Virginia's Public Schools*, the Attorney General's opinion issued August 23, 2023 on this issue, and our current practice for middle school transgender

athletes, the School Board wishes to carefully consider [Janie's] participation on the girls' tennis team as we work to determine the best interest of all participants on the team. Please provide information in furtherance of your student's consistent expression as female, including any medical documentation or verification that may exist concerning this matter.<sup>27</sup>

61. Defendant May noted that while middle school sports are not governed by the Virginia High School League ("VHSL"), Janie's parents could "use their *Application for Transgender Appeal* form to collect and provide useful information."<sup>28</sup> Defendant May enclosed a copy of the form.

62. Defendant May informed Janie's parents that the matter of Janie's participation on her middle school's girls' tennis team would be heard in a closed session at the September 12, 2023 School Board meeting.

63. Defendant May concluded, "[p]lease note that your student will not be permitted to participate in practices or matches until a decision is rendered by the School Board."<sup>29</sup>

64. After receiving Defendant May's letter, Janie's parents placed a call to Defendant May to discuss the letter. On the afternoon of September 5, 2023, Defendant May returned their call. He stated that the issue of Janie's participation on the girls' tennis team had been brought to his attention by Defendant Gill. Defendant May also asked repeatedly whether Janie was born "a biological male," adding "that's really the bottom line."

65. After receiving Defendant May's letter, Janie's mother rushed to intercept Janie before she arrived at after-school tennis practice. Janie's mother was terrified that her

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<sup>27</sup> Defendant May's September 5 Letter, *supra* note 1.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



daughter would be turned away from the team in front of her peers because this would be humiliating for Janie and have the effect of “outing” her as transgender.

66. When Janie’s parents told Janie that she was not allowed to play girls’ tennis, Janie was very upset and cried. Janie initially hoped that her parents could rectify the situation and that she would ultimately be able to play on the team.

67. On September 11, 2023, Janie’s parents submitted documentation in response to Defendant May’s September 5, 2023 letter. In particular, Janie’s parents provided:

- Letters from Janie’s medical team attesting that she underwent a mental health assessment in 2020 related to her gender identity and had since completed clinically appropriate treatment, which included receiving a histrelin implant in September 2022 to prevent further development of puberty associated with testosterone.
- Letters from parents of children in Hanover County Public Schools—including the parents of another student on the middle school’s girls’ tennis team—affirming Janie’s gender identity and supporting her participation on the team.
- A letter from Janie’s third grade teacher affirming her gender identity.
- A handwritten letter from Janie stating, “[w]hen I was 7 years old I began living as my true self all of the time. I was so happy when I got my ears pierced and could go to school wearing girl clothes. I have always been one of the girls.”

68. On September 12, 2023, Janie’s parents submitted additional documentation in response to Defendant May’s September 5, 2023 letter. This submission included letters from Janie’s clinical psychologist and endocrinologist evidencing Janie’s diagnosis of gender dysphoria.

69. While awaiting the School Board’s scheduled vote on her athletic participation, Janie felt anxious and experienced consistent worry about the looming decision. Janie consistently asked her parents what was happening and when they would have an answer about her eligibility to participate on the team.

70. On September 14, 2023, through counsel, Janie’s parents received a second letter from Defendant May. He wrote:

Thank you for providing the requested materials regarding your student’s eligibility to play for the [middle school’s] competitive girls’ tennis team. On September 12, 2023, the Hanover County School Board considered all provided materials in closed session prior to voting upon this matter. After careful consideration, the School Board voted unanimously against permitting your student to participate on the middle school girls’ tennis team in effort to ensure fairness in competition for all participants.<sup>30</sup>

71. As a result of this decision, Janie was upset that she was not able to play on the girls’ tennis team with her friends and classmates or proudly wear the team’s uniform together with them at school. Janie was angry that she was being singled out and excluded. She also felt embarrassed that her participation in athletics with her peers had been the focus of so much attention by powerful adults responsible for the entirety of Hanover County Public Schools.

72. After they received Defendant May’s September 5 Letter but before the School Board had made a final decision on Janie’s eligibility to participate on the team, Janie’s parents purchased a team jersey for Janie. When they learned of the School Board’s vote that Janie would not be allowed to participate on the team, Janie’s father picked up the jersey from the principal and hid it from Janie to prevent additional emotional distress.

73. Janie was forced to seek opportunities for athletic participation outside of Hanover County Public Schools, at greater expense and logistical burden than was required for participation on the school team. Janie’s parents found a private competitive tennis program, governed by the United States Tennis Association (“USTA”), where Janie was able to participate in accordance with her gender identity. Janie played in girls’ competitive matches in Spring 2024.

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<sup>30</sup> Defendant May’s September 14 Letter, *supra* note 2.

**School Board Amends Extracurricular Activities Policy to Exclude Transgender Students From School Athletics**

74. On November 14, 2023, the School Board unanimously voted to amend its policy regarding participation in extracurricular activities by inserting the following into § 7-4.1:

For any school programs, events, or activities (including extracurricular activities) that are separated by biological sex, *the appropriate participation of students will be determined by biological sex rather than gender or gender identity* .... Reasonable modifications to this policy will be permitted only to the extent required by law.<sup>31</sup>

75. The Policy is more restrictive than the transgender athlete policies adopted by leading athletic competition organizations, such as IOC, NCAA, and USTA. As noted above, the NCAA permits transgender women to participate in women’s athletic competitions, and specifically in women’s tennis, where the student-athlete has received hormone suppression treatment for at least one calendar year and demonstrates that her testosterone level is below a threshold set by the International Tennis Federation. And, as it relates to non-professional athletes, the USTA, whose rules govern the private tennis league that Janie has played in since being excluded from her middle school’s team, “do[es] not require confirmations of gender identity status.”<sup>32</sup> The USTA explains that it “do[es] not want to be an obstacle to recreational participation” and “take[s] it on faith that players who compete under these rules are doing so not to gain a competitive advantage, but to enjoy participating in a manner in which they are comfortable.”<sup>33</sup>

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<sup>31</sup> Hanover Cnty. Sch. Bd., Proposed Revisions: 7-4.1 Extracurricular Activities Policy 1 (emphasis added), attached as Exhibit 4; *see also* Hanover Cnty. Sch. Bd., Minutes of Nov. 14, 2023 Meeting 4, attached as Exhibit 5.

<sup>32</sup> USTA, *Transgender Inclusion Policy*, <https://www.usta.com/en/home/about-usta/who-we-are/national/transgender-inclusion-policy.html> (last visited July 2, 2024).

<sup>33</sup> *Id.*

76. The Policy is further at odds with that of the VHSL, the principal sanctioning organization for interscholastic athletic competition among Virginia’s public high schools. Recall, Defendant May referred Janie’s parents to VHSL’s transgender appeal form in September 2023.<sup>34</sup> Ironically, VHSL’s policy applies only to students “who wish to participate in a VHSL gender-specific sports team that is different from the gender identity listed on the student’s official birth certificate or school records.”<sup>35</sup> Such a policy would not exclude Janie from participating in girls’ athletic competitions since her official birth certificate reflects her gender as female and she has been registered with Hanover County Public Schools consistent with her gender identity since 2021.

77. In stark contrast to guidance from the IOC, NCAA, USTA, and VHSL, the Hanover County School Board Policy blanketly excludes all transgender students from participating in school sports in a manner that is consistent with their gender identity.

78. The School Board explained that the Policy was “the result of the model policies recently issued by the Virginia Department of Education entitled Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia[’]s Public Schools” (the “2023 Model Policies”).<sup>36</sup>

79. The 2023 Model Policies were issued under the administration of Republican Governor Glenn Youngkin, who had made the issue of “parents’ rights” in public school a

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<sup>34</sup> Defendant May’s September 5 Letter, *supra* note 1.

<sup>35</sup> Va. High Sch. League, Inc., Handbook and Policy Manual 2023-24 § 28A-8-1, <https://drive.google.com/file/d/1OxLAgeE0tBHCgcHBdYoMBDGepYL2fN7W/view> (last visited July 2, 2024).

<sup>36</sup> Hanover Cnty. Sch. Bd., Agenda for Nov. 14, 2023 Meeting 9, attached as Exhibit 6.

central focus of his campaign.<sup>37</sup> The 2023 Model Policies rescinded policies that were promulgated two years earlier by Democratic Governor Ralph Northam, stating that the earlier policies “promoted a specific viewpoint aimed at achieving cultural and social transformation in schools” and “disregarded the rights of parents.”<sup>38</sup>

80. The School Board’s revisions to § 7-4.1 are part of a disturbing trend across the country that seeks to marginalize transgender youth. A recent study found that “[n]inety-three percent of transgender youth ages 13-17 in the U.S., an estimated 280,300 transgender youth, live in states that have passed or proposed one or more laws banning access to gender-affirming care, participation in sports, use of bathrooms and other sex-separated facilities, or affirmation of gender through pronoun use.”<sup>39</sup>

81. The School Board has jumped on the bandwagon. In addition to the Policy at issue here:

- a. On March 8, 2022, the School Board voted to engage the Alliance Defending Freedom, a documented anti-LGBTQ organization, to provide guidance on the School Board’s “Equal Educational Opportunities” policy.<sup>40</sup>

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<sup>37</sup> See, e.g., McKend & Merica, *Virginia Republicans Seize on Parental Rights and Schools Fight in Final Weeks of Campaign*, CNN (Oct. 7, 2021, 4:01 PM), <https://www.cnn.com/2021/10/07/politics/glenn-youngkin-parental-rights-education-strategy/index.html>; Barthel, *McAuliffe And Youngkin Spar Over Vaccine Mandates, Education Policy In Final Gubernatorial Debate*, DCist (Sept. 29, 2021, 12:09 PM), <https://dcist.com/story/21/09/29/mcauliffe-youngkin-spar-over-vaccine-mandates-education-policy-final-gubernatorial-debate/>.

<sup>38</sup> Va. Dep’t of Educ., *Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia’s Public Schools* 1 (Jul. 18, 2023), <https://www.doe.virginia.gov/home/showpublisheddocument/46509/638252918535370000>.

<sup>39</sup> Redfield et al., *The Impact of 2024 Anti-Transgender Legislation on Youth 2*, Williams Institute (Apr. 2024), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/2024-Anti-Trans-Legislation-Apr-2024.pdf>.

<sup>40</sup> Hanover Cnty. Sch. Bd., Minutes of Mar. 8, 2022 Meeting, <https://go.boarddocs.com/vsba/hcpsva/Board.nsf/goto?open&id=C8DQ9E617C7E> (last visited July 2, 2024).

- b. On August 30, 2022, the School Board “approved a policy requiring transgender students to submit a request to use school bathrooms that align with their gender identity and giving the board the authority to approve or deny the requests.”<sup>41</sup>
- c. On November 14, 2023, the School Board unanimously voted to mandate that school staff refer to students using the pronouns identified in student records unless school administrators receive a written request from both a student and their parent; this policy caveats, however, that “Hanover County Public Schools will not compel staff or students to address or refer to students in any manner that would violate their constitutionally protected rights.”<sup>42</sup>
- d. On November 22, 2023, the School Board “expanded its book ban to 72 more titles that will be removed from public school libraries,” several of which address themes of gender identity.<sup>43</sup>

82. In April 2024, the Fourth Circuit held that a West Virginia law that prevented transgender girls from playing on girls’ sports teams could not be lawfully applied to a transgender girl who wished to join her middle school’s cross country and track teams.

*B.P.J. by Jackson v. W. Va. St. Bd. of Educ.* 98 F.4th 542, 563-565 (4th Cir. 2024). In the wake of *B.P.J.*, the Policy as applied to Janie unquestionably violates federal law.

#### **Janie Seeks to Play on Her Middle School’s Girls’ Tennis Team in Fall 2024**

83. Despite the deeply painful experience of having been excluded from her middle schools’ girls’ tennis team in Fall 2023, Janie is resilient. She still desires to represent

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<sup>41</sup> Mirshahi, *Hanover County School Board Passes New Bathroom Access Policy for Transgender Students*, WRIC ABC 8News (Aug. 31, 2022, 10:01 AM), <https://www.wric.com/news/local-news/hanover-county/hanover-county-school-board-passes-new-bathroom-access-policy-for-transgender-students/?ipid=promo-link-block3>; see also Policy Manual § 7-1.7.

<sup>42</sup> Hanover Cnty. Sch. Bd., Proposed Revisions: 7-1.4 Extracurricular Activities Policy 6, attached as Exhibit 7; see also Minutes of Nov. 14, 2023 Meeting, *supra* note 31, at 4.

<sup>43</sup> German, *Hanover County School Board Presses Forward with 70+ New Book Removals*, VPM (Nov. 22, 2023, 6:25 PM), <https://www.vpm.org/news/2023-11-22/hanover-county-school-board-more-book-ban-removals>.

her school and play tennis with her friends. She wishes to try out for the team this Fall and, if she is again successful in earning a spot on the team, proudly represent her school.

84. Through counsel, Janie's parents inquired with the School Board if Janie would be allowed to participate on the girls' tennis team in Fall 2024.

85. On June 12, 2024, through counsel, the School Board informed Janie's parents that it would consider a renewed request for Janie to participate on the girls' tennis team in the upcoming season. The School Board directed Janie's parents to submit a formal request with supporting documentation for its consideration in a closed session at an upcoming meeting.

86. On June 21, 2024, Janie's parents submitted to the School Board a renewed request that Janie be allowed to participate on her middle school's girls' tennis team. Janie's parents referred the School Board to the supporting documentation they provided in September 2023. Janie's parents enclosed a June 20, 2024 letter from Janie's endocrinologist evidencing Janie's continuing care and again confirming that Janie meets diagnostic criteria for gender dysphoria. Janie's parents also pointed the School Board to the Fourth Circuit's recent decision in *B.P.J.*

87. On information and belief, the School Board is expected to consider Janie's renewed request in a closed session at its meeting on July 9, 2024. The Policy provides that "[r]easonable modifications ... will be permitted only to the extent required by law." Policy Manual § 7-4.1. While the Fourth Circuit's ruling in *B.P.J.* makes clear that policies like the one the School Board seeks to enforce against Janie are impermissible and violate federal law, the School Board has taken no steps to comply with that decision since it was issued in permitting Janie to participate on the girls' tennis team in Fall 2024. Indeed, while not directly at issue here, the School Board enacted a trans-exclusionary bathroom and locker room policy—and enforced that policy against Janie—more than two years after the Fourth

Circuit found in *Grimm v. Gloucester County School Board* that a bathroom policy that prevented a transgender boy from using the boy's restroom violated Title IX. 972 F.3d 586, 618-619 (4th Cir. 2020).

88. By requiring students' participation in sex-segregated extracurricular activities to be determined by students' biological sex rather than gender identity, the School Board shuts Janie out of participation in school sports entirely for as long as she attends Hanover County Public Schools. Under the Policy, Janie cannot participate in girls' athletics, and participating in boys' athletics would undermine Janie's gender-affirming treatment and exacerbate her gender dysphoria.

89. By denying Janie the ability to participate in school sports, the Policy denies her the opportunity to participate in team competitions and experience the numerous social, educational, and physical and emotional health benefits of school sports set forth above.

90. Earning a spot on the girls' tennis team in August 2023 and then having it taken away from her by the School Board was demoralizing for Janie. Now, in the wake of the School Board's revisions to § 7-4.1, Janie faces the devastating prospect that she may never experience the camaraderie of playing tennis with her friends and the pride of representing her school in competition.

91. Janie also has a reasonable fear that the Policy will encourage bullying and harassment against her since it sends a message that it is acceptable to treat transgender students differently simply because of who they are.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **Deprivation of Equal Protection, U.S. Const. Amend. XIV**

92. Janie incorporates paragraphs 1 through 91 as though fully set forth herein.

93. Janie brings this Count against Defendant Hanover County School Board, Defendant May, and Defendant Gill.



94. The Equal Protection Clause of the Fourteenth Amendment, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Under the Equal Protection Clause, discrimination by the government based on sex and transgender status is tested under heightened scrutiny and is therefore presumptively unconstitutional absent a showing by the government that the discrimination is adequately tailored to further a sufficiently important state interest.

95. Transgender people as a group possess all the indicia of a suspect class that have been identified by the United States Supreme Court as triggering heightened scrutiny, including: (1) transgender people have experienced a history of discrimination; (2) being transgender does not limit or affect one’s ability to contribute to society; (3) transgender people are a discrete and insular minority who lack the political power to protect themselves through the legislative process; and (4) gender identity and being transgender are a core part of one’s identity so fundamental to one’s identity and conscience that a person cannot be required to abandon it (even if that were possible) as a condition of equal treatment.

96. Through their expulsion of Janie from the girls’ tennis team in September 2023 and their revision of § 7-4.1 in November 2023, Defendants have and will continue to:

- a. Single out and categorically bar Janie from playing interscholastic sports consistent with her gender identity, thus precluding her from participating in interscholastic sports altogether.
- b. Discriminate against Janie on the basis of her transgender status.
- c. Discriminate against Janie on the basis of sex by treating her differently from other students with a female gender identity based solely on her sex assigned at birth.

97. Defendants cannot satisfy heightened scrutiny or any level of equal protection scrutiny. Not only did Defendants expel Janie from the girls’ tennis team in September 2023 because of her gender identity, but the Policy categorically bars her from playing

interscholastic sports consistent with her gender identity, regardless of the circumstances.

Prohibiting Janie from participating on the girls' tennis team does nothing to advance

Defendants' purported concerns about "fairness in competition for all participants."<sup>44</sup>

98. Defendants expelled Janie from the girls' tennis team and revised § 7-4.1 neither to ensure fairness in competition nor to protect the rights of parents; rather, Defendants acted to marginalize transgender people. Their actions reflect a bare desire to harm a politically unpopular group, which is an impermissible government purpose and fails any level of equal protection scrutiny.

99. Absent injunctive relief, Janie will be irreparably harmed.

**COUNT II**  
**Violation of Title IX, 20 U.S.C. § 1681, et seq.**

100. Janie incorporates paragraphs 1 through 91 as though fully set forth herein.

101. Janie brings this Count against Defendant Hanover County School Board, Defendant May, and Defendant Gill.

102. Hanover County School Board is a recipient of Federal financial assistance that operates education programs and activities.<sup>45</sup>

103. Under Title IX of the Education Amendments of 1972, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

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<sup>44</sup> Defendant May's September 14 Letter, *supra* note 2.

<sup>45</sup> Hanover Cnty. Sch. Bd., FY2024-2025 Adopted Budget 13, [https://cdnsm5-ss12.sharpschool.com/UserFiles/Servers/Server\\_1250983/File/Departments/Business\\_and\\_Operations/FY25%20Budget/FY25%20Adopted%20Budget%20Book\\_Remediated.pdf](https://cdnsm5-ss12.sharpschool.com/UserFiles/Servers/Server_1250983/File/Departments/Business_and_Operations/FY25%20Budget/FY25%20Adopted%20Budget%20Book_Remediated.pdf) (last visited July 2, 2024) (showing the school district's revenues from federal sources).

104. Athletic programs are not excluded from Title IX's prohibition on sex discrimination.

105. Discrimination against students because they are transgender is discrimination based on sex.

106. Through their expulsion of Janie from the girls' tennis team in September 2023, and their revision of § 7-4.1 in November 2023, Defendants have prohibited, and will continue to prohibit, Janie from playing interscholastic sports consistent with her gender identity, thus precluding her from participating in interscholastic sports altogether. This denies Janie the benefits of, and subjects Janie to discrimination in, educational programs and activities "on the basis of sex," in violation of her rights under Title IX.

107. Absent injunctive relief, Janie will be irreparably harmed.

#### **PRAYER FOR RELIEF**

WHEREFORE, Janie prays that this Court grant the following relief:

1. Declaring that the provisions of and enforcement by Defendants of § 7-4.1 of the Policy Manual as applied to Janie violate her rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972;

2. Permanently enjoining all Defendants, their officials, agents, employees, assigns, and all other persons acting in concert or participating with them from enforcing against Janie § 7-4.1 of the Policy Manual or any other law, custom, or policy that precludes Janie's participation on a girls' sports team in the Hanover County Public Schools;

3. Awarding Janie her costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

4. Granting such other and further relief as the Court deems just and proper.

Dated: July 3, 2024

Respectfully submitted,

*/s/ Eden Heilman*

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