

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

STATE OF TEXAS , et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 7:16-cv-54-O
)	
UNITED STATES OF AMERICA , et al.,)	
)	
Defendants.)	
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DEFENDANTS’ NOTICE OF PENDING LITIGATION

The Court has made clear that its preliminary “injunction should not unnecessarily interfere with litigation currently pending before other federal courts on this subject,” and instructed the parties to “file a pleading describing those cases so the Court can appropriately narrow the scope [of its injunction] if appropriate.” Order at 37, ECF No. 58. Defendants submit this notice in accordance with the Court’s instruction. Attached as Exhibit A is a list of currently pending cases involving Defendants and relating to the rights of transgender individuals under Title VII or Title IX.

As an initial matter, Defendants understand that this Court’s preliminary injunction permits them to proceed with the ordinary course of litigation in any case that does not involve (1) “enforcing the Guidelines against Plaintiffs and their respective schools, school boards, and other public, educationally-based institutions,” (2) “initiating, continuing, or concluding any investigation based on Defendants’ interpretation that the definition of sex includes gender identity in Title IX’s prohibition against discrimination on the basis of sex,” or (3) “using the Guidelines or asserting the Guidelines carry weight in any litigation initiated following the date of this Order,” which was issued August 21, 2016. *Id.* Defendants believe that the cases listed in

Exhibit A fall outside the scope of these prohibitions. Defendants understand that in such cases they are permitted to comply with all deadlines and court orders, file appeals as necessary, and continue to participate as an amicus or interested party.

Defendants bring one case in particular to the Court's attention. *United States v. Southeastern Oklahoma State University*, No. 5:15-cv-324 (W.D. Okla.), was filed by the Civil Rights Division of the U.S. Department of Justice on March 30, 2015, alleging that a transgender professor was denied promotion and tenure, and the opportunity to reapply for same, for discriminatory and retaliatory reasons in violation of Title VII. The defendant in that case is a public university in the State of Oklahoma, which is a plaintiff in this case. To be clear, *Southeastern Oklahoma State University* does not involve students or the enforcement of Title IX, and the United States has asserted no claim turning on access to bathrooms or other sex-segregated facilities. The parties are now in discovery, which is scheduled to conclude on September 1, 2016, and the case is on the calendar for trial before Judge Robin J. Cauthron on November 1, 2016. There is a pressing need to proceed in *Southeastern Oklahoma State University* so that pre-trial deadlines and the scheduled trial are not unduly delayed. Although Defendants do not believe that the case is intended to be covered by this Court's preliminary injunction, the Department of Justice has halted its discovery out of an abundance of caution. After this Court issued its order, the Department postponed depositions scheduled for August 24, 25, and 26, 2016. Given other impending deadlines, the Department will shortly seek a stay in *Southeastern Oklahoma State University* pending confirmation that proceedings in that case are not enjoined by this Court's order. Absent immediate confirmation from this Court, there will likely be substantial disruption to the schedule ordered by Judge Cauthron.

Defendants expect to file a motion seeking relief with respect to the Court's preliminary injunction. In the interim, however, Defendants ask this Court to make it clear beyond any doubt that they are free to proceed with all of the pending litigation listed in Exhibit A, including the case discussed above.

Date: August 30, 2016

Respectfully submitted,

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Counsel for Defendants

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EXHIBIT A

1. The U.S. Department of Justice is a defendant in *McCrorry v. United States*, 5:16-cv-238 (E.D.N.C.) (filed May 9, 2016), which involves the Department’s interpretation of Title VII as it relates to transgender individuals.

2. The U.S. Departments of Education and Justice are co-defendants in the following cases involving their interpretation of Title IX as it relates to transgender individuals:

- a. *Student and Parents for Privacy v. U.S. Department of Education*, No. 1:16-cv-4945 (N.D. Ill.) (filed May 4, 2016).
- b. *North Carolinians for Privacy v. U.S. Department of Justice*, No. 1:16-cv-845 (M.D.N.C.) (filed May 10, 2016).
- c. *Board of Education of the Highland Local School District v. U.S. Department of Education*, No. 2:16-cv-524 (S.D. Ohio) (filed June 10, 2016).
- d. *Women’s Liberation Front v. U.S. Department of Justice*, 1:16-cv-915 (D.N.M.) (filed Aug. 11, 2016).

3. The U.S. Departments of Education, Justice, and Labor, as well as the Equal Employment Opportunity Commission, are co-defendants in *Nebraska v. United States*, No. 4:16-cv-3117 (D. Neb) (filed July 8, 2016), which raises substantially the same claims asserted here.

4. The U.S. Department of Justice is representing the United States as a plaintiff in the following cases involving the rights of transgender individuals under Title VII and/or Title IX:

- a. *United States v. Southeastern Oklahoma State University*, No. 5:15-cv-324 (W.D. Okla.) (filed Mar. 30, 2015).
- b. *United States v. North Carolina*, No. 1:16-cv-425 (M.D.N.C.) (filed May 9, 2016).

5. The U.S. Department of Justice represented the United States as a plaintiff in *Doe v. Anoka-Hennepin School District No. 11*, No. 11-cv-1999 (D. Minn.) (filed July 21, 2011), which involved the rights of transgender individuals under Title IX. The district court entered a consent decree effective until March 6, 2017, and retained jurisdiction to enforce it.

6. The U.S. Department of Justice has filed a statement of interest and/or an amicus brief in these pending cases involving the rights of transgender individuals under Title IX:

- a. *Tooley v. Van Buren Public Schools*, No. 2:14-cv-13466 (E.D. Mich.) (statement of interest filed Feb. 20, 2015).
- b. *G.G. ex rel. Grimm v. Gloucester County School Board*, No. 4:15-cv-54 (E.D. Va.) (statement of interest filed June 29, 2015), *rev'd on appeal*, No. 15-2056 (4th Cir.) (amicus brief filed Oct. 28, 2015), *stayed and mandate recalled pending petition for certiorari*, No. 16A52 (U.S. Aug. 3, 2016).

7. The U.S. Equal Employment Opportunity Commission has filed suit, intervened on behalf of plaintiff, or filed a subpoena enforcement action in these pending cases involving the rights of transgender individuals under Title VII. None of these actions involve schools as defendants or the issue of access to bathrooms:

- a. *U.S. Equal Employment Opportunity Commission v. R.G. & G.R. Harris Funeral Homes, Inc.*, No. 2:14-cv-13710 (E.D. Mich.) (complaint filed Sept. 25, 2014).
- b. *Broussard v. First Tower Loan, LLC*, No. 2:15-cv-1161 (E.D. La.) (intervention granted Sept. 16, 2015).
- c. *U.S. Equal Employment Opportunity Commission v. Bojangles Restaurants, Inc.*, No. 5:16-cv-654 (E.D.N.C.) (complaint filed July 6, 2016).

- d. *U.S. Equal Employment Opportunity Commission v. Rent-A-Center East, Inc.*, No. 2:16-cv-2222 (C.D. Ill.) (complaint filed July 18, 2016).
- e. *U.S. Equal Employment Opportunity Commission v. Help at Home, Inc.*, No. 2:16-mc-1188 (N.D. Ala.) (subpoena enforcement action filed July 20, 2016).

8. The U.S. Equal Employment Opportunity Commission has sought leave to participate as amicus curiae on behalf of plaintiff in *Robinson v. Dignity Health*, No. 4:16-cv-3035 (N.D. Cal.), a case alleging sex discrimination in health insurance benefits against a transgender employee in violation of Title VII. The case was initiated on June 6, 2016; the Commission filed its motion on August 22, 2016.

Date: August 30, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

SHEILA M. LIEBER
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2016, a copy of the foregoing Defendants' Notice of Pending Litigation was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ Benjamin L. Berwick
Benjamin L. Berwick