

In the
Supreme Court of Ohio

STATE EX REL. DAVE YOST, et al.,

Relators,

vs.

JUDGE MICHAEL J. HOLBROOK, Judge
on the Franklin County Court of Common
Pleas,

Respondent.

Case No. 2024-0551

Original Action
Writ of Prohibition
Writ of Mandamus

JANE DOE'S MOTION TO INTERVENE AS A RELATOR

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MOTION TO INTERVENE AS A RELATOR

Intervening Relator, Miss Jane Doe, by and through her Father, Mr. John Doe, moves this Court to grant her motion to intervene in this action. Intervention is justified for the reasons laid out in the memorandum in support.

April 24, 2024

/s/ James S. Kresge

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MEMORANDUM IN SUPPORT

INTRODUCTION

Miss Jane Doe is unlike any party currently before the Court—or any party in the underlying Franklin County case. She is a biologically female, ninth-grade softball player with two weeks left in her current season and most of her high school career ahead of her. Absent relief from this Court, Doe will almost certainly be forced to compete against biological males identifying as transgender females. The Franklin County judge’s statewide injunction puts Doe in unprecedented situations and forces her to assume the risks of losing once-in-a-lifetime athletic opportunities compounded by the increased risks of physical injury.

Doe seeks to intervene in this original action pursuant to Civil Rule 24 and Supreme Court Rules of Practice 12.01(A)(2) and 12.02(B). She is entitled to intervene as of right under Civil Rule 24(A). Regardless, the Court should grant her motion under Civil Rule 24(B) (permissive intervention).

ARGUMENT

I. Doe may intervene as of right because the disposition of this action may impair her ability to protect her interests as a biologically female athlete.

Under Civil Rule 24(A), “anyone *shall* be permitted to intervene in an action,” upon “timely application,” when the applicant “claims an interest relating to the ... subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest.” Civ. R. 24(A)

(emphasis added). A court “shall” permit the applicant to intervene “unless the applicant’s interest is adequately represented by existing parties.” *Id.*

Doe easily meets the standard for intervention as of right. She “claims an interest” directly related to the “subject of the action.” Civ. R. 24(A). Her interest is simple: she wishes to participate in traditional competitive sports. Thus, like the state relators, she seeks peremptory writs of prohibition and mandamus directing Judge Holbrook to limit his injunction to the two named plaintiffs for only the harm they have alleged that they will suffer prior to any final relief in the case. *See State Relators’ Compl.* at p.8.

Moreover, this Court’s “disposition of the action” may well “impair or impede” Doe’s “ability to protect” her interests as a biologically female athlete. Civ. R. 24(A). Because the respondent issued a universal, statewide injunction against Ohio’s law concerning transgender children and students in its entirety, there is a high likelihood that Doe will be forced to compete in softball against biological males who identify as transgender females—absent relief from this Court. Should this Court deny the relators the relief they seek, Doe will suffer irreparable harm.

Without relief from this Court, Doe is at risk of losing once-in-a-lifetime athletic opportunities because of the potentially severe competitive disadvantage of having to compete against biological males with physical or physiological advantages over biological females of the same age group. Doe is also at increased risk of physical injury from

having to compete against biological males who are physically stronger, heavier, or physiologically different from biological females of the same age group.

Because Doe has two weeks remaining in her current softball season, the respondent's injunction causes her immediate, irreparable harm. Moreover, Doe is in the ninth grade and intends to continue playing softball. This means that the respondent's statewide injunction, as long as it remains in force, will continue irreparably harming her and others like her. The underlying Franklin County litigation may continue for two to three years—or more. If the respondent's statewide injunction remains operative during this time, Doe will finish high school without the protection of Ohio's law concerning transgender children and students. Once Doe suffers these irreparable injuries, nothing a court can do will restore the lost opportunities and missed experiences. And no court will be able to undo any injuries biological male athletes inflict upon her.

Nor do the existing parties “adequately represent[]” Doe's interests. Civ. R. 24(A). The state relators are state officials or entities who will suffer irreparable harm primarily because the respondent universally enjoined a state law. *See* Emergency Mot. for Writ of Prohibition or Mandamus at 13. Neither the respondent nor the state relators are athletes directly affected by the trial judge's order—athletes whose lives will be altered by an unprecedented upending of traditional sports. And none of the plaintiffs in the underlying case, who have now moved to intervene as respondents here, allege that they are Ohio athletes either.

Finally, Doe’s motion to intervene is timely. The state relators filed their complaint and emergency motion for writs of prohibition or mandamus on April 22, 2024. The next day, this Court ordered the respondent to file any response to the relators’ emergency motion by 4:00 p.m. on April 24. Doe’s motion to intervene will be filed the same day—only two days after this action commenced.

II. Regardless, the Court should permit Doe to intervene because her claims for relief and the state relators’ original action are integrally related.

Under Civil Rule 24(B), “anyone may be permitted to intervene in an action,” upon “timely application,” when the “applicant’s claim or defense and the main action have a question of law or fact in common.” Civ. R. 24(B). This Court “construe[s] Civ.R. 24 liberally to permit intervention.” *State ex rel. Merrill v. Ohio Dep’t of Nat. Res.*, 130 Ohio St. 3d 30, 2011-Ohio-4612 at ¶41 (2011) (trial court did not abuse its discretion in permitting entities to intervene in the case). “In exercising its discretion[,] the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Civ. R. 24(B).

Doe easily meets the standard for permission intervention. As her accompanying complaint and the supporting affidavit of her father make clear, she supports the state relators’ request for emergency relief and likewise seeks writs of prohibition and mandamus. Her claims and the state relators’ claims for relief are nearly identical, so her claims and the “main action” not only have “a question of law or fact in common”—they are integrally related. Civ. R. 24(B). As discussed above, Doe’s motion to intervene could

hardly be timelier. Nor would granting her motion to intervene “unduly delay or prejudice the adjudication of the rights of the original parties.” Civ. R. 24(B). In fact, allowing her to intervene will provide invaluable factual evidence of the harm Ohio athletes will be subjected to absent relief from this Court.

For these reasons, Doe respectfully moves this Court to grant her motion to intervene.

April 24, 2024

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CERTIFICATE OF SERVICE

I certify that, on April 24, 2024, pursuant to Supreme Court Rules of Practice 3.11(C)(1), I served copies of the foregoing motion and memorandum in support by e-mail on the following:

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