

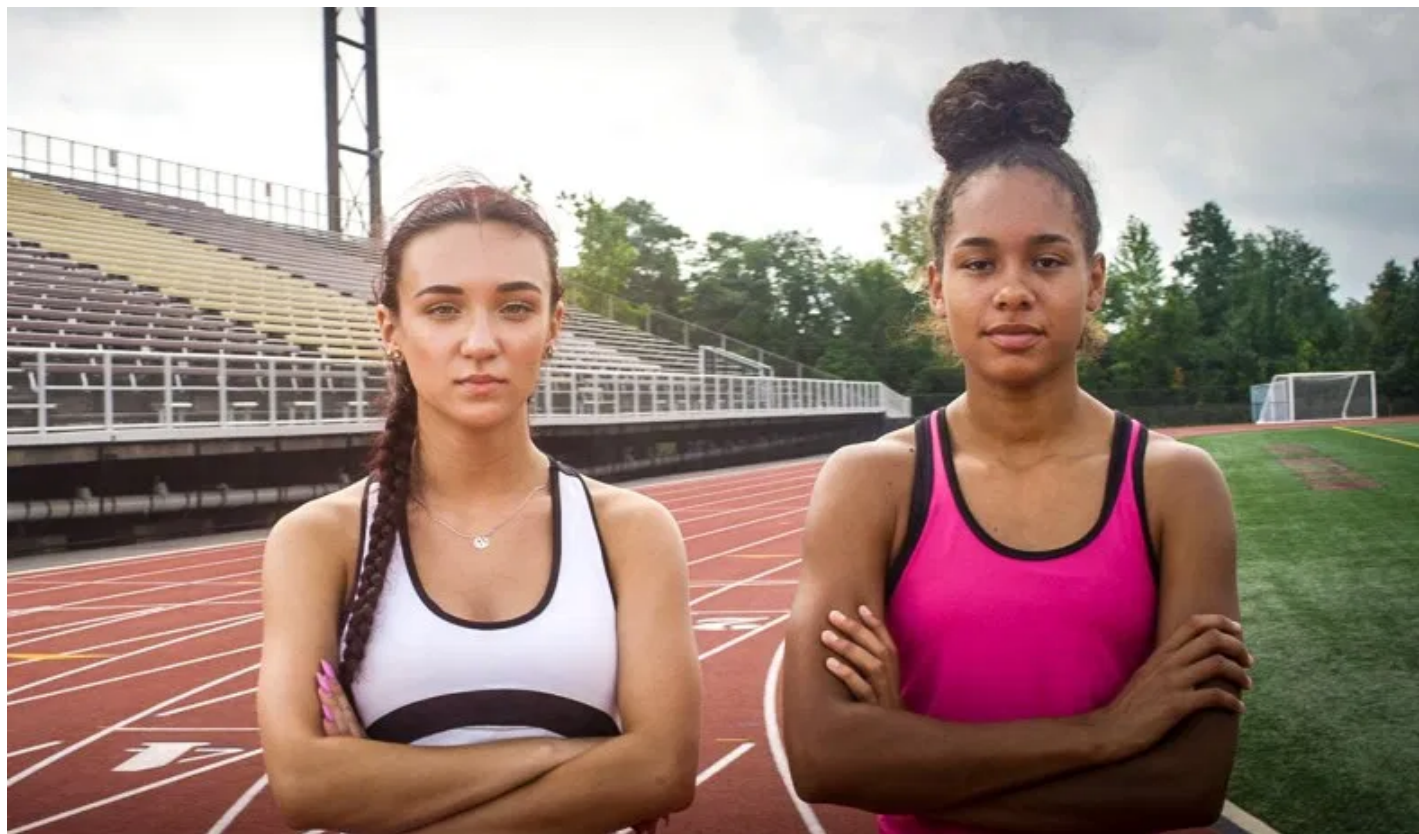
NEWS

LAW & THE COURTS

# Attorneys for Conn. High School Runners Ask Judge to Recuse after He Forbids Them from Describing Trans Athletes as 'Male'

By JACK CROWE | May 11, 2020 6:30 AM

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High-school athletes Selina Soule and Alanna Smith (Photo courtesy Alliance Defending Freedom)

Attorneys representing three female high school track athletes in their effort to bar biological males from competing against them filed a motion on Saturday calling for the presiding judge to recuse himself after he forbid the attorneys from referring to the transgender athletes at issue as “males.”

The ADF **filed suit in February** against the Connecticut Interscholastic Athletic Conference (CIAC) on behalf of three girls — Selina Soule, Alana Smith, and Chelsea Mitchell. The suit challenges the CIAC policy allowing students to compete in the division that accords with their gender identity on the grounds that it disadvantages women in violation of the Title IX prohibition against discrimination on the “basis of sex.”

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During an April 16 conference call, District Judge Robert Chatigny chastised the ADF attorneys for referring to the male athletes seeking to compete in the women’s division as “males,” according to a transcript of the call obtained by NATIONAL REVIEW.

Chatigny:

What I'm saying is you must refer to them as "transgender females" rather than as "males." Again, that's the more accurate terminology, and I think that it fully protects your client's legitimate interests. Referring to these individuals as "transgender females" is consistent with science, common practice and perhaps human decency. To refer to them as "males," period, is not accurate, certainly not as accurate, and I think it's needlessly provocative. I don't think that you surrender any legitimate interest or position if you refer to them as transgender females. That is what the case is about. This isn't a case involving males who have decided that they want to run in girls' events. This is a case about girls who say that transgender girls should not be allowed to run in girls' events. So going forward, we will not refer to the proposed intervenors as "males"; understood?

Roger Brooks, the lead attorney for ADF, responded by pointing out that the biology of transgender athletes seeking to compete in the women's division is relevant to the case and, as such, his duty provide a vigorous defense of his clients' interests required him to use the term "male."

**Brooks:**

The entire focus of the case is the fact that the CIAC policy allows individuals who are physiologically, genetically male to compete in girls' athletics. But if I use the term "females" to describe those individuals — and we've said in our opening brief, we're happy to use their preferred names, because names are not the point to the case. Gender identity is not the point of this case. The point of this case is physiology of bodies driven by chromosomes and the documented athletic advantage that comes from a male body, male hormones, and male puberty in particular. So, Your Honor, I do have a concern that I am not adequately representing my client and I'm not accurately representing their position in this case as it has to be argued before Your Honor and all the way up if I refer to these individuals as "female," because that's simply, when we're talking about physiology, that's not accurate, at least in the belief of my clients.

Brooks further informed the judge that he was "not sure [he] could comply" with the prohibition against the use of "male," and asked if he would be permitted to

simply use “transgender” rather than “transgender females” when referring to the athletes – a request which the judge granted.

The Judge then stipulated that he didn’t want to “bully” the ADF attorneys but nevertheless felt that he had to draw a hard line with respect to the terminology used out of a concern for “human decency.”

Chatigny:

So if you feel strongly that you and your clients have a right to refer to these individuals as “males” and that you therefore do not want to comply with my order, then that’s unfortunate. But I’ll give you some time to think about it and you can let me know if it’s a problem. If it is, gosh, maybe we’ll need to do something. I don’t want to bully you, but at the same time, I don’t want you to be bullying anybody else. Maybe you might need to take an application to the Court of Appeals. I don’t know. But I certainly don’t want to put civility at risk in this case.

In the motion filed Saturday, the ADF attorneys argue that Chatigny’s order is “legally unprecedented” and disrupts the appearance of impartiality.

“A disinterested observer would reasonably believe that the Court’s order and comments have destroyed the appearance of impartiality in this proceeding. That requires recusal,” reads the motion, which was obtained by NATIONAL REVIEW. “To be sure, the public debate over gender identity and sports is a heated and emotional one. This only increases the urgency that court preserve their role as the singular place in society where all can be heard and present facts before an impartial tribunal.”

The case centers on the participation of two transgender sprinters, Terry Miller and Andraya Yearwood, who have combined to win 15 girls indoor and outdoor championship events since 2017. The year prior to Miller and Yearwood’s participation, those titles were held by ten different girls. The three plaintiffs

have competed directly against Miller and Yearwood and have lost to them in nearly every case.

“It’s just really frustrating and heartbreaking, because we all train extremely hard to shave off just fractions of a second off of our time. And these athletes can do half the amount of work that we do, and it doesn’t matter,” Soule **told the *Wall Street Journal***. “We have no chance of winning.”

The Department of Justice filed a statement of interest in March expressing support for the girls’ position.

“In our pluralistic society we generally try to accommodate how individuals desire to live their lives up to the point where those desires impinge on the other people’s rights,” said Attorney General William Barr said in a statement at the time. “Allowing biological males to compete in all-female sports deprives women of the opportunity to participate fully and fairly in sports and is fundamentally unfair to female athletes.”

The ADF team resorted to the suit after initially **filing a complaint with the Department of Education** in June of last year.

Connecticut is one of 17 states that allows students to compete in a division of their choosing without restriction. In contrast, the National Collegiate Athletic Association and the International Olympic Committee requires male-to-female transgender athletes to undergo testosterone suppressing hormonal therapy before competing against women.

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