

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

KYLE FELLERS, ANTHONY FOOTE,
NICOLE FOOTE, and ELDON RASH,

Plaintiffs,

v.

MARCY KELLEY, Superintendent of
Schools, State Administrative Unit 67, in
her official and individual capacities; ;
MICHAEL DESILETS, Athletic
Director, Bow High School, in his official
and individual capacities; MATT FISK,
Principal, Bow High School, in his
official and individual capacities;
PHILLIP LAMY, Lieutenant, Bow Police
Department, in his individual capacity;
STEVE ROSSETTI, soccer referee, New
Hampshire Interscholastic Athletic
Association, in his individual capacity;
and BOW SCHOOL DISTRICT,

Defendants.

Case No. 1:24-cv-00311-SM-AJ

DECLARATION OF ANTHONY C. FOOTE

I, Anthony C. Foote, declare the following based on my personal knowledge:

1. I live in Bow, New Hampshire, with my wife Nicole and children. I have two daughters who attend public schools in Bow School District, a part of State Administrative Unit 67.

2. My oldest daughter is a senior and the captain of the Bow High School varsity girls' soccer team.

3. I am heavily involved in my children's schooling and extracurricular activities. I attend games regularly and often must drive my children to practices, games, and other events. Bow High School and the district are short bus drivers, and they usually do not charter buses to bring the soccer team to away games, so the players' parents must sign up to drive the team. I am often one of the drivers.

4. I am an avid proponent of restricting girls' and women's sports teams to people who were born female. I believe that allowing males to play girls' and women's sports harms fair competition, puts female athletes at risk for physical and mental injury, and undermines much of the social progress that women have made over the past fifty years. Every male allowed to play in female sports takes a spot from a female, causing women to lose their dignity, their self-worth, opportunities, awards, recognition, scholarships, self-esteem, achievements, records, safe places/spaces, and their overall health and well-being.

5. I reject gender ideology, that is, I do not believe people can change their biological sex based on their own feelings about their sex or gender. We are children of God, made in his image and should embrace the beauty of his design.

6. I am aware that in a recent decision, *Tirrell v. Edelblut*, Case No. 24-cv-251-LM-TSM, 2024 U.S. Dist. LEXIS 162185 (D.N.H. Sept. 10, 2024), a federal court preliminarily enjoined the New Hampshire Department of Education from

enforcing a state law that limited participation in interscholastic girls' sports teams to females.

7. I am aware that Parker Tirrell, a male and one of the plaintiffs in *Tirrell v. Edelblut*, plays on the Plymouth Regional High School girls' varsity soccer team. Bow High School's soccer team played the Plymouth team on September 17, 2024.

8. I have no issues with Parker Tirrell. Tirrell has, accordingly to public reports, been on male puberty blockers for over a year, and he may not be the largest player currently on Plymouth's team.

9. However, because of the recent court decision. I became more aware of the injustice that is undermining girls' and women's sports across the country. I fear that the participation of players like Tirrell will serve as a precedent to force girls to compete with male athletes who have been through male puberty and have a great biological advantage over female athletes. Girls in other states such as Massachusetts have been injured competing against larger male athletes, and I worry that the recent court decision will lead to that occurring in New Hampshire and across the nation.

10. On or about September 13, my wife Nicole met in person with Bow High School's Athletic Director, Mike Desilets, to attempt to address this issue about the upcoming game against Plymouth, with those in school leadership positions who she believed could impact the outcome. Desilets told her both in person and later by email that the court decision prevented the school district from doing anything.

After she explained what he said to me, I knew it was now up to us. I needed to take a leadership role in addressing the situation.

11. On September 16, the evening before the game, Desilets emailed all soccer families, including me, warning them that “Bow High School’s status as a member of the [New Hampshire Interscholastic Athletic Association]” and the school’s “Athletics Handbook” impose obligations “regarding sportsmanship and sideline behavior” so that “any inappropriate signs, references, language or anything else present at the [September 17] game will not be tolerated.” Desilets claimed, however, that “some differing opinions regarding tomorrow’s game . . . is perfectly fine.”

12. Exhibit B is a true and correct copy of Desilets’ email.

13. Desilets attached to his email a document containing relevant extracts from the Athletics Handbook and the 2024 NHIAA Soccer Policies and Procedures.

14. Exhibit C is a true and correct copy of this extracts document.

15. My wife and I received Desilets’ email. I responded to Desilets with an email saying that Bow School District’s leadership is “weak, ineffective, and completely out of touch” and needs to “[s]tand up for women” and “[p]rotect our daughters before someone else gets hurt.”

16. Kyle Fellers and I had discussed options to address our concerns. Kyle suggested pink wristbands, as a way of taking a stand for the importance of reserving girls’ and women’s sports for females. So, we agreed to wear pink wristbands that Fellers had purchased off Amazon.

17. These wristbands were the pink bands that athletes often wear to raise awareness about breast cancer and had no writing on them. Breast cancer awareness is an issue that is near and dear to my heart, and something I feel strongly about. I lost my mother when I was 15 years old, when she was only 43. I also lost my sister to the disease in 2005, when she was 33. I view the issue of protecting girls' and women's sports as related, as breast cancer is a disease that predominantly affects women, and the recent debate about separating sports by biological sex is one that also predominantly affects women.

18. A few days before the game, Kyle dropped off the wristbands at my house. I initially tried to get my daughter to have the team wear them as a symbol of support for women's sports. My daughter told me she could not get full support from the team and was afraid that it would divide them. This further convinced me that parents must take the lead in defending girls' and women's sports.

19. The night before the game, I decorated our wristbands with two black Xs, symbolizing the female chromosomes. I also decorated some wristbands with other symbols, including the widely used female pictogram of a circle with a cross underneath. The wristbands that Fellers and I wore at the September 17 soccer game both had double Xs. I kept the wristbands overnight and brought them to the game.

20. Exhibit D is a true and correct photograph of one of these wristbands, decorated with the double Xs.

21. I posted on Facebook that night to encourage people “to protect the integrity and safety of female athletics” and to “come out to support our XX Lady Falcons and show your solidarity with our girls’ team.” In the post, I warned that the recent court decision “is setting a dangerous precedent” but emphasized that “it’s not the athlete’s (i.e., Tirrell’s) fault” but the fault of “the legal system, the school board, and school administration.”

22. Exhibit E is a true and correct copy of this Facebook post.

23. On September 17, I attended Bow High School’s varsity girls’ soccer game, with my wife. I arrived about 45 minutes before the game and brought the wristbands and our chairs to mid field in preparation for the game.

24. The soccer game occurred at the Bow High School soccer field, which is public property and part of the public high school’s campus.

25. When I arrived at the field, I observed that Bow High School’s Superintendent, the principal, the athletic director, and other coaches and employees were at the game, as well as on-duty members of the Bow Police Department. I have never seen such a group of authority figures at a regular season girls soccer game.

26. I sat down on the parents’ sideline, close to mid-field and watched the first half of the game with other parents. That line is set back a few feet from the sideline (also called a touchline in soccer) demarcating the outer edge of the playing area of the field (or pitch) and allows the soccer players to complete throw-ins without tripping or colliding with parents or spectators. I did not shout, chant,

march, or waive signs about biological men playing girls' and women's sports during the game. I also did not direct any comments or words at Parker Tirrell during the game.

27. During the first half of the game, I quietly handed out pink wristbands to my wife, her parents, and to approximately half a dozen other spectators who I knew to be in support of our position. I told these people not to put them on until after halftime. I stored the wristbands that I had not given out in a plastic grocery store bag at my chair, where they were not visible.

28. Then at halftime, I went back to my Jeep and placed a poster of collegiate swimmer and political activist Riley Gaines on the windshield. I also met with Fellers. After the second half began, Fellers and I put on our pink wristbands and returned to the parents' sidelines.

29. For the first ten minutes of the second half, nothing more occurred. I watched the game without incident or disruption. Fellers and I did not shout, chant, march, or waive signs about biological men playing girls' and women's sports. We did not say anything to Parker Tirrell. Beyond our wristbands, nothing indicated that we were protesting at all.

30. Approximately ten minutes into the second half, Athletic Director Mike Desilets approached me and said that I was not allowed to protest and had to take off the wristband. I responded that I was just supporting my daughter and women's sports. He responded that he knew what we were doing because he saw my

Facebook post. I said that it is my right to sit peacefully and express myself in solidarity for women's sports.

31. When it was clear that Desilets would not leave me alone, I took the wristband off and threw it on the ground.

32. Shortly after, Desilets made his way through the crowd looking for more pink wristbands. The next thing I heard was Fellers' voice. I assume Desilets told Fellers the same thing, because Fellers was refusing to remove the wristband and saying loudly that he had a First Amendment right to wear the wristband. Desilets, Principal Matt Fisk, Bow Police Lieutenant Phillip Lamy, and a couple of other people seemed to be pressuring Fellers to remove the wristband. At one point, I heard Lamy insist that the soccer field was private property, but someone in the crowd yelled out that it was public property.

33. Prior to Desilets going around asking parents to remove the wristbands Kyle had been quietly watching the game from the parents' sidelines. Based on what I observed, Fellers only became vocal when the school official confronted him about the wristband. If Desilets had just left him alone, probably none of this would have happened.

34. The interaction between Fellers and the school officials and police officer was more heated than mine. I am not exactly sure how it happened, but somehow Feller's father-in-law, Eldon Rash, became involved in the dispute. I overheard his interaction, occasionally participated from afar, and filmed over eight minutes of it on my cellphone camera.

35. At one point, Steve Rossetti, the head referee, came over as if scripted. He stopped the game and told both teams to return to their benches. According to Rossetti, he stopped the game because the soccer players could overhear “you guys arguing” about “the First Amendment thing.” The game did not restart for about 15 minutes.

36. Under visible duress Fellers took his wristband off and went to his car. Desilets, Fisk, Rossetti, and others met at center field, to discuss what to do. Earlier Rossetti had stated that Bow High School would forfeit the game (and thus be ineligible for the playoffs) if everyone did not remove their wristbands. Rossetti said that Rash had “no right to embarrass the kids” and that if he did not take the wristband off “the game is over.”

37. Eventually, the referee and school officials decided to resume play, so the girls came back onto the field. I did not know at the time if Rash removed his band before the game restarted or if he still had it on. The game continued without further incident.

38. After the game ended, I turned and saw that Fellers and Lt. Lamy were arguing in the parking lot. Fellers’ daughter, my daughter, and my wife were all extremely upset, so I decided things had to stop. I dropped what I was holding and ran off the field to where Fellers and Lamy were. I approached Lamy to ask if he could just leave Fellers alone, as the game was over, and everyone was leaving. Another officer had joined me in trying to address the issues. Begrudgingly, Lt. Lamy listened to us and walked away.

39. On September 18, Superintendent of Schools Marcy Kelley released a statement about the events of the night before. According to Kelley, “late in the game, play had to be stopped on the field for 10-15 minutes because of a form of protest taking place” which supposedly “did not abide by our public conduct on school property policy.” Kelley claimed that the school had “reminded all soccer families of these expectations, by email, in advance of Tuesday’s game”—presumably referring to Desilets’ email.

40. Exhibit F is a true and correct copy of Kelley’s statement.

41. Kelley attached to her statement the Bow School Board’s policy KFA on “Public Conduct on School Property.”

42. Exhibit A is a true and correct copy of Policy KFA.

43. Kelley also attached to her statement the same document of extracts from NHIAA’s Soccer Policies and from the Bow High School Athletics Handbook that Desilets had sent two days before. *See Ex. C.*

44. On September 19, I received a hand delivered, by the Bow Police Department, a “No Trespass Order” from Superintendent Kelley, which was in effect “through September 23, 2024.” If I do anything to violate the order, I would be arrested and it “will be extended for the duration of the fall sports seasons,” and it “may potentially be extended until the end of the season” even if I obey the order.

45. The No Trespass Order states that I am “prohibited from entering the buildings, grounds, and property of the Bow School District” including “parking lots, and athletic fields” and “from attending any Bow School District athletic or extra-

curricular event, on or off school grounds” until further notice. According to the Order, the reason for my ban is that “prior to and during the soccer game” I “brought and distributed pink armbands to parents and other attendees to protest . . . [which] was designed to and had the effect of intimidating, threatening, harassing, and discouraging” a student on the other team from playing.

46. Exhibit G is a true and correct copy of the document the No Trespass Order that I received.

47. I obeyed the No Trespass Order through its expiration on September 23, 2024. As a result, I was not able to attend Bow High School’s Girls Soccer homecoming game on September 20, which my daughter played in, The homecoming Football game, or my younger daughter’s middle school soccer game on September 23. I was also not able drop my younger daughter off at school on Friday, September 20 and Monday, September 23.

48. After the No Trespass Order expired, my wife and I attended the soccer game on September 24, 2024. I wore a pink wristband at this game, but I was wearing a long sleeve shirt, so I do not believe the wristband was visible or easy to see. I was concerned about the blowback from the school and parents for wearing a wristband. However, after many other people, including a large group from the nationally recognized group, Moms for Liberty, showed up in support, I felt more comfortable and less concerned that the school would act against so many. The Moms for Liberty protest included chanting (as well as signs and wristbands) and

was considerably more boisterous than the protest I participated in at the September 17 game. Nonetheless, no disruption or incident occurred.

49. My wife and I also attended the soccer game on September 27, 2024. This was an away game, so it did not take place on Bow School District property. I did not wear a wristband at this game.

50. On October 1, the day after this lawsuit was filed, Superintendent Kelley sent an email informing parents that future protests at school events must occur in a designated protest area. Protestors who protest outside this area “may be deemed as disruptive and result in the game being suspended.” Kelley suggested that the school may not “continue to have spectators at our games” if this new regulation is not obeyed. Kelley attached a notice containing the new regulation.

51. Exhibit K is a true and correct copy of Kelley’s email about the new designated protest area.

52. The Notice of Designated Protest Area states that “campus visitors” who wish to engage in “protests and other free speech exercises” must do so in a marked-off designated area. The Notice states that this area is located “in front of the scoreboard on the soccer field” and is only open “for 30 minutes before and 30 minutes after” girls’ soccer games. There is “no designated area for protest outside of this timeframe” and “[t]his is the only designated area for any visitors to engage in protests on any school District properties.” Violating the regulation “will result in removal from District property.”

53. Exhibit L is a true and correct copy of the Notice of Designated Protest Area.

54. The scoreboard on the soccer field is located around 50 yards further from the soccer fields than the area on the parents' sidelines where we usually sit on camp chairs and where I sat on September 17. The scoreboard is beside the parking lot and the view from there would be obstructed by all the spectators sitting or standing on the sidelines. Similarly, if someone were to silently protest by wearing pink wristbands beside the scoreboard, other parents, spectators, game officials, coaches, or players would not easily be able to observe this silent protest. To me, the school's new designated protest area is designed to stifle our ability to express our views on women's sports by putting us in an area where few people could observe us or our wristbands and also restricting when we can wear the wristbands.

55. Exhibit M is a true and correct map of the Bow High School soccer field and the adjacent parking lot with annotations showing the parents' sidelines, the new designated protest area, and the approximate locations of my car and Kyle Fellers car in the parking lot during and after the September 17 game.

56. I intend to attend sporting events and other extracurricular events, on and off school grounds, throughout the fall sports season, the school year, and future school years, including the upcoming soccer games on October 5, October 8, and October 11.

57. I would silently but visibly protest on the sidelines at some of these events, including the soccer games scheduled on October 5, October 8, and October

11, in defense of girls' and women's sports, by wearing a pink wristband on the parents' sidelines during the game, by distributing wristbands, or by holding signs in the parking lot. I believe, however, that for the foreseeable future during this and future school years, protesting in a visible way could cause Defendants to remove me from school property and to take out a new No Trespass Order against me, perhaps lasting through the end of the season as the original No Trespass Order threatened. As a result, I am only willing to show my support for girls' and women's sports in more subtle ways or in circumstances where I am not worried about being singled out, as I did at the September 24 game.

58. I also worry that protesting on the sidelines in a silent but visible way by wearing a pink wristband during this and future school years could potentially cause Bow School District sports teams to forfeit games, have games suspended, and become ineligible for the playoffs. In fact, the new designated protest area announcement suggests that future games could be suspended if officials decide parents are not doing what they want. Ms. Kelley wrote in her Oct. 1 email: "Please note, if protestors refuse to comply that may be deemed as disruptive and result in the game being suspended." (see also Ex. K).

59. I find it frustrating and degrading to have my viewpoint, and even presence, prohibited by Defendants, especially when I see other spectators being allowed to promote their viewpoints and opinions at school events, by, for instance, displaying pride flags and similar LGBTQ messages on signs or clothing.

60. I feel that forcing me to express my viewpoint and opinions from a designated protest area relegates me and people who agree with me to second class status and is designed to make it sound like my views are too dangerous to be seen or heard by other parents or high school students.

61. Exhibit P is a true and correct photographic image depicting the view from the new designated protest toward the soccer field. The soccer goals can be seen in the distance and there are some items on the field indicating where the sideline is located. I took this photo.

62. Exhibit Q is a true and correct photographic image depicting the view from the parents' sideline back toward the scoreboard and the new designated protest area at the Bow High School soccer field. In the foreground is a new sign posting the school district's Oct. 1 protest rules, which is consistent with the content of Exhibit L. This sign warns parents not to protest on the sidelines. The cones near the scoreboard mark the boundaries of the new designated protest area. I took this photo.

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

Executed on October 2, 2024



Anthony C. Foote