

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

DANIELA ARROYO GONZÁLEZ; VICTORIA  
RODRÍGUEZ-ROLDÁN; J.G.; and PUERTO  
RICO PARA TOD@S,

*Plaintiffs,*

v.

RICARDO ROSSELLÓ-NEVARES, in his  
official capacity as Governor of the  
Commonwealth of Puerto Rico; RAFAEL  
RODRÍGUEZ-MERCADO, in his official capacity  
as Secretary of the Department of Health of the  
Commonwealth of Puerto Rico; and WANDA  
LLOVET-DÍAZ, in her official capacity as  
Director of the Division of Demographic Registry  
and Vital Statistics of the Commonwealth of  
Puerto Rico,

*Defendants.*

Civil No. 3:17-cv-01457-CCC

**DECLARATION OF OMAR GONZALEZ-PAGAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Omar Gonzalez-Pagan, being of legal age and sound mind, do hereby state as follows:

1. I am one of the attorneys for Plaintiffs in this action. I am a member of the bar of the Commonwealth of Massachusetts and State of New York, and have been admitted *pro hac vice* to this court. I am a Staff Attorney at Lambda Legal Defense and Education Fund, Inc. in New York, New York. I make this declaration on personal knowledge, in support of Plaintiffs' Motion for a Preliminary Injunction.

2. Attached as Exhibit A to this declaration is a true and correct copy of *Ex parte Delgado*, 165 D.P.R. 170, 198 (2005), along with a certified translation prepared by TransPerfect.

3. Attached as Exhibit B to this declaration is a true and correct copy of Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey: Executive Summary* (Dec. 2016), available at: <https://goo.gl/shjV5w>.

4. Attached as Exhibit C to this declaration is a true and correct copy of Sheilla L. Rodríguez-Madera, et al., *Experiences of Violence Among Transgender Women in Puerto Rico: An Underestimated Problem*, *Journal of Homosexuality* 1 (2016).

5. Attached as Exhibit D to this declaration is a true and correct copy of Rebecca L. Stotzer, *Violence against transgender people: A review of United States data*, *Aggression and Violent Behavior* 14, 170–179 (2009).

6. Attached as Exhibit E to this declaration is a true and correct copy of Andrew R. Flores, Jody L. Herman, Gary J. Gates, and Taylor N.T. Brown, The Williams Institute, *How many adults identify as transgender in the United States?* (June 2016), available at: <https://goo.gl/E57eoF>.

7. Attached as Exhibit F to this declaration is a true and correct copy of the Executive Summary of Human Rights Campaign Foundation, *Corporate Equality Index 2017: Rating Workplaces on Lesbian, Gay, Bisexual and Transgender Equality: Executive Summary* (2017), available at: <https://goo.gl/1v4Qsk>.

8. Attached as Exhibit G to this declaration is a true and correct copy of Terri Moon Cronk, *Transgender Service Members Can Now Serve Openly, Carter Announces*, DoD News (June 30, 2016).

9. Attached as Exhibit H to this declaration is a true and correct copy of Human Rights Campaign Foundation, *Anti-Transgender Legislation Spreads Nationwide, Bills Targeting Transgender Children Surge* (Feb. 9, 2016).

I certify and attest under penalty of perjury that the foregoing statements made by me are true and correct to the best of my knowledge.

Dated this 26th day of June, 2017.

  
\_\_\_\_\_  
Omar Gonzalez-Pagan

**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing with the Clerk of the United States District Court for the District of Puerto Rico via the CM/ECF system this 26th day of June, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Omar Gonzalez-Pagan  
Omar Gonzalez-Pagan\*  
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*Arroyo González v. Rosselló Nevares*

Civil No. 3:17-cv-01457-CCC

Declaration of Omar Gonzalez-Pagan

# Exhibit A

165 D.P.R. 170, 2005 WL  
1593435 (P.R.), 2005 TSPR 95

ALEXIS DELGADO HERNÁNDEZ, *Ex parte*.

In the Supreme Court of Puerto Rico.

Number: CC-2004-708

PETITION FOR *CERTIORARI* to review a JUDGMENT from *José L. Miranda De Hostos, Ismael Colón Birriel and Jorge L. Escribano Medina*, Judges of the Court of Appeals, by means of which a resolution from the Court of First Instance was reversed, which ordered the Demographic Registry to correct the entry of the registration of birth of the petitioner so that petitioner's sex would appear as female and petitioner's name would be changed. The Department of Transportation and Public Works was also ordered to make changes to name and sex on the driver's license of the petitioner. *Judgment is handed down affirming the decision of the Court of Appeals, in regard to its determination to reverse the decision by the Court of First Instance that authorized the change of sex on the petitioner's birth certificate. The decision by the appellate court to invalidate the change of petitioner's name on petitioner's birth certificate, authorized by the Court of First Instance, is reversed.*

*José Luis Velázquez Ruiz*, attorney for the petitioner; *Lizzette Mejías Avilés*, attorney for the appellee. \*176

ASSOCIATE JUSTICE RODRÍGUEZ RODRÍGUEZ issued the opinion of the Court.

We have before our consideration, again, the situation of a person who, having been born male, underwent a sex reassignment surgery and asks us that petitioner's birth certificate and driver's license be corrected to properly reflect petitioner's sexual identification.

## I

Alexis Delgado Hernández (Delgado Hernández) was born male on October 27, 1970, in Fajardo, Puerto Rico. Said birth was registered in the Demographic Registry, as can be seen from Birth Certificate No. 152-1970-02267-000000-176071. On May 23, 2003, the appellee underwent a sex reassignment surgery (from male to female) at the Mount San Rafael Hospital in Colorado.<sup>1</sup>

On December 22, 2003, Delgado Hernández submitted a petition before the Court of First Instance, Superior Court of Humacao, so that petitioner's birth certificate would be changed, specifically the registration entry that identifies petitioner's sex as male, and petitioner's driver's license, so that they would be in agreement with the petitioner's new reality. Furthermore, the petitioner requested that said official documents would also reflect that the petitioner's name was Alexandra Delgado Hernández.

On January 20, 2004, the court of first instance issued a resolution, wherein it ordered the herein petitioner to submit a clear criminal record certificate within a period of fifteen days. Also, the

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<sup>1</sup> In the court records, there is a copy of the medical certification to this effect entitled *Affidavit by Physician as to Change of Sex Designation*. See Appendix of the writ of *certiorari*, p. 5.

Office of the Attorney General was given a period of fifteen days to present its position in relation to \*177 the petition and was informed that, if it did not do so, the understanding would be that it had accepted it. On February 10, 2004, the petitioner submitted a motion, accompanied by the required certificate. The Office of the Attorney General did not appear.

Thus, on February 24, 2004, the court of first instance issued a concise resolution, wherein it ordered the Demographic Registry to modify the entry of the birth registration of Delgado Hernández so that it would appear that Delgado Hernández's sex was female and that Delgado Hernández's name is Alexandra Delgado Hernández. In turn, it ordered the Department of Transportation and Public Works to make the corresponding changes on the driver's license.

Not in agreement, the Attorney General appeared before the intermediate appellate court and argued that the decision by the court of first instance lacked legal validity, and therefore it should be reversed. As a threshold matter, he asserted to the appellate court that the lack of due care from the Office of the Attorney General by not appearing before the court *a quo* to challenge the grounds of the request, could not limit the State's right to review the court of first instance's decision, as this is a matter that is of great public interest. The Court of Appeals accepted the appearance of the State.

In his brief, the Attorney General argued that the lower court's decision was erroneous, because the purpose of the birth certificate is to collect historical data that is true at the time of birth, as the sex of a person is. He argued that a transsexual who undergoes sex reassignment surgery from a man to a woman continues to be a man biologically, given that his chromosomes continue to be male; a change of sex, in truth, has not occurred. He asserted that processing Delgado Hernández's petition could potentially result in a person who is a transsexual marrying a person of their same biological sex, clearly violating the laws of the Commonwealth of Puerto Rico.<sup>2</sup>  
\*178

Delgado Hernández submitted a brief opposing the appeal submitted by the State. Said brief, however, does not clearly outline the legal grounds to uphold the validity of the decision by the lower court.

As such, the Court of Appeals issued a judgment reversing the Court of First Instance.<sup>3</sup> In its judgment, the intermediate appellate court concluded that the Demographic Registry Law of Puerto Rico, 24 L.P.R.A. secs. 1071–1074, 1101–1110, 1131–1139, 1161–1166, 1191, 1211 and 1231–1238 (Demographic Registry Law or Registry Law), does not contain any provision that would allow for a birth certificate to be amended to change the sex of a registered person, in the absence of any circumstances indicating that the original entry was the product of an error. The court concluded that authorizing a change of sex on the certificate would require express

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<sup>2</sup> Please note that Law No. 94 of May 19, 1999, amended Art. 68 of the Civil Code, 31 L.P.R.A. sec. 221, wherein marriage is defined, denying the legality (“full faith and credit”) in Puerto Rico of a marriage of two people of the same sex or transsexuals executed outside of the jurisdiction of Puerto Rico.

<sup>3</sup> In its judgment, the Court of Appeals recognizes that in *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000), we allowed, by means of a judgment to that effect, the sex of a transsexual to be changed from male to female on said party's birth certificate. The appeals court ruled, correctly, that, as it dealt with *a judgment* and not an opinion from the Court, our decision in *Andino Torres, Ex parte*, supra, was not a binding precedent. See *Rivera Maldonado v. E.L.A.*, 119 D.P.R. 74, 79–80 (1987)

authorization in this regard from the Legislative Assembly, which was not the case. It thus concluded that it was appropriate to reverse the Resolution issued by the Court of First Instance. Having done so, not only did it invalidate the order that authorized the change of sex on the birth certificate and driver's license, but also the requested and authorized name change. This occurred even though this matter was not submitted for consideration, as it was not set forth by the Attorney General in his petition for *certiorari*.

Not in agreement, Delgado Hernández appeared before us so that we would review the judgment of the Court of Appeals. Petitioner argues that: **\*179**

The Court of Appeals acted in error by reversing the Resolution from the Court of First Instance that ordered the Demographic Registry to change the entry for the birth registration of the petitioner so that it would appear that petitioner's sex is female and which ordered that same remedy made to petitioner's driver's license. Petition for *certiorari*, p. 2.

On November 12, 2004, we issued the requested order. With the parties present, we proceeded to decide.<sup>4</sup>

## II

This case brings before us the following question: if a transsexual has undergone a sex reassignment surgery, can said party demand that this change be reflected on the party's birth certificate—and other official documentation—so that the status of the registry is in agreement with what said party believes his/her true sex to be.

[1] The sex and sexual identity of a person constitute one of the primary characteristics of personal identity. For some, sex continues to be fundamentally defined by its biological and physiological characteristics, and by its exterior morphology. "Sex is what a person is born with and under which the subject is registered in the corresponding civil status registry." C. Fernández Sessarego, *Derecho a la Identidad Personal* [The Right to Personal Identity], Buenos Aires, Ed. Astrea, 1992, p. 288. Sex is, therefore, immutable and static. On the other hand, there is a viewpoint of sex as a concept that refers to the inherent personality of the individual, the person's psychosocial development, his or her manner of behavior, and his or her habits and mannerisms. *Id.* Ordinarily, both aspects coincide on the subject. Meaning, biological, chromosomal and registered sex are in accordance with social psychological sex. On occasions, however, and as an exception, "situations arise... **\*180** where an articulate disassociation can be observed between said aspects." *Id.*

The most dramatic case is constituted by a transsexual for whom the external sexual appearance does not coincide with the sex they live with and feel, the one they fully identify with; this situation is one that "leads the transsexual, with help from hormonal treatments and transsexual

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<sup>4</sup> The brief submitted by the petitioner, surprisingly, does not address with legal rigorosity the indication of error brought to our attention. The discussion of an error is set forth without any presentation whatsoever of the reasons providing legal grounds for same or the authorities that support it.

surgery ... to adapt his or her external physical characteristics to the desired sex.” L. Puig Ferriol, *Manual de Derecho Civil* [Civil Law Manual], Madrid, Ed. Marcial Pons, 1997, Vol. 1, p. 133.<sup>5</sup>

The subject of transsexuality and its repercussions, both legal, social, psychological or moral, is a pressing matter in our time and one of deeply human content.<sup>6</sup> Those who have decided to undergo a sex reassignment surgery are those who have taken extraordinary measures in their fervent desire to live a regular life.

The dispute brought before us requires that we consider, looking at the prevailing system of laws, \*181 a countless number of difficult questions. For example: Whose responsibility is it to make the petitioner’s claim feasible? Is it through the Judicial Branch, through a jurisprudential ruling, or, on the other hand, through the political branches of Government by means of the corresponding legislation? Would this decision not entail, at its very essence, a public policy matter about how the State should respond to claims from certain individuals traditionally misunderstood and marginalized by society, legislating the relevant requirements and guarantees that said recognition brings? What is the most effective process for deliberation and democratic reflection, that would bring together all the interests that interlink in a dispute of this nature?<sup>7</sup>

The questions that we have formulated previously only address some of the multiple and arduous problematic issues that the subject of transsexuality encompasses. As noted, the issues involved with said questions cannot be considered matters with easy solutions because of their implications both for the liberty of the individual and for the social interests at play.

We must then proceed carefully and calmly.

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<sup>5</sup> There is extensive literature on the subject of transsexuality. For a more comprehensive discussion on this subject, see: J. Meyerowitz, *How sex changed? A History of Transsexuality in the United States*, Cambridge, Harvard U. Press, 2002; 6 *Schidt’s Attorney’s Dictionary of Medicine and Word Finder*, 2002; R. Green, *The “Sissy Boy Syndrome” and the Development of Homosexuality*, New Haven, Yale U. Press, 1987; L. Martínez Calcerrada, *Derecho Médico General y Especial* [General and Special Medical Law], Madrid, Ed. Tecnos, 1986; H.W. Jones, W.E. Scout, *Hermafroditismo, anomalías genitales y trastornos endocrinos afines* [Hermaphroditism, genital anomalies, and related endocrine disorders], Madrid, Ed. Labor, 1975. See also: A.A. Lawrence, *Factors Associated with Satisfaction or Regret Following Male to Female Sex Reassignment Surgery*, 32 Arch. Sexual Behavior 299 (2003); L. Lax, *Is the United States Falling Behind? The Legal Recognition of Post-Operative Transsexual’s Acquired Sex in the United States and Abroad*, 7 Quinipiac Health L.J. 123 (2003); J.T. Weiss, *The Gender Caste System: Identity, Privacy and Heteronormativity*, 10 Law & Sexuality 123 (2001); J.A. Greenberg, *Defining Male and Female: Intersexuality and the Collision between Law and Biology*, 41 Ariz. L. Rev. 265 (1999); M. Coombs, *Transgenderism and Sexual Orientation: More than a Marriage of Convenience*, 3 Nat’l J. Sexual Orient. L. 4 (1997); L. Pearlman, *Transsexualism as Metaphor: The Collision of Sex and Gender*, 43 Buff. L. Rev. 835 (1995); F. Valdés, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex”, “Gender”, and “Sexual Orientation” in Euro American Law and Society*, 83 Cal. L. Rev. (1995); Commentary, *Transsexualism: Sex Reassignment Surgery and the Law*, 56 Cor. L. Rev. 933 (1971).

<sup>6</sup> See, among others: J.M. Bailey, *The man who would be Queen*, Washington, Joseph Henry Press, 2003; J. Finney Byland, *She’s not There, A Life in Two Genders*, New York, Broadway Books, 2002. See also, [www.annelawrence.com/twr](http://www.annelawrence.com/twr).

<sup>7</sup> C. Sunstein, *One Case at a Time*, Cambridge, Harvard U. Press, 1999.

### III

The legal dispute on transsexuality is, for this Court, a recently occurring issue, but that is not true for other jurisdictions. Both in Europe<sup>8</sup> and in the United \*182 States,<sup>9</sup> this issue has been discussed extensively, and so there is vast jurisprudence and comprehensive legislation on the issue of transsexuality.

In *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000), we handed down a *judgment* in which a change of sex—from male to female—was authorized on the birth certificate of the petitioner, who was transsexual. Having resolved *Andino Torres* by means of judgment, what is provided therein does not constitute precedent for this Court, and therefore it is not binding for the Court of Appeals, as the latter correctly concluded, and, much less, is it binding for us.

[2] We have repeatedly maintained that the Supreme Court establishes a rule *exclusively* by means of an opinion supported by a signed opinion or a *per curiam opinion*. *Rivera Maldonado v. E.L.A.*, 119 D.P.R. 74 (1987); *Mayol v. Torres*, 164 D.P.R. 517, 546 esc. 17 (2005); *Díaz v. Colegio Nuestra Sra. del Pilar*, 123 D.P.R. 765, 777 (1989). See also, R.E. Bernier and J.A. Cuevas Segarra, *Aprobación e interpretación de las leyes en Puerto Rico* [Approval and interpretation of the laws in Puerto Rico], 2nd ed., San Juan, Pubs. JTS, 1987, p. 158. With that, ordinarily, only the signed opinion or the *per curiam* are published. Rule 44(b) of the Rules of the Supreme Court, 4 L.P.R.A. Ap. XXIA. Thus, our opinions serve as precedents for the cases that the *a quo* courts have before them, both judicial and administrative.

[3–4] Additionally, this Court resolves a case through judgment when issues are set forth in same that have been resolved repeatedly by the Court or *to resolve a specific dispute between the litigating parties, confined, therefore, to the specific facts of that case*, or to \*183 rule on a case quickly, considering the large number of cases that must be resolved. The judgments, therefore, are not published.<sup>10</sup> It is for that reason that we have stated that it is not “considered appropriate

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<sup>8</sup> On this matter, see, in Great Britain: *Bellinger v. Bellinger* (2003) UKHL 21; *Goodwin v. United Kingdom* (2002) 35 E.H.R.R. 18; *Cossey v. United Kingdom* (1990) 13 E.H.R.R. 622; *Corbett v. Corbett* (1970) 2 All E.R. 33. In Spain, see: Judgment from July 2, 1987; Judgment from July 15, 1988; Judgment from May 3, 1989; Judgment from April 19, 1991. Regarding these judgments, see, A. Villagómez, *Aportación al estudio de la transexualidad* [Contribution to the study of transsexuality], Madrid, Ed. Tecnos, 1994. In Australia, see *In re Kevin*, 28 Fam. L.R. 158 (2001). Five European countries have legislation about transsexuality: Law of April 21, 1972 (Sweden); Law of September 10, 1980, *Transsexuellengesetz* (Germany); Law of April 14, 1982 (Italy); Law of April 24, 1985 (Holland); Law Number 3444 of 1988 (Turkey). See L. Puig Ferriol and others, *Manual de Derecho Civil* [Civil Law Manual], Madrid, Ed. Marcial Pons, 1977, Vol. 1, p. 133–134.

<sup>9</sup> In the United States, see: *In re R.W. Heilig*, 816 A.2d 68 (2003); *Littleton v. Prange*, 9 S.W.3d 223 (1999); *In re Ladrach*, 513 N.E.2d 828 (1987); *K. v. Health Div., Dept. of Human Resources*, 560 P.2d. 1070 (Or.1977); *M.T. v. J.T.*, 355 A.2d. 204 (1976); *In re Anonymous*, 314 N.Y.S.2d. 668 (1970); *In re Anonymous*, 293 N.Y.S.2d. 834 (1968); *Anonymous v. Weiner*, 270 N.Y.S. 2d. 319 (1966).

<sup>10</sup> However, “as an exception and by our express order, a judgment issued without opinion can be sent for publication.” *Rivera Maldonado v. E.L.A.*, 119 D.P.R. 74, 79 (1987). Therefore, subject to what is provided for in the Rules of the Supreme Court, nothing prevents “any Justice of this Court who delivers a concurring or dissenting opinion or specific vote in relation to a decision of the Court lacking opinion, may certify it so that it may be sent to the Compiler and Publisher of Jurisprudence of the Court and to the Bar Association of Puerto Rico for its publication.” *Id.*, p. 79-80.



to cite as an authority or precedent those judgments that do not constitute opinions.” *Rivera Maldonado v. E.L.A.*, supra, p. 79.

In light of the foregoing, what is set forth in *Andino Torres, ex parte*, supra, only resolved the specific dispute of that case in regard to the specific facts involved therein. Therefore, *Andino Torres* is not binding for the decision that we make today. Let us move on then.

At this time, we believe it is appropriate to begin our discussion by analyzing the role of the Spanish Civil Registry, precursor of the Demographic Registry; hopefully, we will be able to clarify its purpose and objective. Then we will analyze the Demographic Registry Law, its relationship with the role of the Civil Registry, to then apply current legislation to the facts of the case before our consideration.

[5–6] The Civil Registry is defined as “the institution or administrative service responsible for the publication of the facts affecting the civil status of people or indirectly related to said status, contributing, in certain cases, to the constitution of said acts and providing certificates that legitimize status.” Puig Ferriol, *op. cit.*, p. 136. Professor Luces Gil, in his work on the Civil Registry, asserts that same position and indicates that the Registry is “the institution that has as its objective the publishing of the events and acts that affect the civil status of individuals, to cooperate, in certain cases, for the constitution of those acts, and to provide certificates that legitimize civil status \*184.” F. Luces Gil, *Derecho Registral Civil* [Civil Registry Law], Barcelona, Ed. Bosch, 1976, p. 170. Likewise, see, J. Santos Briz, *Derecho Civil, Teoría y Práctica* [Civil Law, Theory and Practice], Madrid, Ed. Edersa, 1976, Vol. 1, p. 463.

[7] “Civil status” is the combination of qualities, attributes and circumstances of a person, which identify and distinguish the person, and which contribute to determine their capacity with a certain level of permanency and generality. Luces Gil, *op. cit.*; Puig Ferriol, *op. cit.*, p. 130 (“[Civil status] determines the distinct situations that a person could find him or herself in and which justify the recognition of a different capacity of process or a differentiated situation of rights and requirements, susceptible to unitary treatment”). Luces Gil, *op. cit.*; Puig Ferriol, *op. cit.*, p. 130.

Regarding the Registry as reliable evidence of the civil status of people, Albaladejo tells us:

It benefits the interested party as well as the State and third parties, that they are able in this way to obtain the information that they need when they enter into a relationship with the other. M. Albaladejo, *Derecho Civil* [Civil Law], Barcelona, Ed. Bosch, 1989, T. I, Vol. 1, p. 358.

[8] All events and vital facts that define the civil status and legal capacity of an individual are also entered into the Registry. J.L. Lacruz Berdejo, *Elementos de Derecho Civil* [Elements of Civil Law], Barcelona, Ed. Bosch, 1974, T. I, p. 170. Most noteworthy are: birth, and along with that, the name, sex, and filiation of the registered party. Art. 41 of the Spanish Civil Registry Law; Art. 167 of the Civil Registry Regulations, Decree of November 14, 1958, Sec. V, Chap. I. Marriage, nationality, and death also have their place in the registry. All these attributes of personality are characterized by, among other things, “having general efficacy, meaning, before

all (*erga omnes*).” Albaladejo, *op. cit.*, p. 236. The registry of each person’s vital statistics begins at birth, which individualizes it and makes it subject to rights, and it ends, obviously, with death.  
**\*185**

[9] The Registry’s existence is justified given that the Law and the relationships it governs require security, certainty and documentation on the conditions of a person’s capacity and family environment. The Registry thus becomes a system for verifying relevant facts about the holder.<sup>11</sup> Thus, what gives it importance is essentially its finality, being “*the material instrument so that there is public evidence of the official record of the existence, civil status and condition of individuals.*” (Emphasis ours.) E. Vázquez Bote, *Derecho Privado Puertorriqueño* [Puerto Rican Private Law], Orford, Equity Publishing, 1992, Vol. III, p. 400.<sup>12</sup> With this as its function, “the veracity and integrity of the civil status Registry is [*sic*: are] of singular importance for the State, because it also represents *a means of knowing the exact and true legal situation of individuals*, while at the same time they can be very convenient instruments for ordering certain administrative services.” (Emphasis ours.) Id.

[10] In synthesis, the fundamental purpose of the Civil Registry is to guarantee trustworthy information about civil status and vital statistics of individuals and to provide a means for evidencing same. This is for the benefit of the registered party and also of the State and third parties who enter into a relationship with the former. The Civil Registry is, **\*186** therefore, a mechanism that, by guaranteeing the security, written evidence and certainty of the information that it publishes, avoids, among others, fraud and simulation in the relationships that individuals establish between each other and that are governed by the Law. See: Puig Ferriol, *op. cit.*, p. 136–137; likewise, Luces Gil, *op. cit.*, p. 18; M. Planiol and G. Ripert, *Tratado Elemental de Derecho Civil* [Fundamental Agreement of Civil Law], 4th ed., México, Ed. J.M. Cajica, 2003, Vol. 1, p. 243 (“The acts of the civil registry constitute a secure and easy method, organized by the law, for evidencing births, marriages and deaths.”)

Let us then move on to discuss the provisions of the Demographic Registry.

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<sup>11</sup> Historically, the direct precedent of the Spanish Civil Registry is found in the parochial registries taken by the Catholic Church to record baptisms, marriages, and deaths since the middle of the 14th century and the beginning of the 15th. M. Albaladejo, *Derecho Civil* [Civil Law], Barcelona, Ed. Bosch, 1991, T. I, Vol. 1, p. 358. The French Revolution secularized those registries, creating the modern Civil Registry under the responsibility of State officials. J. Castán Tobeñas, *Derecho Civil español, común y floral* [Spanish Civil Law, Common and Flowery], Madrid, Ed. Reus, 1984, T. I, Vol. 2, p. 508.

<sup>12</sup> This institution was incorporated into our legal system at the end of the 19th century when, in 1885, the Provisional Civil Registry Law went into effect in Cuba and Puerto Rico, decreed by Spain in 1870, based on the Spanish Constitution of 1869. With the change of sovereignty in 1898, the structure of the civil registry system did not undergo any substantial changes. In 1931, however, with Law Number 24 of April 2, 1931 (24 L.P.R.A. sec. 1041 *et seq.*), a reorientation of the traditional civil status system occurred when the Demographic Registry was created. The new framework legislated centralized the functions of the registry into the hands of the Health Commissioner, eliminating the control that the municipality and mayor had had over the registry. *Municipio v. Fernós, Com.*, 63 D.P.R. 978 (1944). The purpose of the aforementioned Law No. 24 is also to gather information of a statistical nature.



## IV

[11] The Demographic Registry Law of Puerto Rico creates a General Demographic Registry established in the Demographic Registry or Vital Statistics Division of the Department of Health of Puerto Rico. It was established with the objective of registering, collecting, protecting, preserving, correcting and certifying the vital statistics of people born in Puerto Rico. 24 L.P.R.A. sec. 1042(1). In accordance with the change made in registry legislation of 1931, the Demographic Registry became primarily a trustworthy and formal statistical registry that allowed for the study of the vital statistics of our population.<sup>13</sup> Certainly, the name change itself, from Civil Registry to *Demographic* Registry, denotes the intention to convert it into an instrument for the statistical study of the population of Puerto Rico according to its composition and condition at a certain time, or as it changes over time. See, in general, E.A. Wrigley, *Historia y población: introducción a la demografía histórica* [History and population: introduction to historical demography], Madrid, Ed. Guadarrama, 1969. \*187

[12] That did not, however, signify that it stopped having the essential purpose of being the instrument used to publicly set forth the official record on the existence, civil status, and vital statistics of people born in Puerto Rico; and, as such, serving as an instrument of written evidence for those who entered into contact with the individuals registered. Therefore, on repeated occasions, we have indicated that the information on record in the Demographic Registry constitutes *prima facie* evidence of the fact being recorded. *Medina v. Pons*, 81 D.P.R. 1, 8 esc. 11 (1959); *Juan Bigas, Sucrs. v. Com. Industrial*, 71 D.P.R. 336 (1950); *Pueblo v. Ramírez*, 65 D.P.R. 680 (1946); *Mercado v. American Railroad Co.*, 61 D.P.R. 228 (1943).

[13] The birth certificate is the document that reflects the vital statistics of the person at the time of their birth. *It is, therefore, a historical picture of the person at birth, which provides written record of the following information: date and place of birth, name of parents, and name and sex of the registered person.* See *K. v. Health Div., Dept. of Human Resources*, 560 P.2d 1072, 1072 (Or. 1977) (“it was the intent of the legislature of Oregon that a ‘birth certificate’ is an historical record of the facts as they existed at the time of birth”).

[14] The registry’s records are subject to corrections only and in an exceptional manner. About this matter, Lacruz Berdejo tells us that “as an exception, mistakes can be corrected ... restoring them to the way they should have been recorded, in various circumstances where there cannot be suspicion of possible fraud ...”. Lacruz Berdejo, *op. cit.*, p. 177.

[15] The Demographic Registry Law provides the procedure for correcting a birth certificate, also as an exception. The law states:

Omissions or mistakes that appear on any certificate prior to being registered at the Department of Health can be corrected by inserting the necessary corrections or additions in red ink on said certificate, *but after \*188 it has been filed at the Department of Health, no corrections, additions or amendments of any kind that would substantially alter same can be made, unless by virtue of an*

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<sup>13</sup> See the Preamble of Law No. 220 of August 9, 1998 (1998 (Part 1) Laws of Puerto Rico 941).

*order from the District Court, whose order, in said case, shall be filed at the Department of Health, with reference made to the certificate to which it corresponds.*

To obtain said order, the interested party must submit a request to the District Courthouse corresponding to his/her domicile, stating under oath his/her claim and duly explaining it along with the relevant documentary evidence to support his/her request. A copy of the request and all documentary evidence shall be sent to the Attorney General's Office at the same time it is filed, who must set forth its position within a period of 10 days.

.....

The change, addition or modification of first or last name can only be done by the request of the interested party, who must submit the request to any District Courthouse in a timely manner, stating under oath the reasons for the claim, accompanied by the relevant documentary evidence in support of the request. (Emphasis ours.)  
24 L.P.R.A. sec. 1231.

This provision is complemented with Sec. 1071-19 of Regulation Number 1 of the Demographic Registry (Regulation Number 316 of the Department of Health) of February 16, 1932, which in turn sets forth:

*Corrections or alterations after the registration has been done —*  
After a certificate has been accepted by the registrar, it cannot undergo any changes, erasures or modifications, nor can they be made to the transcription done in the record book, without due process of law. Clerical errors that appear on any certificate when submitted for registration or after having been registered, consisting of a mistaken first name, last name, or non-essential word or phrase, can be corrected by writing the incorrectly written word or words correctly in red ink or inserting the omitted word or words. Modifications that may be necessary shall always be done in a way so that the corrected word can be read. To make said corrections, registrars require evidence that, as applicable, they deem necessary.

[16] A reading of these provisions establishes that there are two processes for correcting or rectifying errors: one, before the certificate has been registered and, \*189 the other, after it has been filed and registered at the Department of Health. In the first of these cases, the law allows the Registrar to correct "omissions or mistakes" in the registration before the certificate has been registered, inserting the corresponding corrections in red ink. After the certificate has been registered, the Demographic Registry Law prohibits any change, correction or modification from being made that would substantially alter the certificate, except by virtue of a judicial order to that effect.

The Regulation, for its part, clarifies that the Registrar can correct mistakes in the first or last names, and *non-essential* words or phrases on the certificate, after registered, without a judicial order. However, *in cases of substantial corrections or modifications* after the certificate has been registered in the Demographic Registry, the law only allows for it to be determined in a competent court.

On very few occasions, we have stated our position about the process of modification or correction of a birth certificate or information registered in the Demographic Registry. *Ex parte Pérez*, 65 D.P.R. 938 (1946); *León Rosario v. Torres*, 109 D.P.R. 804 (1980). On both occasions, we restrictively interpreted the Demographic Registry Law and the provisions allowing the correction of the entries in the Registry or the registration of information in same, concluding that the changes requested would have had to have been previously authorized by law before agreeing to them.

Thus, in *Ex Parte Pérez*, supra, we considered a request for a name change on a birth certificate. We decided that, in the absence of any provision in our Demographic Registry Law that would specifically authorize the change requested, we were prevented from authorizing same. In resolving as such, we indicated that it corresponded to the Legislature to make a name change to a birth certificate feasible. We specifically indicated that the Legislature should “correct what \*190 we understand to be a defect in our legislation.” *Ex Parte Pérez*, supra, p. 942–943.

[17] Subsequently, the Legislative Assembly approved Law Number 119 of April 12, 1950 (24 L.P.R.A. sec. 1231), to amend the Demographic Registry Law and authorize the change of a person’s first and last name on their birth certificate. This law was approved specifically to address the problem created by the absence of legislative authorization to make a name change in the Demographic Registry, a situation that we alerted to in *Ex Parte Pérez*, supra. See Acts of the Chamber of Representatives, 17th Legislative Assembly, Regular Session, 1950, p. 643.

Furthermore, in *León Rosario v. Torres*, supra, we denied a petition to have the birth of a girl born in the United States to Puerto Rican parents, all residing in Puerto Rico, to be registered in the Demographic Registry because the Demographic Registry Law did not allow it. The law, ordinarily, only authorizes the registration of children born in Puerto Rico. At that time, we indicated that “the exceptions stated in the law are of *restrictive interpretation*” (emphasis ours) *Id.*, p. 810, given that the legislature has always expressly stated what it has wanted to allow registered in the Demographic Registry.<sup>14</sup> “There is no place in this legislative framework for a liberal interpretation in terms of the vital statistics that are registrable.” *Id.*

[18] What is described above clearly denotes \*191 that we have interpreted the provisions of the Demographic Registry Law restrictively. We have set forth that any change or correction on a

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<sup>14</sup> In the cases where the legislature has wanted to allow for events occurring outside of Puerto Rico to be registered in the Demographic Registry, it has authorized as such expressly in law. As such, it has provided for: the registration of deaths that occur on a boat or plane in transit or, in the case of missing persons, Law Number 1 of February 23, 1978 (24 L.P.R.A. secs. 1042, 1101, 1131–1132, 1231, 1237 and 1301); the registration of births occurring on a boat or plane in transit, *Id.*; the annotation of divorces or marriage annulments decreed outside of Puerto Rico, of people whose marriages had been entered into in Puerto Rico, Law No. 4 of March 2, 1971 (24 L.P.R.A. sec. 1168); and the registration of adoptions conducted outside of Puerto Rico of people born here, and those conducted here of people born elsewhere, Law No. 84 of June 15, 1953 (24 L.P.R.A. sec. 1139).

birth certificate, once registered, or any request for registration of vital data, has to have been previously authorized by means of legislation so that it can proceed. That signifies that, in the part where the Registry Law provides that a *substantial correction* to birth certificate records *shall only proceed by virtue of a "court order,"* the order shall only proceed if the legal system authorizes the change requested by means of legislation to that effect.

[19] Taking the above into consideration, we conclude that *the Demographic Registry Law establishes, as "numerus clausus," the only instances where changes can be made in the annotations of vital statistics on the birth certificate.* As such, there is no margin for a liberal or expansive interpretation of the provisions of the Demographic Registry Law.

[20] This is in accordance with the current legislation on which facts are registrable in the Civil Registry. In this regard, Luces Gil writes: "But, in practice, there must be recognition of *the impossibility of undeclared civil status facts or qualities having access to the Registry that are expressly unregistrable in registry legislation.*" (Emphasis ours.) Luces Gil, *op. cit.*, p. 30–31. We must remember that the purpose of the Demographic Registry, among others, is to publish the facts that affect the civil status or vital data of people *when they enter into relationship with the State or with third parties*, and, additionally, that the birth certificate constitutes a document that *compiles historical information about the vital facts of a person at the time of his or her birth.* As we have done in the past and reaffirm today, all of the foregoing advises a restrictive interpretation of the Demographic Registry Law as a guarantee of the legal certainty of all information contained therein.

[21] In light of the above, we must strenuously \*192 conclude that the Registry Law does not address, and much less authorizes, a change like the one requested by the petitioner here. In absence of legislation expressly authorizing it, we are prevented from recognizing as feasible a substantial change in the written evidence of the birth certificate of what is a vital fact about a person, namely, their sex.

[22] It cannot reasonably be construed in this case that there is a gap in the Demographic Registry Law. On the contrary, there is an express prohibition on making substantial changes to the original records of the birth certificate. According to the dictionary of the Royal Spanish Academy, "substantial" is all that constitutes what is essential and most important of a thing. *Diccionario de la Lengua Española* [Dictionary of the Spanish Language], 22nd ed., Madrid, Ed. Espasa-Calpe, 2001, T. II, p. 2115. The changes demanded by the petitioner would affect the civil status of the individual, the central axis of the Demographic Registry, and therefore we are facing a substantial change, the modification of which lies only within the jurisdiction of the Legislative Assembly. Judge Patricia Wald, with great clarity, has stated:

Personal experience has revealed that the nearly universal view among federal judges is that when we are called upon to interpret statutes, it is our primary responsibility, within constitutional limits, to subordinate our wishes to the will of Congress because the legislator's collective intention, however discerned, trumps the will of the court. P. Wald, *The Sizzling Sleeper: The Use of Legislative History in Construing Statutes in the 1988–89 Term of the United States Supreme Court*, 39 Am. U.L. Rev. 277, 281 (1990).

[23] When the language of the law is clear and unequivocal, our responsibility is to respect the legislative will, independent of our personal opinion. *Alonso García v. S.L.G.*, 155 D.P.R. 91 (2001); *Lasalle v. Junta Dir. A.C.A.A.*, 140 D.P.R. 694 (1994); *Silva v. Adm. Sistemas de Retiro*, 128 D.P.R. 256 (1991). It corresponds to the Legislative Assembly and the elected legislators serving therein to determine what the public policy should be that our laws embody. \*193 *Pueblo v. Zayas Rodríguez*, 147 D.P.R. 530 (1999). The laws are, ultimately, the reflection of the will of the community, expressed democratically through elected legislators, and they bring together that which the community finds acceptable at a given moment.<sup>15</sup> A judge should not substitute the clear letter of the law for his or her own sense of justice. *Berrocal v. Tribl. de Distrito*, 76 D.P.R. 38, 65 (1954).

In consideration of the questions we formulated at the start, we are of the opinion that it corresponds to the Legislative Assembly to weigh all of the interests involved in the dispute that the subject of transsexuality brings to light, bring them together and propose a legislative response that it deems appropriate. Ultimately, under a system with separation of powers like the one established in our Constitution, the power to approve laws is held by the Legislative Assembly and the responsibility then corresponds to the Judicial Branch to resolve disputes through the interpretation of the approved law.

Taking the above into consideration, we resolve that it is not appropriate to authorize the change requested on the birth certificate \*194 of the petitioner to change petitioner's sex, because the Demographic Registry Law does not expressly authorize it.

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<sup>15</sup> It is worth noting that 28 states of the United States have passed legislation to allow a birth certificate to be amended so that it reflects changes occurring as the result of sex reassignment surgery.

In some of those states, the process established requires only that a request be made before the court for the change of sex on the birth certificate, nothing more; or that a new certificate be issued. See: Ala. Code Sec. 22-9A-19(d); Ark. Code Ann. Sec. 20-18-307(d)(4); California Health and Safety Code Sec. 103425; Colo. Rev. Stat. Ann. Sec. 25-2-115(4); Conn. Gen. Stat. Ann. Sec. 19a-42; D.C. Code Ann. Sec. 7-217(d); Ga. Code Ann. Sec. 31-10-23(e); Md. Code Ann. Health-Gen.I Sec. 4-214(b)(5); Miss. Code Ann. Sec. 41-57-21; Mo. Stat. Sec. 193.215; Mont. Code Ann. Sec. 50-15-204; Nv. Adm. Code sec. 440.130; Or. Rev. Stat. Sec. 432-235; Utah Code Ann. Sec. 26-2-11; Va. Code Ann. Sec. 32.1-269; Wisc. Stat. Sec. 69.15(1)(a).

Other states, however, require a sworn declaration from the doctor or surgeon who performed the operation, so that the court can issue its ruling ordering the change on the birth certificate. See: Ariz. Rev. Stat. Sec. 36-337(a)(4); Haw. Rev. Stat. Sec. 338-17.7(4)(b); 410 Ill. Comp. Stat. Ann. Sec. 535/7(d); Iowa Code IV Sec. 144.38; Ky. Rev. Stat. Ann. Sec. 213.121(5); La. Rev. Stat Ann. 40:62; Mass. Gen. Laws Ann. Ch. 46 Sec. 13(e); Mich. Comp. Laws Sec. 333.2891(9)(a); N.J. Stat. Ann. 26:8-40.12; Neb. Rev. Stat. Sec. 71-904.01; N.M. Stat. Ann. Sec. 24-14-25(D); N.C. Gen. Stat. Sec. 130A-118.

Tennessee is the only state that has a statute expressly prohibiting a change of sex on a birth certificate. T.N. Stat. Ann. Secs. 191.028, 192.011. See also, *Changing Name & Sex On Birth Certificate United States, Canada & UK*, United States Department of State, [http://www.kindredspiritlakeside .homestead.com/ BirthRecord.html](http://www.kindredspiritlakeside.homestead.com/BirthRecord.html). Latest version: November 3, 2004.

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V

Before concluding, we must point out, as we indicated at the start, that the Court of Appeals, by reversing the decision from the Court of First Instance, invalidated—we assume inadvertently—the decision by said court to authorize the change of the petitioner’s name on petitioner’s birth certificate. Having done so, however, it erred.

We have reviewed the court records and based on same, it can be seen that the petitioner fulfilled all requirements demanded by the Demographic Registry Law to authorize a name change. Furthermore, the Attorney General did not question said decision before the intermediate appellate court. Therefore, it is not appropriate to revoke that decision by the lower court. Consequently, we invalidate that ruling by the Court of Appeals. In regard to all other matters, the appealed opinion is confirmed.

*On the grounds previously expressed and the writ of certiorari issued, the judgment delivered by the Court of Appeals is confirmed in this case in regard to the decision to invalidate the change of sex on the birth certificate of the petitioner authorized by the Court of First Instance. Furthermore, the decision by the appellate court to invalidate the change of the petitioner’s name on petitioner’s birth certificate is reversed, which had been ruled on by the court of first instance.*

*A judgment in accordance shall be handed down.*

Associate Justice Rivera Pérez issued a concurring opinion. Associate Judge Fuster Berlingeri and Associate Judge Fiol Matta both issued dissenting opinions. **\*195**



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Concurring opinion delivered by Associate Judge Rivera Pérez.

We are in agreement with the result of confirming the appealed judgment handed down by the Court of Appeals and with its legal grounds. We concur with the majority opinion on the existing impediments that, according to the Demographic Registry Law of Puerto Rico,<sup>1</sup> preclude a physical sex reassignment of a transsexual from being recognized in the official records of the State. However, we believe it necessary to state our position about other aspects of equal or greater importance within the “case and dispute” before us.

We understand that the dispute brought before us, in addition to the analysis confined to the Demographic Registry Law of Puerto Rico, deserves an analysis from another perspective. It is essential that we evaluate and analyze the consequences that this matter could have on the stability and formality of the institutions of the State. Such is the case, for example, of the cumulative effect that it would have on important areas and institutions, parts of family law and succession law, among others.

## I

In *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000), this Court had the opportunity to state its position in a case with a situation essentially identical to the one we face today. On that occasion, Mr. Andrés Andino Torres underwent a surgical intervention and, subsequently, appeared before the Court of First Instance to ask that the entry recording Andino Torres’s birth in the Demographic Registry of Puerto Rico be corrected, that petitioner’s name be changed to Alexandra and that petitioner’s sex be \* 196 recorded as female. After the corresponding proceedings before the Court of First Instance and the Court of Appeals, this Court, by means of a Judgment issued June 30, 2000, agreed to grant the request. Associate Judge Negrón García delivered a concurring opinion. He supported said legal action on the principle of equity, established in the Civil Code of Puerto Rico, which sets forth the following: “when there is no statute applicable to the case, the court shall decide in accordance with equity, as defined in Article 7 of the Civil Code.”<sup>2</sup>

In *Andino Torres, ex parte*, supra, then Associate Justice Corrada Del Río issued a dissenting opinion wherein he stated the reasons that, in addition to the limitations imposed by the Demographic Registry Law of Puerto Rico, preclude the recognition of a change of sex in the official documents of the State. Today we support that evaluation, analysis and its legal grounds, and we include other reasons that the Government has expressed, that likewise preclude the recognition of the so-called physical reassignment of sex in the official documents of the State as an issue of pressing interest. Let us now take a look.

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<sup>1</sup> 24 L.P.R.A. secs. 1071–1074, 1101–1110, 1131–1139, 1161–1166, 1191, 1211 and 1231–1238.

<sup>2</sup> Article 7 of the Civil Code states: “Any court which shall refuse to render a decision on the pretext of silence, obscurity or insufficiency of the laws, or for any other reason, shall be held liable therefor. “When there is no statute applicable to the case at issue, the court shall decide in accordance with equity, which means that natural justice, as embodied in the general principles of jurisprudence and in accepted and established usages and customs, shall be taken into consideration.” 31 L.P.R.A. sec. 7.

## II

On October 27, 1970, Mr. Alexis Delgado Hernández was born in Puerto Rico, displaying male phenotype. On May 23, 2003, in the state of Colorado, he underwent a surgical intervention. On December 22, 2003, Delgado Hernández submitted a petition before the Court of First Instance of Puerto Rico asking to amend the entry reflecting petitioner's birth in the Demographic Registry of \*197 Puerto Rico and petitioner's driver's license and, thus, that both would be changed to reflect petitioner's name as Alexandra and petitioner's sex be recorded as female. The Court of First Instance of Puerto Rico, by means of a resolution, ordered the Demographic Registry and the Department of Transportation and Public Works to make the requested changes, both the name change and the change of sex.

Subsequently, the Attorney General appeared before the Court of Appeals to request that the appealed resolution, handed down by the Court of First Instance, be reversed. That court, following appearance by both parties, proceeded to reverse the aforementioned order issued by the Court of First Instance. As primary grounds, it stated that the Demographic Registry Law of Puerto Rico does not contain a provision that allows a birth certificate to be amended to change the sex of the person registered, in absence of circumstances that indicate that the original entry was the result of an error.

Mr. Alexis Delgado Hernández appeared before us to ask that we revoke the judgment issued by the Court of Appeals and that we uphold the order originally issued by the Court of First Instance.

## III

We have no doubt whatsoever about the right held by all people to express and experience their sexuality in the manner they deem appropriate, within the scope protected by the constitutional right to privacy. However, those wishes cannot transcend and disrupt the formality and officiality of the documents issued by the Government; and much less can the State legitimize and officialize something that was not supported with expert and scientific evidence, as has occurred.

In *Andino Torres, ex parte*, supra, p. 837, Associate Justice Corrada Del Río stated, quoting the scholar Díez Del Corral Rivas: “no matter how much a person feels like a woman, that circumstance cannot be enough to encourage \*198 and officially accept a condition or situation that exists solely in the psychology of the individual.”<sup>3</sup> Based on this premise, we propose the following question, as an issue of scientific reality: Did a sex change occur?<sup>4</sup> The psychological factor determines the character and social and individual behavior of a human being, but does not alter the scientific reality of the individual's sex.<sup>5</sup>

The central issue in the case under consideration lies in the fact that, by the petitioner having undergone a surgery and the external genital parts of petitioner's body having appeared to have undergone a change, it was not established with expert and scientific evidence by the petitioner

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<sup>3</sup> J. Díez Del Corral Rivas, *Estado Civil y Sexo: Transexualidad* [Civil Status and Gender: Transsexuality], 2 Actualidad Civil 2135, 21565 (1987).

<sup>4</sup> *Andino Torres, Ex parte*, 151 D.P.R. 794, 834 (2000).

<sup>5</sup> *Id.*, p. 840.



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that, in fact, a transformation had occurred in petitioner's chromosomes. However, to determine the sex of a person who was subjected to a surgical intervention, it is not enough to check the external part of his or her body. It is necessary to evaluate, additionally, the person's chromosomal, genetic, hormonal and psychological characteristics.<sup>6</sup>

The sexual classification corresponding to a person is defined at the time of the person's birth, taking into consideration the phenotype displayed by the newborn. This displayed phenotype, with limited exceptions, normally coincides with a typical chromosomal structure of the corresponding sex. It is for this reason that, using scientific tests, we can determine with exactness, with a chromosome test, what the sex of that person is, given that the male sex is identified by having the XY chromosomes and the female sex by having chromosomes [*sic*: having XX chromosomes].

We are aware of the existence of a variety of disorders that are manifested in different ways.

Such is the case of hermaphrodites, to mention one of \*199 them. In these cases, the person cannot remain indefinitely in a state of uncertainty about what their sex is, nor within a special classification, and therefore it becomes necessary for that person to choose one of the two options that, as an anomaly, their body presents. Meaning, in these cases, the person has to define their sex after birth. This is not the situation before us. The possibility of a sex change being recognized in the official documents of the State, without expert and scientific evidence to justify it, would create an anomaly situation in different areas of our legal system. It would allow, among others, circumventing the prohibition set forth in our Civil Code related to the celebration of marriages between people of the same sex. Art. 68 of our Civil Code,<sup>7</sup> sets forth:

Marriage is a civil institution that results from a civil contract by virtue of which *a man and a woman mutually agree to become husband and wife, and to fulfill each for the other the duties that the law imposes upon same*. It shall be valid only when celebrated and solemnized pursuant to the prescriptions for same, and can only be dissolved by the death of either of the two spouses, in the cases expressly provided for in this chapter. *Any marriage between persons of the same sex or transsexuals contracted in other jurisdictions shall not be valid or legally recognized in Puerto Rico.* (Emphasis added.)

Marriage is a contract by virtue of which *a man and a woman* mutually agree to become husband and wife. Any marriage between *persons of the same sex or transsexuals* contracted in another jurisdiction *is not valid or recognized* as valid in Puerto Rico. To include or record, as the petitioner claims, the external results of a surgical intervention in the genital area of petitioner's body in the entry of the Demographic Registry, where petitioner's birth was registered, would allow for marriages to occur between people of the same sex, one of them a transsexual, when the chromosomal and \*200 biological condition of the latter has not been demonstrated, with

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<sup>6</sup> Id., p. 835.

<sup>7</sup> 31 L.P.R.A. sec. 221.

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expert and scientific evidence, as altered. For all legal purposes, it would be a marriage between people of the same sex, in open violation of the statutory prohibition.

Despite that the aforementioned statute refers to the ban on contracting marriage between people of the same sex or transsexuals *in other jurisdictions*, obviously this ban extends to marriages of this type that are celebrated in Puerto Rico. To interpret the statute as if the aforementioned prohibition did not include marriages of this type celebrated in Puerto Rico would be absurd. The statute prohibits the celebration of marriages between people of the same sex or transsexuals in Puerto Rico. It contains a clear mandate on the invalidity of marriages of this type being entered into.

Authorizing the officialization of a change of sex in the documents of the State, in cases like this one, opens the door to granting adoptions of minors to same-sex adopting couples, an act that goes against the values and legal regulations in force in our jurisdiction.

Another consequence of allowing a change of sex in the official documents of the State is the detriment that this would have to the certainty and trustworthiness that those documents currently have, more specifically, the birth certificate issued by the Demographic Registry of Puerto Rico. The birth certificate is perhaps the most important personal document that the Government in Puerto Rico issues. With this document, Puerto Rican citizens begin obtaining the accumulation of documents that we usually hold and use to establish our identity in official transactions of all types. If we were to allow an alleged sex change to be officially recorded on the birth record of a person in the Demographic Registry, that, in reality, has not been proven with scientific evidence, we would be subtracting \*201 certainty and trustworthiness from a document that is so important, as the birth certificate issued by that agency is. That would have serious consequences in relation to the local, national and international affairs of our citizens, because those documents are indispensable evidence of their identities, and they would no longer enjoy the certainty and trust that they hold today.

The psychological and emotional aspect of a human being does not alter the chromosomal, hormonal and genetic components that determine sex. Sex is a quality of the individual. When a person, who was born male, attempts to assume a female role, it is merely a particular way to experience his or her own sexuality.

When a person undergoes a surgical intervention, as in the case before us, the person only acquires a simple outside appearance of a change to the genital area, unless demonstrated otherwise with expert and scientific evidence.

The grounds explained above, in addition to the impediments established by the Demographic Registry Law of Puerto Rico, constitute a barrier to the recognition of a so-called sex change in the official documents of the State as the result of a surgical intervention, as in the case before us.

**The force of precedent in the law is heightened by that almost universal sense of justice which urges that all men are properly to be treated alike in like circumstances.”**

**Karl Llewellyn**

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#### IV

Based on the legal grounds set forth, we are in agreement with the result the Court has come to and the grounds used to uphold it, according to the Demographic Registry Law of Puerto Rico.

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Dissenting opinion issued by Associate Justice Fuster Berlingeri.

**Look, Sancho ... When equity may and should be brought into play, press not the utmost rigor of the law against the guilty; for the reputation of the stern judge stands not higher than that of the “compassionate.”**

**Advice from Don Quixote de la Mancha to Sancho on the occasion of the governance of the Isle of Barataria.**

The matter that the case under consideration deals with was resolved by this Court in *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000). In accordance with an imperious legal tradition that addresses the inherent essence of the judicial process, once we have resolved a matter in a certain manner, the rule that governed in the first case must also govern for all same or similar cases that subsequently arise. Fundamental considerations of equal treatment, and on the stability and certainty that the Law must have, inform the aforementioned tradition, which comprises any new decision on our part, even if only announced by means of a judgment. As the aforementioned reasons are so fundamental, bastions against arbitrariness and confusion, we have resolved that a decision we made on a certain matter must not be differed in subsequent cases wherein said matter again arises, unless our previous decision were to have been “*so manifestly erroneous that it cannot be sustained without violating reason and justice.*” (Emphasis added.) *Capestany v. Capestany*, 66 D.P.R. 764, 767 (1976). See: *San Miguel & Cía. v. Guevara*, 64 D.P.R. 966, 974 (1946); *Banco de Ponce v. Iriarte*, 60 D.P.R. 72, 79 (1942), as cited in *García Fernández, Ex parte*, 44 D.P.R. 296, 297 (1932). \*203

The majority of the Court is now sheltering itself behind a mere managerial policy of this forum, in the provincial distinction between a *judgment* and an *opinion*, to resolve the case under consideration in a manner contrary to how we decided *Andino Torres, ex parte*, supra. It resorts to the simplistic excuse that our decision in that case was just a judgment and, therefore, that we are not bound by it.

What the majority does not do is explain what differences, if any, exist between the facts of the case under consideration and the facts of *Andino Torres, ex parte*, supra, that *justify a decision in the case under consideration to the contrary of the decision of the previous case*. The majority of the Court seems to not realize that if this court, or any other, can decide essentially identical cases in disparate manners, *then the Law does not prevail—arbitrariness prevails*. The essence of the rule of law in regard to judicial function is precisely *equal treatment of similar cases*. It is the cornerstone on which any legitimate judicial system and the people’s trust in justice are built, proclaimed as such by the greatest legal scholars of our time, including: Cardozo,<sup>1</sup> Brandeis,<sup>2</sup> Llewellyn,<sup>3</sup> Pound<sup>4</sup> and Bodenheimer.<sup>5</sup> We have expressly applied this extremely fundamental

<sup>1</sup> B. Cardozo, *The Nature of the Judicial Process*, New Haven, Yale U. Press, 1921, p. 149.

<sup>2</sup> *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932).

<sup>3</sup> “Case Law”, 3 *Encyclopedia of the Social Sciences*, p. 249 (1930).

<sup>4</sup> R. Pound, *The Theory of Judicial Decision*, 36 Harv. L. Rev. 641 (1923).

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principle in Puerto Rico for almost one hundred years. See *Delgado v. Pimentel*, 20 D.P.R. 556 (1914). It extends to all *judicial decisions* regardless if they are issued as judgments or opinions.

The majority supports their rationalization of complete nonsense in *Rivera Maldonado v. E.L.A.*, 119 D.P.R. 74 (1987). There, we certainly made a distinction about value as a precedent that exists between our judgments and our opinions. *But we also clearly explained the reason that the distinction is based on as being one of \*204 judicial economy, and not one of authority or legitimacy*, something that the majority of the Court has ignored by using said decision to support themselves now. We explained then that as a general rule in our opinions, by means of which we address matters that require establishing a guideline, “the issues involved are extensively considered *and are grounded with reasoning, explained precedents and recognized scholars.*” On the other hand, the judgments are used “*to rule on the enormous number of cases that [the Court] must resolve as quickly as possible,*” those that bring up “*issues repeatedly resolved by this Court.*” (Emphasis added.) *Id.*, p. 80 esc. 7. These judgments, that evidently we do not ordinarily use to resolve *new* issues, have “*the intrinsic persuasive value of their legal grounds.*” (Emphasis added.) *Id.*, p. 80. They are, therefore, one of the two regular variations of our judicial task: one type of opinion from the Court that usually does not have an extensive exegesis of the applicable Law, but has the force of law, and that, in some instances, we order published.

Pursuant to the above, to ignore our decision in *Andino Torres, ex parte*, *supra*, which was published, the majority must explain at least why they believe its grounds erroneous, especially considering that, by means of said decision, *a new question was resolved*. The judgment of *Andino Torres, ex parte*, *supra*, included as express reference the grounds of the concurring opinion that accompanied it, and therefore the Court majority now must indicate why it deems them erroneous. See *Am. Railroad Co. v. Comisión Industrial*, 61 D.P.R. 314, 326 (1943). However, the majority of the Court *does not explain* in the case under consideration why it believes our previous decision in *Andino Torres, ex parte*, *supra*, was mistaken. And, as we already stated, neither does it indicate what differences, if any, there are between the facts of that decision and the facts under consideration here that justify arriving at a different outcome. Hence, it is clear that *the majority has not formulated a worthy basis of any kind in virtue of which it would be lawful \*205 to ignore our previous opinion on the matter that concerns us here.*

The majority of the Court, in the case under consideration, should have ruled as we did in *Andino Torres, ex parte*, *supra*. Our decision there was not manifestly erroneous; *much less would it violate reason and justice to resolve the case under consideration as we did in the previous case*. That decision was severely criticized by some religious sectors of the country *and so we paid the price of exercising our fundamental judicial mission with verticality*. But this Court cannot become intimidated out of fear of that criticism. I, at least, cannot take steps backwards as a Justice just because some powerful sectors of the public opinion do not agree with the way that a duty of conscience was fulfilled, especially when I have reasons to believe that the aforementioned criticism did not even objectively weigh the solid grounds of our previous decision.

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<sup>5</sup> E. Bodenheimer, *Jurisprudence: the Philosophy and Method of the Law*, Cambridge, Harvard U. Press, 1962, p. 193.

## I

To conclude this brief dissent, I think it is worth noting two points about the issue that concerns us here. The first is related to the group of people to which the petitioner Alexis Delgado belongs. *Transsexuals* like him [*sic*: her] must distinguish themselves from other groups that they are mistakenly confused with, such as *transvestites*, *intersexuals*, *homosexuals*, and *bisexuals*. See T. Flynn, *Transforming the Debate: Why we Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality*, 101 Columbia L. Rev. 392 (2001). Transsexuals are people who are *very different* from others, recognized as such not just by medical and psychiatric sciences, but also by the courts<sup>6</sup> and professional legal literature \*206.<sup>7</sup> Transsexuals suffer from a *recognized medical condition*, for which various therapies and specific treatments have been developed specifically for them. These transsexual people suffer from the serious discordance of feeling with their entire being that they are a man or a woman, despite that their anatomical features are of the opposite sex. Scientific literature is full of studies and monographs about this anomaly condition, which emphasize the *anguished existence* that those who have it suffer from, leading some of them to suicide or, at least, attempting to take their own lives. What these transsexual people want most is to be able to correct the involuntary sexual identity disorder they suffer from, to thus be able to integrate their existence and *live as normally as possible*. Their condition as transsexuals, as such, has nothing to do with, for example, the inclination of transvestites to dress in clothing of the opposite sex or the inclination of homosexuals to have intimate relationships with people of the same sex—it is entirely to the contrary.

The second point that must be noted is that approving the specific request of Alexis Delgado in this case means only, in my opinion, that there are not sufficient legal grounds that justify *making the petitioner's life worse* here, as will occur as a result of the majority's decision.

*It is very important to clearly understand what is before our consideration in this case—what it is, exactly, that we are being asked to do.* What Delgado seeks in this case is *solely* that an aspect of Delgado's identity be modified in two legal documents: the birth certificate and the license to drive motor vehicles. Meaning, we are being asked *to amend two documents so that petitioner's sexual identification therein coincides with petitioner's current physical appearance* \*207. It is easy to understand the great need that Delgado has to achieve the modification of the documents requested. Just think of the *problems that will occur*, for example, if Delgado is pulled over by a police officer who asks to see a driver's license where the sexual identification does not correspond to Delgado's present physical appearance; likewise to what would happen if Delgado were going to open a bank account, apply for a job, or so many other day-to-day transactions where Delgado must produce some type of identification document.

The petitioner had already undergone the sex change operation before coming to this Court. *The new circumstances of the petitioner are an irreversible fact that no one can remedy.* We are only responsible for deciding if we make the petitioner's life easier now, *specifically in the manner*

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<sup>6</sup> See the indication about this matter in *Littleton v. Prange*, 9 S.W.3d 223, 226 (1999), wherein the Supreme Court of Texas ruled against a transsexual, but recognized that the condition is different than that of a homosexual.

<sup>7</sup> The condition of transsexuals and their special characteristics have been the subject of numerous scholarly monographs in the field of Law. Just as illustration, see: M. Bell, *Transsexuals and The Law*, 98 Nw. U.L. Rev. 1709 (2004); M. Aubin, *Defying Classification: Intestacy Issues for Transsexual Surviving Spouses*, 82 (No. 4) Ore. L. Rev. 1155 (2003).



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*that has been requested of us here*, or if we are going to join those who are unaffected by the anguished existence that this human being has suffered because of this extensive sexual identity disorder, an anguished existence that *Delgado must continue to suffer* because of the majority decision.

For me, the course of action that we must take, based on reasons of law and human solidarity, is clear.<sup>8</sup> There are more than enough legal grounds to grant what is being requested of us, in accordance with how we ruled in *Andino Torres, ex parte*, supra. To not do so represents not only an unfair and ominous abandonment of a precedent set by us, but also a refusal to sympathize with the deep unhappiness of a human being. This lacks both justice and a commitment to solidarity.

In summary, we are not here and now deciding the validity of so-called “marriages” of homosexuals or the so-called “de facto unions” of people of the same sex, nor any other similar difficult issue. This case solely deals with helping a human being, who has suffered an anguished existence, so that life in the future could be a bit easier by means of the modification of two specific \*208 documents. I am sorry that the majority of the Court does not share this viewpoint, and I dissent from their opinion.

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<sup>8</sup> See J. Fuster Berlingeri, *La solidaridad en el proceso judicial* [Solidarity in the judicial process], 41 (No. 1) Rev. Der. Pur. 1 (2002).

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Dissenting opinion issued by Associate Justice Fiol Matta.

Five years ago, this Court had the opportunity to resolve a dispute identical to the one that this case brings before us. It did so by means of a published judgment, in favor of the request. We set forth, in that case, that the Demographic Registry could amend the birth certificate of a transsexual human being<sup>1</sup> that had undergone a sex reassignment operation.<sup>2</sup> *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000).<sup>3</sup> Today, the pendulum has swung in the other direction. However, our legal conscience requires us to set forth that we agree with the pluralist opinion above from this Court and, in particular, with the grounds set forth in the concurring opinion issued in this case by Associate Justice Negrón García, that Associate Justices Hernández Denton and Fuster Berlinger also joined. \*209

The dispute that is again before our consideration offers us the opportunity to use our adjudicating authority to hand down a decision protected by the elemental principles of equity and to accommodate the interpretation of our laws to advances in modern science. On the understanding that the majority opinion unjustifiably refuses to grant the remedy requested, resorting to an excessively rigid interpretation of the Law, we respectfully dissent.

## I

On December 22, 2003, the petitioner, who was registered at birth with the name Alexis Delgado Hernández, submitted before the Court of First Instance a sworn petition so that petitioner's birth certificate would be corrected in relation to petitioner's new name, Alexandra Delgado Hernández, and petitioner's sex, from male to female. It was also requested that petitioner's driver's license and file at the Department of Transportation and Public Works be corrected in the same manner. Along with the request, petitioner attached the birth certificate, from which it can be seen that petitioner was born October 27, 1970, was registered in the Demographic Registry on November 16 of that same year under the name Alexis and was identified as a male. Petitioner also submitted documentary evidence that petitioner had undergone a sex change operation. That evidence consisted of one sworn declaration from Dr. Stanley H. Biber, issued the same day of the operation—May 23, 2003—attesting that he had operated on Alexandra at the Mount San Rafael Hospital in Colorado. Specifically, he certified that, as a consequence of

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<sup>1</sup> According to the work of the Universidad de Navarra [Navarre University], *Diccionario de Medicina* [Dictionary of Medicine], Madrid, Ed. Espasa Calpe, 2001, p. 1200, transsexualism is a “disorder of sexual identity that consists of the desire to live and be accepted as a member of the opposite sex. It tends to be accompanied by feelings of discomfort or disagreement with one's own anatomical sex and with the intention of undergoing a surgical or hormonal treatment to make one's body agree, as much as possible, with the preferred sex.” In almost all societies and ages, there have been people who have performed jobs and even who have related socially as if they were a different sex. See: C. Garaizabal Elizalde, *Problemas de diagnóstico en los casos de transexualidad* [Diagnostic problems in cases of transsexuality], 40 Rev. Psicoterapia (1999); A. Becerra-Fernández, *Transexualidad* [Transsexuality], Madrid, Ed. Díaz de Santos, 2003.

<sup>2</sup> This operation is completely valid in our system of law and no provision exists that prohibits it.

<sup>3</sup> *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000), dealt only with one *ex parte* petition so that the name and sex of a post-operative transsexual would be corrected on the birth certificate; it was not requested that said information be corrected likewise on the driver's license. The matter in relation to the possibility of correcting this information on the driver's license, set forth by the petitioner, will be addressed in paragraph IV of our dissenting opinion.



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this operation, “*the sex designation of the same person was changed completely from male to female.*”

On January 20, 2004, the lower court ordered the petitioner to submit a clear criminal record certificate issued in the name of Alexis Delgado Hernández. It also granted a period of time to the Attorney General’s Office \*210 so that it could state its opinion on the request for certificate correction. *It specified that, if it did not do so, the court’s understanding would be that it accepted the petition.* The petitioner submitted the requested certification in a timely manner, *but the Attorney General’s Office never appeared to express its position.*<sup>4</sup> Finally, on February 23, 2004, the court of first instance issued a resolution, wherein it declared the following:

This Court ORDERS the Demographic Registry to correct the entry of registration of birth of the petitioner so that it appears that petitioner’s sex is FEMALE and that petitioner’s name is ALEXANDRA DELGADO HERNÁNDEZ, name by which petitioner is known and which is the one chosen to be used in accordance with petitioner’s new reality. It also orders the Department of Transportation and Public Works, Motor Vehicles Division, to make the corresponding changes in terms of name and sex on the driver’s license. Appendix, Attachment 2, p. 2.

After the aforementioned resolution had been handed down and almost three months after the period granted by the Court of First Instance for the Attorney General’s Office to appear, the District Prosecutor requested copies of the documents in the court records from the General Clerk of the same court. On April 12, 2004, a petition for *certiorari* was submitted before the Court of Appeals, requesting the reversal of the resolution issued. Eleven days later, on April 23, 2004, that court issued the record requested and granted a period to the appellee, herein petitioner, to submit a brief. Finally, on June 22, 2004, the Court of Appeals issued a ruling that reversed the decision of the lower court in its entirety.

On August 5, 2004, the petitioner submitted the petition for *certiorari* that we are addressing. As the only error, it indicated that the intermediate appellate court erred by reversing the resolution of the court of first instance and denying the request for the birth certificate and driver’s license records to be corrected \*211. We issued the writ of *certiorari* and the appeal was submitted once the Attorney General filed its brief on March 3, 2005.

## II

We subscribe entirely to the concurring opinion issued in *Andino Torres, ex parte*, supra, by then Associate Justice Negrón García along with current Chief Justice Hernández Denton and Associate Justice Fuster Berlingeri.<sup>5</sup> The foregoing thoroughly examined the provisions of the

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<sup>4</sup> This fact denotes a gross lack of diligence from the appellee, if it believed, as it now states before us, that the issue was one of great importance, it should have complied with the order within the term originally granted.

<sup>5</sup> *Andino Torres, ex parte*, supra, p. 797–811. Associate Justice Naveira de Rodón concurred with the result of the decision “with the understanding that it is limited to interpreting the concept of ‘sex’ within the specific context of this case, in terms of making a change to the written record that appears on the Birth Certificate issued by the Demographic Registry. This is an area that must be developed case by case and the ruling certified today should not

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Demographic Registry Law of Puerto Rico, Law No. 24 of April 22, 1931 (24 L.P.R.A. secs. 1071–1074, 1101–1110, 1131–1139, 1161–1166, 1191, 1211 and 1231–1238), which regulate modifications to the information contained in the Demographic Registry. It concluded that the law had a gap in regard to modifications for change of sex and that this Court was obligated to fill that gap, applying equity, as required by Art. 7 of the Civil Code, 31 L.P.R.A. sec. 7:

A court that refuses to render a decision on the pretext of *silence, obscurity or insufficiency of the law*, or for any other reason, shall be held liable therefor.

When there is no statute applicable to the case at issue, the court shall decide in accordance with *equity*, which means that natural justice, as embodied in the general principles of jurisprudence and in accepted and established usages and customs, shall be taken into consideration. (Emphasis added.)

Applying this article to the case before us, we must specify, from the start, two fundamental concepts. The first is \*212 the base concept or element *sine qua non* of “silence, obscurity or insufficiency of the law;” the second is, specifically, the principle of “equity,” with its enormous regulatory and ethical richness.

Half a century ago, Felipe Clemente de Diego, in a speech published by the Royal Academy of Jurisprudence and Legislation of Madrid, dealt with the subject of so-called “gaps” in the law, which is what Art. 7 of our Code, *supra*, calls “silence, obscurity or insufficiency” of same.<sup>6</sup> In an extensive discussion that holds the same force and relevance today, the eminent scholar concluded the following:

It appears then, that the word ‘gap’ represents in our spirit something that is lacking in a thing or group that cracks, breaks or detains its continuity, limiting its extension and content and therefore resulting incomplete and insufficient. ... *Rightly, it also applies to the law that, in the regulation of the relationships of social coexistence and their potential conflicts, does not contain a necessary or appropriate provision for the protection of the interests of the Community or of its members.* (Emphasis added.) F.C. de Diego y Gutiérrez, *De las lagunas de la ley* [Regarding gaps in the law], Madrid, Real Academia de Jurisprudencia y Legislación, 1945, p. 39–40.<sup>7</sup>

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be understood to project beyond the change it authorizes.” Id., p. 796. Associate Justice Rebollo López delivered a dissenting opinion and was joined by Chief Justice Andréu García. Associate Justice Corrada Del Río issued a dissenting opinion.

<sup>6</sup> Although some scholars deny the possibility of gaps in the law, “the legislator himself recognizes the existence of gaps when, in absence of law or applicable tradition, he refers the general principles of the Law to the Judge.” G. García Valdecasas, *Parte general del Derecho Civil español* [General Party of Spanish Civil Law], Madrid, Ed. Civitas, 1983, p. 115. See, for example, D. Espín Cánovas, *Manual de Derecho Civil Español* [Manual of Spanish Civil Law], 3rd ed., Madrid, Ed. Edersa, 1968, Vol. I, p. 129 et seq.

<sup>7</sup> Puig Brutau does not favor the term “gap” in the law. As he explains, “it would be more appropriate to talk about the legal imperfection or lack of foresight of the regulations enacted.” He also states that the concept corresponds in English to an “*unprovided case or case of first impression.*” J. Puig Brutau, *Fundamentos de Derecho Civil* [Foundations of Civil Law], 2nd ed., Barcelona, Ed. Bosch, 1989, Preliminary Ch., p. 309.

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Gaps occur because “the law is very rarely born perfect, complete, of the mind of the legislator, as experience from all eras has proven. And even when born perfect, with that perfection relative to human works, very soon its insufficiency is revealed.”

From \*213 Diego y Gutiérrez, *op. cit.*, p. 54. The author elaborated on this concept by asserting:

The legislator, even with experience and extensive view of the whole of legal principles and of the complexity of social relationships, even with knowledge of the social needs of his community, cannot include in the law, to regulate them, all of the cases and problems that could arise in life. On the one hand, his attention is directed at the most important facts and cases that tend to arise, and with that, the possibilities are endless and therefore he does not regulate, nor is aware of, the extremely varying circumstances with which they could arise. *Id.*, p. 10.

Among the circumstances about which the law is quiet, are those due not only to a lack of foresight by the legislator, but “to a later change in social reality that brings up issues impossible to resolve when the law was enacted.” G. García Valdecasas, *Parte general del Derecho Civil español*, Madrid, Ed. Civitas, 1983, p. 115–116.<sup>8</sup> In this sense, acts are not the entirety of the Law, but an incomplete expression of it. Clemente de Diego, *op. cit.*, p. 53. The spaces that arise in the law and which are generally called “gaps” are the necessary assumption so that judicial law can be formed and recognized in a strict sense. It is here where the initiative of judges and courts is manifested, which shape, mold and adapt the law to these new situations. *Id.*, p. 8.

This Court has the obligation to fill the gaps existing in the law, according to the mandate of Art. 7 of the Civil Code, *supra*, to the extent that it requires that we, in absence of law applicable to the case, decide in accordance with equity and we attempt to harmonize the legal provisions that are or appear to be in conflict.<sup>9</sup> Therefore, if \*214 gaps appear in a statute, they are filled by means of jurisprudence. *Olmo v. Young & Rubicam of P.R.*, 110 D.P.R. 740 (1981). In *Pueblo v. Ortega Santiago*, 125 D.P.R. 203, 214 (1990), we elaborated on this particular and we stated:

The courts are authorized to interpret the laws when, among other circumstances, they are not clear or conclusive about a specific point; when the objective, in doing so, is to fill a gap in same; or when, with the objective of mitigating the adverse effects of the application of a law to a particular situation, justice requires as such. (Emphasis removed.)

In discussing equity, we must keep in mind that this is a principle that has governed Law for more than twenty centuries. According to Aristotle, equity is an expression of what is fair, but

<sup>8</sup> For a detailed explanation of other circumstances where legal gaps can arise, see Puig Brutau, *op. cit.*, p. 309–316.

<sup>9</sup> *Asoc. Cond. Balcones S.Ma. v. Los Frailes*, 154 D.P.R. 800 (2001). See: *Corraliza v. Bco. Des. Eco.*, 153 D.P.R. 161 (2001); *Flores v. Meyers Bros. of P.R.*, 101 D.P.R. 689 (1973); *Robles Ostolaza v. U.P.R.*, 96 D.P.R. 583 (1968); *Collazo Cartagena v. Hernández Colón*, 103 D.P.R. 870 (1975). See, also, *Asoc. Fcias. Com. v. Depto. de Salud*, 156 D.P.R. 105 (2002).

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not like the law is, and rather as “rectification of justice;” meaning, the rectification of the unfair results of its application to a specific case. A. Hernández Gil, *Conceptos Jurídicos Fundamentales, Obras Completas* [Fundamental Judicial Concepts, Complete Works], Madrid, Ed. Espasa Calpe, 1987, T. 1, p. 72. According to the philosopher, the Law must be complemented by equity and exception to the general rule, to be able to always attain a fair solution on the human level. J. Puig Brutau, *Fundamentos de Derecho Civil* [Foundations of Civil Law], 2nd ed., 1989, T. 1 preliminary, p. 309. This Aristotelian discussion on the interpretation of the laws in which equity is employed influenced not only Roman legal scholars<sup>10</sup> but, through Saint Thomas Aquinas,<sup>11</sup> also has had influence on the entire Western world. Id. See also, *Silva v. Comisión Industrial*, 91 D.P.R. 891, 899 (1968).

Because of its moderating power on the strictness of the law, the term “equity,” which is defined in various ways, is sometimes \*215 used as a synonym of justice.<sup>12</sup> García Valdecasas, *op. cit.*, p. 118. Thus, “[a]n equitable solution is one that seems appropriate or correct in certain circumstances, like something that corresponds to natural justice.” Puig Brutau, *op. cit.*, p. 332.

It is a well-known issue that general rules, because of their generality and intrinsic abstraction, cannot provide for all circumstances of the de facto situations that will fall under their dominions. García Valdecasas, *op. cit.*, p. 118. For that reason, “a rigorous application of the general rule that does not take the particular characteristics of each specific situation into consideration could lead, at times, to unfair outcomes. To avoid that, equity demands taking said particular characteristics into consideration, taking from the general rule the individual rule that is fair and appropriate to the specific case.” (Emphasis added.) Id., p. 119. At times, this is necessary because the general rule is in disagreement with the regulated situation and is no longer duly aligned to the current need: “Equity in this case has another meaning because it could call for a new Law, better than the one proclaimed by the current rule. In this circumstance, equity signifies a reflection on the mission of the Law, or as PRINGSHEIM has stated, *equity is the conscience of the Law.*” (Emphasis added.) Puig Brutau, *op. cit.*, p. 333.

Lastly, it is essential that we clarify that by using equity to fill a gap in the law, the courts do not usurp the function of the legislator. Rather, we use the principles that inform the applicable law to derive a rule that allows for the resolution of a new situation, that, while included within the scope of the law, is not set forth by same in its specific circumstances. Thus, the mission of the judge, under the scope of \*216 Art. 7 of the Civil Code, *supra*, is not to legislate, but to extract a rule for the specific case, based on what has already been set forth for the general case. If the courts were to abdicate this duty,

... the social situations worthy of protection would be left unprotected, inflicting serious harm to the interested parties and

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<sup>10</sup> In Roman law, equity characterized the rules that took the circumstances of the specific case into consideration (“*Ius aequum*”) versus those that did not allow for said circumstances to be considered (“*Ius strictum*”). García Valdecasas, *op. cit.*, p. 118.

<sup>11</sup> For a discussion on the meaning of the scholastic work of Saint Thomas, see Hernández Gil, *op. cit.*, p. 75–82.

<sup>12</sup> It has been said: “Cities and all groups of human beings are united together by the bond of equity, which is the keeper and soul of all human society.” L. Legaz y Lacambra, *El Derecho y el Amor* [The Law and Love], Barcelona, Ed. Bosch, 1976, p. 113 esc. 33, citing L. Vives, in the edition of the “*Obras Completas*” [Complete Works], *De tradendis disciplinis* (L. River, trad.), Madrid, Ed. Aguilar, 1948, T. II, p. 1948.

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even to the common good itself; and, needless to say, it would also place judges in the difficult predicament of denying *amparo* or protection to those situations ... Clemente de Diego, *op. cit.*, p. 31.

### III

The birth certificate is an official document issued and in the custody of the State that includes, among other information, the name and sex of the registered person, the date and place of their birth, the name and age of their parents, and their place of birth. This certificate is used to authenticate the identity of a person and their nationality, and also to obtain other official documents of the Government. Herein lies the importance for all people that the data in the birth certificate be correct, so that this data is also correct on the other documents that rely on that information.

The first legal gap that we must correct is found in Art. 31 of the Demographic Registry Law of Puerto Rico, 24 L.P.R.A. sec. 1231, specifically in the process for amending the birth certificate:

... Providing, that omissions or mistakes that appear on any certificate prior to being registered at the Department of Health can be corrected by inserting the necessary corrections or additions in red ink on said certificate, but *after it has been filed at the Department of Health, no corrections, additions or amendments of any kind that would substantially alter same can be made, unless by virtue of an order from the District Court, whose order, in said case, shall be filed at the Department of Health, with reference made to the certificate to which it corresponds ...* (Emphasis added.)

**\*217**

Below, cited Article 31 of the Civil Code describes the procedure for obtaining a judicial order that allows amendment to the registry. This article, among other things, sets forth the following:

The official document authorizing the correction or amendment of an entry in the former Civil Registry shall be registered by means of annotation issued in due form in the margin of the corrected registration. The correction, addition or amendment of a certificate already archived in the General Demographic Registry shall be done by inserting therein the corrections, additions or amendments authorized by the court. *Modifications that may be necessary shall always be done in a way so that the corrected word can be read.*

The change, addition or modification of first or last name can only be done by the request of the interested party, who must submit the request to any District Courthouse in a timely manner, stating under oath the reasons for the claim, accompanied by the relevant documentary evidence in support of the request. A copy of the request and all documentary evidence shall be sent to the Attorney General's Office at the same time it is filed.



Ten (10) days after delivery and notification to the Office of the Attorney General, if the latter has not filed any objection, the court shall understand and decide on the merits of the petition without the need to hold a hearing or at its discretion it may hold a hearing if it deems appropriate, and shall hand down the appropriate ruling. (Emphasis added.)

Finally, the aforementioned Art. 31 establishes the internal procedure for the way that corrections ordered through judicial order shall be amended:

The official document authorizing the change, addition or modification of a first or last name shall be registered in the former Civil Registry by means of an annotation issued in the margin of the registration of birth of the interested party and in the margin of the marriage certificate. The change, addition or modification of first or last name shall be verified in the General Demographic Registry, correcting on the birth certificate and on the certification of marriage of the interested party, the first or last name being replaced and recording the new first or last name authorized by the court. *Corrections shall be made in such a way that the deleted first or last name can still be read.* (Emphasis ours.)

For its part, Sec. 1071-19 of Regulation Number 1 of the \*218 Demographic Registry (Regulation No. 316 of the Department of Health) of February 16, 1932, governs corrections or alterations after the registration has been made:

After a certificate has been accepted by the registrar, it cannot undergo any changes, erasures or modifications, nor can they be made to the transcription done in the book of clerical errors on record, *without due process of law*. Clerical errors that appear on any certificate when submitted for registration or after having been registered, consisting of an incorrect first name, last name, or non-essential word or phrase, can be corrected by writing the incorrectly written word or words correctly in red ink or inserting the omitted word or words. *Modifications that may be necessary shall always be done in a way so that the corrected word can be read.* To make said corrections, registrars shall require the evidence that, as applicable, they deem necessary. (Emphasis added.)

The majority opinion offers an extensive description of the entity of the Spanish Civil Registry, supported by Spanish legal scholars. However, although it mentions several judgments by the Supreme Court of Spain that interpret the Civil Registry Law, it does not explain that those have allowed for *name and sex* of transsexual people to be amended on birth certificates in the Spanish Civil Registry.<sup>13</sup> The concurring justices in *Andino Torres, ex parte*, supra, pointed out

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<sup>13</sup> Judgments from July 2, 1987; July 15, 1988; March 3, 1989; and April 19, 1991.

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this legal reality of the country where, as the majority opinion states, our Demographic Registry system comes from. Thus, they explain that in Spain, the Spanish Supreme Court has repeatedly decided

... that the amendment of the annotation of sex in the Civil Registry, product of a surgical modification, is not included in the Civil Registry Law; second, that this omission constitutes a gap in the law that the courts must correct [by] applying equity, and; third, *that based on the application of equity, it results that the change of the annotation of sex in the Civil Registry is permissible.* (Emphasis added.) *Andino Torres, ex parte, supra, p. 804. \*219*

In filling the gaps in the provisions that regulate amendments to birth certificates, we must take the current trend into consideration. The aforementioned Spanish judgments are, clearly, right to the point. Also, recently, the European Court of Human Rights recognized the right of transsexual persons to amend their birth certificate, in the case of a transsexual person who was born male but underwent surgery to live her life as a woman. *Goodwin v. United Kingdom*, 35 Eur. Ct. H.R. 18 (2002). In the United States, the Social Security Administration allows a change to be made in the designation of sex on Social Security records when a “clinical or medical record or other combination of documents showing the sex change surgery has been completed” is submitted.<sup>14</sup>

There is a general concern, reflected in both the majority opinion and in the ruling by the Court of Appeals, and in the brief of the Attorney General, that allowing the requested amendments would harm the historical nature of the Registry and diminish the use of the certificate for statistical purposes.<sup>15</sup> Also, it speculates on the possibility of fraud to third parties. **\*220**

We do not share these concerns. In the first place, as the concurring Justices explained in *Andino Torres, ex parte, supra, p. 798*, “the historical nature of the certificate is what compels the adoption of mechanisms for amendment that, without ceasing to reflect the condition of the newborn, also reflect the vital statistics of his or her history. What a small history it would be if it

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<sup>14</sup> Order RM 00203.210, Changing Numident Data— Name Change, October 3, 2002. Likewise, the State Department of the United States of America has allowed amendment of both name and sex on the passport, if certain requirements are met. M. Bell, *Transsexuals and the Law*, 98 Nw. U.L. Rev. 1709, 1738 (2004).

<sup>15</sup> The majority opinion also mentions that this Court has ruled that the process for amending or correcting the birth certificate should be interpreted restrictively. To that effect, it refers to two cases; one from 1946, resolved before the law was amended to allow amendments to the certificate; and the other from 1980, the facts of which have no relation to what we are addressing today, *Ex parte Pérez*, 65 D.P.R. 938 (1946), and *León Rosario v. Torres*, 109 D.P.R. 804 (1980). Both cases are clearly discernible from the dispute we examine today. It is important to note that by referring to *Ex Parte Pérez, supra*, the concurring opinion in *Andino Torres, ex parte, supra, p. 801*, concluded that the restrictive interpretation used therein to deny the change of the last name of the petitioner was inadmissible, because although “the Law of 1931 did not *expressly* provide for a change of name, *neither did it prohibit it.*” (Emphasis in the original.) Clearly, a restrictive analysis would move us away from the civil law methodology that must prevail in our judicial system and which orders us to interpret the law using equity. But, more importantly still, *none of these cases had the possibility of a violation of fundamental rights protected in our Constitution.* We reject a restrictive interpretation in these circumstances.

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stopped at birth!” (Emphasis added.)<sup>16</sup> On the other hand, the law and the regulation of the Demographic Registry require that, to amend the original birth certificate, corrections be used, which allow for the original information to be maintained for statistical and historical purposes. In this way, the historical document is maintained for internal use by the Registry and the alleged possibility of fraud to third parties is avoided,<sup>17</sup> because *the original information does not disappear—it is amended*.

The judgment from the appeals court that the majority of this Court confirms sustains that the sex reassignment surgery does not alter the chromosomes of the person operated on and that, therefore, we must conclude that the transsexual person did not really change sex. This argument was compiled in the concurring opinion delivered by Associate Justice Rivera Pérez and underlies the majority opinion.

It is true that the sex reassignment operation does not alter the chromosomes, but that has nothing to do with the nature of the identification of sex that is done *for the \*221 sole purposes of issuing a birth certificate*. The determination of the sex of a newborn is limited to an observation of the appearance of the genitals, without the need for a laboratory test to determine if the chromosomes of the newborn correspond to outside appearance. Therefore, in the Demographic Registry, the information is completed to mark the box corresponding to sex, using, as the sole and exclusive criteria, outside appearance. To prove one’s sex, we cannot require a different standard from transsexual people who request the amendment of their birth certificates than the one ordinarily used. *In the specific case of Alexandra, we must use the same standard that was used when the petitioner was born thirty-five years ago, namely, the appearance of her genitals and other characteristics perceptible to the eye, as certified by an authorized physician. The doctor who operated on Alexandra certified that he had performed a sex reassignment medical procedure. That, along with the issue of a clear criminal history certificate and a judicial order, is sufficient, in legal terms, to authorize the change of sex in the Demographic Registry.*

Our analysis of the Demographic Registry Law brings us to the conclusion, contrary to the opinion that we dissent from, *that the description of amendments contained in the law is “numerus apertus” and there is no legal impediment of any kind for the Demographic Registry to fulfill the order from the court of first instance to amend the sex and the name of the petitioner on her birth certificate*. The law does not prohibit the requested amendment; to the contrary, it clearly allows for the possibility for Registry entries to be amended. Furthermore, the process for

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<sup>16</sup> It also observes the commitment imposed on the Demographic Registry to record the information as it is, *even after certifications*. Specifically, Art. 31 of the Demographic Registry Law, *supra*, states

“... that the certificates received monthly at its Department from those responsible for registries shall be carefully examined and shall demand the additional information that might be necessary for those that appear incomplete or defective, *for which every person who may have knowledge of facts related to any birth, marriage or death, shall be obligated to supply said information, when required to do so by the Ministry of Health, in person or by means of an accredited representative of same, by mail, or by means of the District Registrar.*” (Emphasis added.)

<sup>17</sup> “A transsexual does not have the intention of defrauding society, but, to the contrary, to correct a dilemma of his or her personality that the transsexual deems, for him or herself, fraudulent.” (Emphasis added.) *Andino Torres, ex parte, supra*, p. 809.



amendments through corrections allows us to derive the principles based on which we can construct the rule for the specific case we are dealing with. In this manner, equity and the law itself would lead us to decide that we should authorize the amendment requested by means of the process for amendments \*222 under the scope of Art. 33 of Law No. 24, *supra*, 24 L.P.R.A. sec. 1233.

#### IV

Let us move now to examine if the possibility exists for the Department of Transportation and Public Works to amend the name and sex of the petitioner on her driver's license and on her records at the Department of Transportation and Public Works. *This matter was not addressed by the majority opinion, despite that the petitioner clearly stated it in her indication of error.* As we will see, there is also a gap here that must be corrected using equity.

Vehicles and Transit Law of Puerto Rico, Law No. 22 of January 7, 2000 (9 L.P.R.A. sec. 5001), does not specify what the process that must be followed is if a person is interested in changing the information that appears on their driver's license. It is confined to stating, in its Art. 3.14 (9 L.P.R.A. sec. 5064), that the process for renewing licenses shall be established by the Secretary of the Department of Transportation and Public Works, by means of regulation. For its part, the Regulation to Establish the Requirements for the Issuance, Renewal, Change of Category or Name, Duplicate, Reciprocity of Certificate of Driver's License and Special Endorsement to Transport Materials and Dangerous Substances, Regulation No. 6277 of the Department of Transportation and Public Works of January 2, 2001 (Regulation), also does not specifically regulate a change of sex on a driver's license. Like the Demographic Registry Law, this regulation provides a general procedure for changes to the information contained on the license, in which it includes changes to name, address and category. Art. VII(G), (H) and (I). For a name change, the following is required: \*223

1. To meet the requirements established in Part A, General Requirements, of this Article, Sections (5), (6), (7), and (9).<sup>18</sup>
2. Sworn Declaration signed before an authorized Public Notary, setting forth the reasons for the petition, which must be accompanied by *one* of the following documents:
  - a) Acknowledgment Instrument.
  - b) *Judgment or decision by the Court.*
  - c) *Birth Certificate.*

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<sup>18</sup> Those requirements are:

“5. Internal revenue stamps according to the transaction requested ...

“6. Two (2) recent photographs ...

“7. Certificate from the Child Support Agency [*Administración para el Sustento de Menores, ASUME*], if applicable.

“9. Pay any outstanding administrative fees.” Regulation No. 6277 of the Department of Transportation and Public Works of January 2, 2001, Art. VII(A)(5), (6), (7) and (9), p. 11.

- d) Any other document, duly authenticated. (Emphasis added.) Regulation, *supra*, p. 13.

From the start, we see that this regulation also does not prohibit information corresponding to the driver's sex from being changed. Also, the process established for name change is equally appropriate for requesting a change of sex, for which it would be sufficient to submit even just one of the documents listed, among them, a judgment or decision from the court or a birth certificate. Therefore, we do not see legal impediment for, by interpreting this insufficiency of the law using equity, allowing the change of not just the name of the driver on the license, but also that which corresponds to sex.

## V

Although the majority decision maintains that “said brief ... however, does not clearly outline the legal grounds to uphold the validity of the decision by the lower court” (majority opinion, p. 178), the reality is that the petitioner appears before us by means of a brief \*224 that is founded on the essence of Justice itself.<sup>19</sup> It is clearly provided for in our Supreme Law, the Constitution of the Commonwealth of Puerto Rico, for the petitioner to demand the right to privacy and dignity, as it refers to our judgment in *Andino Torres, ex parte*, *supra*, and various Spanish judgments, for the purpose of persuading us to repeat the criteria that we adopted then.<sup>20</sup> In this manner, the petition's intention is that we use our authority as interpreters of the Constitution and the laws to interpret a gap in the law.

We agree with the concurring opinion of the Associate Justices Negrón García, Hernández Denton and Fuster Berlinger in *Andino Torres, ex parte*, *supra*, in how it affirms that refusing the petitioner the right to amend her birth certificate (and, in regard to the case before us, her driver's license) *would violate the principles guaranteed in Sections 1 and 8 of our Bill of Rights, L.P.R.A., Volume 1, which respectively protect the right to dignity and equality of all human beings and their right to privacy.*<sup>21</sup> *Andino Torres, ex parte*, *supra*, p. 806–810. It is important to note in this sense that the decision by the European Court in the case *Goodwin v. United Kingdom*, *supra*, was based partially on that denying an amendment on the birth certificate in respect to the sex of a post-operative transsexual person, violated Art. 8 of the European Convention for the Protection of Human Rights \*225 and Fundamental Freedoms, which states, similarly to our Constitution, that: “Everyone has the right to respect for his private and family life, his home, and his correspondence.”

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<sup>19</sup> In society, “man needs the Law.” J. Vallet de Goytisolo, *Panorama del Derecho Civil* [Panorama of Civil Law], 2nd ed., Barcelona, Ed. Bosch, 1973, p. 7. “It is about a spiritual need for Justice, almost as intense as the material need that a fish has for water.” *Id.*

<sup>20</sup> It also uses as persuasive material several articles related to the subject.

<sup>21</sup> The Constitution of the Commonwealth declares: “The dignity of the human being is inviolable. All men are equal before the Law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality.” Art. II, Sec. 1, Const. E.L.A., L.P.R.A., Volume 1, ed. 1999, p. 257. For its part, the Constitution of the Commonwealth also establishes that: “Every person has the right to protection of law against abusive attacks on his honor, reputation, and private and family life.” Art. II, Sec. 8, Const. E.L.A., *supra*, p. 301.

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We have already firmly established that Sections 1 and 8 of the Bill of Rights of our Constitution, *supra*, operate without the need for law that implements them. *Figueroa Ferrer v. E.L.A.*, 107 D.P.R. 250 (1978).<sup>22</sup> Neither the Demographic Registry Law nor the Regulations of the Department of Transportation, and much less, the decisions of this Court, can go above the provisions of our Supreme Law.

## VI

“The activity of the legal scholar becomes vain lip service or a futile set of concepts if, being concerned only with an extrinsic although competent technicality, it loses sight of the essential aim that has been assigned thereto: the realization of justice.” L. Legaz y Lacambra, *El Derecho y el Amor* [The Law and Love], Barcelona, Ed. Bosch, 1976, p. 113, citing Del Vecchio, *Aspectos y problemas del Derecho* [Aspects and Problems of the Law], Madrid, Ed. Espesa, 1967, p. 284–285.

The reasons to prevent a transsexual person from changing information in respect to his or her name and sex in the Demographic Registry and on his or her driver’s license, lose merit if we compare them with the harm resulting from this decision. We are reminded that, by definition, this is about a person who totally changes his or her sexual assignment, as has happened with the petitioner, who, although born male, identifies with the other sex to the extent of having undergone a complex surgery and hormone treatment. *We may fail to understand \*226 the anguish that brings a human being to such a drastic decision. We may, even, in our individual, internal selves, be against such a drastic solution to this situation of existential anguish.* But what is certain is that our legislation permits using the means provided by science to align one’s appearance to the desired sex, if a transsexual person, exercising his or her free will, decides to do so. Exercising thus the right to change sex, in the privacy that our Fundamental Law protects, we the courts, protectors of the Constitution, should not condemn them to be subjected to daily discrimination by presenting a driver’s license that does not correspond to their reality or a birth certificate that does not correspond to their identity.<sup>23</sup>

As the courts, we have the delicate responsibility to harmonize our interpretation of the Law with advances in science and technology.<sup>24</sup> Situations that, at the start, were inconceivable, are possible today due to advances in science. We have acknowledged as such in matters related to legal filiation. See: *Castro v. Negrón*, 159 D.P.R. 568 (2001); *Ramos v. Marrero*, 116 D.P.R. 357

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<sup>22</sup> Specifically, in the case *Figueroa Ferrer v. E.L.A.*, 107 D.P.R. 250 (1978), this Court was faced with the interpretation of our divorce law, which did not include nor prohibit a divorce under the legal system of mutual consent. On that occasion, on the basis of both rights, the right to dignity and the right to privacy, we undertook a legal interpretation that, as in the case under consideration, did not attempt to usurp the functions assigned to the Legislature, but to interpret the laws enacted by that branch of Government.

<sup>23</sup> We are legally aware of the use of the driver’s license for purposes of identification in the activities of daily life and of the birth certificate for matters as important as searching for employment. In regard to this, we have resolved that a worker seeking employment should not have to abdicate her right to privacy by allowing an employer to invade her mind and listen to her thoughts. *Both rights, the right to privacy and to employment, are inseparable from human dignity.* *Arroyo v. Rattan Specialties, Inc.*, 117 D.P.R. 35 (1986).

<sup>24</sup> According to the Royal Spanish Academy, *harmonize* means: “to place in harmony, or make it so that two or more parts of a whole do not disagree or reject each other, or two or more things that should agree for the same purpose.” *Diccionario de la Lengua Española* [Dictionary of the Spanish Language], 22nd ed., Madrid, Ed. Espasa-Calpe, 2001, p. 207.

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(1985); *Moreno Álamo v. Moreno Jiménez*, 112 D.P.R. 376 (1982); *Ortiz v. Peña*, 108 D.P.R. 458 (1979). Just two months ago, this Court decided to allow a DNA test to contest voluntary acknowledgment. *Mayol v. Torres*, 164 D.P.R. 517 (2005). The solution that the majority has adopted in this case constitutes an anomaly within this trajectory and is contrary to the legal grounds of these decisions. \*227

Transsexual people do not fit within the category of “female” or “male.” For this reason, they turn to science, which allows them to undergo operation and submit to hormone treatment to live their lives according to one of these two sexes: “A person who undergoes an irreversible operation to adapt his or her physical sex to their psychological desire does not want to live as a transsexual, as a classification that is strange and discordant with the duality of sexes culturally recognized.” *Andino Torres, ex parte*, supra, p. 808. The Law gives us the authority to interpret this reality and the Constitution tasks us with the responsibility to do so, ordering a simple amendment to the name and sex in the Demographic Registry and in the Department of Transportation and Public Works.

*The petitioner’s dilemma is not resolved or reduced with the half “remedy” that the majority opinion sets forth.* Granting her permission to change her name on the birth certificate from “Alexis” to “Alexandra,” while the description of her sex is maintained as “male,” leaves the very fact that the petitioner wishes to amend at the mercy of public scrutiny. We cannot forget that “a certain kindness is necessary for the effectiveness of the Law, and charity needs a Law that does so effectively.” Legaz Lagambra, *op. cit.*, p. 92. For this reason, it has been said that the Law is “the Art of the just.” J.B. Vallet de Goytisolo, *Panorama del Derecho Civil* [Panorama of Civil Law], 2nd ed., Barcelona, Ed. Bosch, 1973, p. 38–39. In this sense, it surprises us that the majority opinion recognizes that those who “have decided to undergo a sex reassignment surgery are those who have taken extraordinary measures in their fervent desire to live a regular life” and, however, they are not allowed to live this regular life, which is nothing more than a life where we guarantee them their privacy and dignity as human beings.

Based on the preceding legal grounds, we dissent. We would reverse in its entirety the judgment from the appeals court and we would confirm the order from the Court of First Instance \*228 that authorized the change of name *and* sex on the birth certificate of Alexandra, on the computerized records of that certificate, on her driver’s license and on the records of the Department of Transportation and Public Works.



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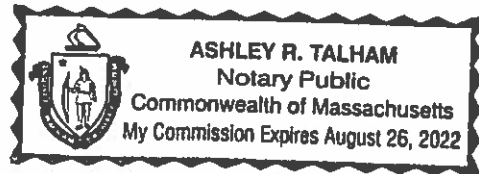
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165 D.P.R. 170, 2005 WL 1593435 (P.R.), 2005 TSPR 95

ALEXIS DELGADO HERNÁNDEZ, *Ex parte*.

En El Tribunal Supremo De Puerto Rico.

Número: CC-2004-708

PETICIÓN DE *CERTIORARI* para revisar una SENTENCIA de José L. Miranda De Hostos, Ismael Colón Birriel y Jorge L. Escribano Medina, Js. del Tribunal de Apelaciones, mediante la cual se revocó una resolución del Tribunal de Primera Instancia, que ordenó al Registro Demográfico corregir el asiento de inscripción de nacimiento de la parte peticionaria para que aparezca su sexo como femenino y que se cambie su nombre. Se le ordenó, además, al Departamento de transportación y Obras Públicas que realizara cambios de nombre y de sexo en la licencia de conducir del peticionario. *Se dicta sentencia en la que se confirma la dictada por el Tribunal de Apelaciones, en cuanto a su determinación de revocar la decisión del Tribunal de Primera Instancia que autorizó el cambio de sexo en el certificado de nacimiento del peticionario. Se revoca la determinación del tribunal apelativo de dejar sin efecto el cambio de nombre del peticionario en su certificado de nacimiento autorizado por el Tribunal de Instancia.*

José Luis Velázquez Ruiz, abogado de la parte peticionaria; Lizzette Mejías Avilés, abogada de la parte recurrida. \*176

LA JUEZ ASOCIADA SEÑORA RODRÍGUEZ RODRÍGUEZ emitió la opinión del Tribunal.

Tenemos ante nuestra consideración, nuevamente, la situación de una persona que habiendo nacido varón, se somete a una cirugía de reasignación de sexo y nos solicita que su certificado de nacimiento y su licencia de conducir se corrijan para que reflejen correctamente su identidad sexual.

## I

Alexis Delgado Hernández (Delgado Hernández) nació varón el 27 de octubre de 1970 en Fajardo, Puerto Rico. Dicho nacimiento se inscribió en el Registro Demográfico, según surge del Certificado de Nacimiento Núm. 152-1970-02267-000000-176071. El 23 de mayo de 2003 el recurrido fue sometido a una operación quirúrgica de reasignación de sexo (de varón a mujer) en el Mount San Rafael Hospital en Colorado.<sup>1</sup>

<sup>1</sup> Existe en el expediente una copia de la certificación médica a esos efectos titulada *Affidavit by Physician as to Change of Sex Designation*. Véase Apéndice del recurso de *certiorari*, pág. 5.

El 22 de diciembre de 2003, Delgado Hernández presentó una petición ante el Tribunal de Primera Instancia, Sala Superior de Humacao, para que se enmendaran su certificado de nacimiento, específicamente el asiento de inscripción que identifica su sexo como varón y su licencia de conducir para conformarlos a su nueva realidad. Solicitó, además, que dichos documentos oficiales reflejaran también que su nombre era Alexandra Delgado Hernández.

El 20 de enero de 2004, el foro de instancia emitió una resolución, en la que ordenó al aquí peticionario a someter un certificado negativo de antecedentes penales en un término de quince días. Además, le concedió al Ministerio Público un término de quince días para expresarse en torno a \*177 la petición y le advirtió que, de no hacerlo, se entendería que se allanaba a ésta. El 10 de febrero de 2004, el peticionario presentó una moción, acompañando el certificado requerido. El Ministerio Público no compareció.

Así las cosas, el 24 de febrero de 2004, el foro de instancia emitió una escueta resolución, donde ordenó al Registro Demográfico alterar el asiento de inscripción de nacimiento de Delgado Hernández para que apareciera que su sexo era femenino y que su nombre es Alexandra Delgado Hernández. Ordenó, a su vez, que el Departamento de Transportación y Obras Públicas realizara los cambios correspondientes en la licencia de conducir.



Inconforme, el Procurador General acudió ante el foro apelativo intermedio, y adujo que la determinación del tribunal de instancia era improcedente en derecho, por lo que debía ser revocada. Como asunto de umbral, le planteó al tribunal apelativo que la falta de diligencia del Ministerio Público al no comparecer ante el tribunal *a quo* a oponerse a la solicitud, no podía coartar el derecho del Estado a revisar la determinación del tribunal de instancia por ser éste un asunto revestido de alto interés público. El Tribunal de Apelaciones acogió la comparecencia del Estado.

En su escrito, el Procurador General argumentó que la determinación del tribunal de instancia era errónea, ya que el certificado de nacimiento tiene como propósito recoger un dato histórico cierto al momento del nacimiento, como lo es el sexo de una persona. Adujo que un transexual que se somete a una operación de reasignación de sexo de hombre a mujer sigue siendo hombre biológicamente, ya que sus cromosomas siguen siendo de varón; no ha ocurrido, verdaderamente, un cambio de sexo. Argumentó que darle curso a la solicitud de Delgado Hernández tendría como posible consecuencia que una persona que fuera transexual contrajera matrimonio con una persona de su mismo sexo biológico, en clara contravención a las leyes del Estado Libre Asociado de Puerto Rico.<sup>2</sup> \*178

<sup>2</sup> Adviértase que la Ley Núm. 94 de 19 de mayo de 1999 enmendó el Art. 68 del Código Civil, [31 L.P.R.A. sec. 221](#), donde se define el matrimonio, para negarle efectividad jurídica (“full faith and credit”) en Puerto Rico a un matrimonio de personas del mismo sexo o de transexuales efectuado fuera de la jurisdicción de Puerto Rico.

Delgado Hernández presentó su alegato en oposición al recurso presentado por el Estado. No queda claro de dicho escrito, sin embargo, cuáles son los fundamentos legales esbozados para sostener la validez de la determinación del foro de instancia.

Así las cosas, el Tribunal de Apelaciones dictó sentencia, revocando al Tribunal de Primera Instancia.<sup>3</sup> En su sentencia, el foro apelativo intermedio concluyó que la Ley del Registro Demográfico de Puerto Rico, [24 L.P.R.A. secs. 1071–1074, 1101–1110, 1131–1139, 1161–1166, 1191, 1211](#) y [1231–1238](#) (Ley del Registro Demográfico o Ley del Registro), no contiene disposición alguna que permita que un certificado de nacimiento se enmiende para variar el sexo de la persona inscrita, en ausencia de circunstancias que indiquen que la anotación original fue producto de un error. El tribunal concluyó que para autorizar el cambio de sexo en el certificado era necesaria una autorización expresa en ese sentido de la Asamblea Legislativa, lo que no había ocurrido. Concluyó, entonces, que procedía revocar la Resolución dictada por el Tribunal de Primera Instancia. Al así hacerlo, no tan sólo dejó sin efecto la orden que autorizó el cambio de sexo en el certificado de nacimiento y la licencia de conducir, sino también el cambio de nombre solicitado y autorizado. Ello, a pesar de que ese asunto no estaba ante su consideración, ya que no fue planteado por el Procurador General en su petición de *certiorari*.

<sup>3</sup> En su sentencia, el Tribunal de Apelaciones reconoce que en [Andino Torres, Ex parte, 151 D.P.R. 794 \(2000\)](#), permitimos, mediante sentencia a esos efectos, que se cambiara el sexo de un transexual en su certificado de nacimiento de varón a hembra. El foro apelativo concluyó, correctamente, que como se trataba de *una sentencia* y no una opinión del Tribunal, nuestra determinación en *Andino Torres, Ex parte*, supra, no era un precedente obligatorio. Véase [Rivera Maldonado v. E.L.A., 119 D.P.R. 74, 79–80 \(1987\)](#).

Inconforme, Delgado Hernández compareció ante nosotros para que revisemos la sentencia del Tribunal de Apelaciones. Aduce que: \*179

Erró el Tribunal de Apelaciones al revocar la Resolución del Tribunal de Primera Instancia que ordenaba al Registro Demográfico cambiar el asiento de inscripción de nacimiento del peticionario para que apareciera que su sexo es femenino y que ordenaba igual remedio en cuanto a su licencia de conducir. Petición de *certiorari*, pág. 2.

El 12 de noviembre de 2004 expedimos el auto solicitado. Contando con la comparecencia de las partes, pasamos a resolver.<sup>4</sup>

<sup>4</sup> El alegato presentado por el peticionario, sorprendentemente, no discute con rigurosidad jurídica el señalamiento de error traído a nuestra atención. La discusión del error se da sin acopio alguno de las razones que la fundamentan en derecho ni las autoridades que lo apoyan.

## II

Este caso nos plantea la interrogante de si un transexual que se ha sometido a una operación quirúrgica de reasignación de sexo puede exigir que ese cambio se refleje en su certificado de nacimiento —y otra documentación oficial— para que su realidad registral esté acorde con lo que estima es su verdadero sexo.

[1] El sexo y la identidad sexual de una persona constituyen uno de los caracteres primarios de la identidad personal. Para algunos, el sexo queda definido fundamentalmente por sus caracteres biológicos y fisiológicos, y por su morfología exterior. “Es el sexo con que se nace y con el cual el sujeto se inscribe en el correspondiente registro del estado civil.” C. Fernández Sessarego, *Derecho a la Identidad Personal*, Buenos Aires, Ed. Astrea, 1992, pág. 288. El sexo es, por lo tanto, inmutable y estático. De otro lado, existe una visión del sexo como un concepto que se refiere a la personalidad misma del individuo, a su actitud psicosocial, a su modo de comportarse, a sus hábitos y ademanes. Íd. De ordinario, ambas vertientes son coincidentes en el sujeto. Es decir, el sexo biológico, cromosómico y registral está en sintonía con el sicológico social. En ocasiones, sin embargo, y excepcionalmente, “se presentan situaciones ... \*180 en las que se observa una elocuente disociación entre tales vertientes”. Íd.

El caso más dramático lo constituye el de un transexual para quien su apariencia externa sexual no coincide con el sexo vivido y sentido, con el cual se identifica plenamente; situación ésta que “conduce al transexual, con la ayuda de tratamientos hormonales y de cirugía transexual ... a adaptar sus caracteres físicos externos al sexo querido”. L. Puig Ferriol, *Manual de Derecho Civil*, Madrid, Ed. Marcial Pons, 1997, Vol. 1, pág. 133. <sup>5</sup>

<sup>5</sup> Existe vasta literatura sobre el tema de la transexualidad. Para una discusión más abarcadora sobre el tema, véanse: J. Meyerowitz, *How sex changed? A History of Transsexuality in the United States*, Cambridge, Harvard U. Press, 2002; 6 *Schidt's Attorney's Dictionary of Medicine and Word Finder*, 2002; R. Green, *The “Sissy Boy Syndrome” and the Development of Homosexuality*, New Haven, Yale U. Press, 1987; L. Martínez Calcerrada, *Derecho Médico General y Especial*, Madrid, Ed. Tecnos, 1986; H.W. Jones, W.E. Scout, *Hermafroditismo, anomalías genitales y trastornos endocrinos afines*, Madrid, Ed. Labor, 1975. Véanse, además: A.A. Lawrence, *Factors Associated with Satisfaction or Regret Following Male to Female Sex Reassignment Surgery*, 32 Arch. Sexual Behavior 299 (2003); L. Lax, *Is the United States Falling Behind? The Legal Recognition of Post-Operative Transsexual's Acquired Sex in the United States and Abroad*, 7 *Quinnipiac Health L.J.* 123 (2003); J.T. Weiss, *The Gender Caste System: Identity, Privacy and Heteronormativity*, 10 *Law & Sexuality* 123 (2001); J.A. Greenberg, *Defining Male and Female: Intersexuality and the Collision between Law and Biology*, 41 *Ariz. L. Rev.* 265 (1999); M. Coombs, *Transgenderism and Sexual Orientation: More than a Marriage of Convenience*, 3 *Nat'l J. Sexual Orient. L.* 4 (1997); L. Pearlman, *Transsexualism as Metaphor: The Collision of Sex and Gender*, 43 *Buff. L. Rev.* 835 (1995); F. Valdés, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex”, “Gender”, and “Sexual Orientation” in Euro American Law and Society*, 83 *Cal. L. Rev.* (1995); Comentario, *Transsexualism: Sex Reassignment Surgery and the Law*, 56 *Cor. L. Rev.* 933 (1971).

El tema de la transexualidad y sus repercusiones, tanto legales, sociales, sicológicas o morales, es un tema acuciante de nuestros tiempos y una realidad de profundo contenido humano. <sup>6</sup> Quienes han decidido someterse a una operación de reasignación de sexo son personas que han tomado medidas extraordinarias en su ardiente deseo de vivir una vida ordinaria.

<sup>6</sup> Véanse, entre otros: J.M. Bailey, *The man who would be Queen*, Washington, Joseph Henry Press, 2003; J. Finney Byland, *She's not There, A Life in Two Genders*, New York, Broadway Books, 2002. Véase, también, [www.annelawrence.com/twr](http://www.annelawrence.com/twr).

La controversia traída a nuestra atención nos obliga a plantearnos, de frente al ordenamiento jurídico prevaeciente, \*181 un sinnúmero de difíciles interrogantes. A modo de ejemplo: ¿Sobre quién recae la responsabilidad de hacer viable el reclamo del peticionario? ¿Sobre la Rama Judicial a través de un pronunciamiento jurisprudencial o, por el contrario, sobre las ramas políticas del Gobierno mediante la correspondiente legislación? ¿No entraña esta determinación, en su esencia misma, un asunto de política pública sobre cómo el Estado debe responder a los reclamos de unas personas

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tradicionalmente incomprendidas y marginadas por la sociedad, legislando los requisitos y las garantías pertinentes que tal reconocimiento necesariamente conlleva? ¿Cuál es el proceso más efectivo de deliberación y reflexión democrática que permita conjurar todos los intereses que interrelacionan en una controversia de esta naturaleza?<sup>7</sup>

<sup>7</sup> C. Sunstein, *One Case at a Time*, Cambridge, Harvard U. Press, 1999.

Las preguntas que hemos formulado previamente encierran sólo algunas de las múltiples y arduas cuestiones problemáticas que el tema de la transexualidad encierra. Como se advierte, la temática involucrada en dichas interrogantes no puede considerarse como materia de fácil solución por sus implicaciones tanto con la libertad de la persona como con los intereses sociales en juego.

Veamos entonces con detenimiento y sosiego.

### III

La controversia jurídica sobre la transexualidad es para este Tribunal un asunto de reciente actualidad, mas no es así en otras jurisdicciones. Tanto en Europa<sup>8</sup> como en Estados Unidos<sup>9</sup> este tema ha sido discutido ampliamente, por lo que existe vasta jurisprudencia y amplia legislación sobre el tema de la transexualidad.

<sup>8</sup> Sobre este particular véase, en Gran Bretaña: *Bellinger v. Bellinger* (2003) UKHL 21; *Goodwin v. United Kingdom* (2002) 35 E.H.R.R. 18; *Cossey v. United Kingdom* (1990) 13 E.H.R.R. 622; *Corbett v. Corbett* (1970) 2 All E.R. 33. En España, véanse: Sentencia de 2 de julio de 1987; Sentencia de 15 de julio de 1988; Sentencia de 3 de mayo de 1989; Sentencia de 19 de abril de 1991. Véase, sobre estas sentencias, A. Villagómez, *Aportación al estudio de la transexualidad*, Madrid, Ed. Tecnos, 1994. En Australia, confróntese a *In re Kevin*, 28 Fam. L.R. 158 (2001).

Cinco países europeos tienen legislación sobre transexualidad: Ley de 21 de abril de 1972 (Suecia); Ley de 10 de septiembre de 1980, *Transsexuellengesetz* (Alemania); Ley de 14 de abril de 1982 (Italia); Ley de 24 de abril de 1985 (Holanda); Ley Núm. 3444 de 1988 (Turquía). Véase L. Puig Ferriol y otros, *Manual de Derecho Civil*, Madrid, Ed. Marcial Pons, 1977, Vol. 1, págs. 133–134.

<sup>9</sup> En Estados Unidos, véanse: *In re R.W. Heilig*, 816 A.2d 68 (2003); *Littleton v. Prange*, 9 S.W.3d 223 (1999); *In re Ladrach*, 513 N.E.2d 828 (1987); *K. v. Health Div., Dept. of Human Resources*, 560 P.2d. 1070 (Or.1977); *M.T. v. J.T.*, 355 A.2d. 204 (1976); *In re Anonymous*, 314 N.Y.S.2d. 668 (1970); *In re Anonymous*, 293 N.Y.S.2d. 834 (1968); *Anonymous v. Weiner*, 270 N.Y.S. 2d. 319 (1966).

En *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000), dictamos una *sentencia* en la cual se autorizó el cambio de sexo — de varón a hembra— en el certificado de nacimiento del peticionario, quien era transexual. Habiéndose resuelto *Andino Torres* mediante sentencia, lo allí dispuesto no constituye precedente de este Tribunal, por lo que no obligaba al Tribunal de Apelaciones, como éste correctamente concluyó, y mucho menos nos obliga a nosotros.

[2] Reiteradamente hemos sostenido que el Tribunal Supremo establece una norma *exclusivamente* mediante un dictamen sostenido por una opinión firmada o una opinión *per curiam*. *Rivera Maldonado v. E.L.A.*, 119 D.P.R. 74 (1987); *Mayol v. Torres*, 164 D.P.R. 517, 546 esc. 17 (2005); *Díaz v. Colegio Nuestra Sra. del Pilar*, 123 D.P.R. 765, 777 (1989). Véase, además, R.E. Bernier y J.A. Cuevas Segarra, *Aprobación e interpretación de las leyes en Puerto Rico*, 2da ed., San Juan, Pubs. JTS, 1987, pág. 158. De ahí que, de ordinario, sólo la opinión firmada o el *per curiam* se publican. Regla 44(b) del Reglamento del Tribunal Supremo, 4 L.P.R.A. Ap. XXI-A. Así, nuestras opiniones sirven de precedentes para los casos que tienen ante sí los foros *a quo*, tanto judiciales como administrativos.

[3–4] Por otro lado, este Tribunal resuelve un caso por sentencia cuando se plantean en éste asuntos resueltos reiteradamente por el Tribunal o *para resolver una controversia particular entre las partes litigantes, circunscrita, por lo tanto, a los hechos específicos de ese caso*, o para \*183 disponer rápidamente del caso ante el gran número de casos que tiene que resolver. Las sentencias, por lo tanto, no se publican.<sup>10</sup> Es por ello que hemos indicado que no “[s]e considera apropiado citar como autoridad o precedente las sentencias que no constituyen opinión”. *Rivera Maldonado v. E.L.A.*, supra, pág. 79.

<sup>10</sup> Ahora bien, “[a] manera de excepción y mediante orden expresa nuestra, se puede remitir para publicación una sentencia emitida sin opinión”. *Rivera Maldonado v. E.L.A.*, 119 D.P.R. 74, 79 (1987). Así pues, con sujeción a lo dispuesto en el Reglamento del Tribunal Supremo, nada impide que “cualquier Juez de este Tribunal que emita una opinión concurrente o disidente o voto particular en relación con una decisión sin opinión del Tribunal, la certifique para que sea enviada al Compilador y Publicista de Jurisprudencia del Tribunal y al Colegio de Abogados de Puerto Rico para su publicación”. Íd., págs. 79–80.

En vista de lo anterior, lo dispuesto en *Andino Torres, ex parte*, supra, sólo resolvió la controversia particular de ese caso en atención a los hechos específicos allí involucrados. Por ello, *Andino Torres* no es óbice para la determinación que hoy tomamos. Veamos entonces.

En esta ocasión, estimamos apropiado iniciar nuestra discusión, analizando la figura del Registro Civil español, precursor del Registro Demográfico, de suerte que logremos apurar su finalidad y propósito. Luego entonces analizaremos la Ley del Registro Demográfico, su relación con la figura del Registro Civil, para aplicar entonces la normativa vigente a los hechos del caso ante nuestra consideración.

[5–6] El Registro Civil se define como “la institución o servicio administrativo a cuyo cargo se halla la publicidad de los hechos afectantes al estado civil de las personas o mediatamente relacionados con dicho estado, contribuyendo, en ciertos casos a la constitución de tales actos y proporcionando títulos de legitimación de estado”. Puig Ferriol, *op. cit.*, pág. 136. El profesor Luces Gil, en su obra sobre el Registro Civil, sostiene igual posición y señala que el Registro es “la institución que tiene por objeto dar publicidad a los hechos y actos que afectan al estado civil de las personas, cooperar, en ciertos casos, a la constitución de tales actos y, proporcionar títulos de legitimación del estado \*184 civil”. F. Luces Gil, *Derecho Registral Civil*, Barcelona, Ed. Bosch, 1976, pág. 170. Véase, en igual sentido, J. Santos Briz, *Derecho Civil, Teoría y Práctica*, Madrid, Ed. Edersa, 1976, Vol. 1, pág. 463.

[7] “Estado civil” es el conjunto de cualidades, atributos y circunstancias de la persona que la identifican y singularizan, y que contribuyen a determinar su capacidad con cierto grado de permanencia y generalidad. Luces Gil, *op. cit.*; Puig Ferriol, *op. cit.*, pág. 130 (“[El estado civil] determina las distintas situaciones en la que puede encontrarse la persona y que justifican el reconocimiento de una diferente capacidad de obrar o de una situación diferenciada de derechos y deberes, susceptibles de un tratamiento unitario”). Luces Gil, *op. cit.*; Puig Ferriol, *op. cit.*, pág. 130.

Sobre el Registro como prueba fidedigna del estado civil de las personas, nos dice Albaladejo:

[E]llo beneficia, tanto al interesado, como al Estado y a los terceros, que así pueden obtener la información que necesitan cuando entran en relación con aquéllas. M. Albaladejo, *Derecho Civil*, Barcelona, Ed. Bosch, 1989, T. I, Vol. 1, pág. 358.

[8] En el Registro se inscriben, por lo tanto, todos los sucesos y hechos vitales que definen el estado civil y la capacidad jurídica de un individuo. J.L. Lacruz Berdejo, *Elementos de Derecho Civil*, Barcelona, Ed. Bosch, 1974, T. I, pág. 170. Destacamos el nacimiento y, junto a éste, el nombre, *el sexo* y la filiación del inscrito. Art. 41 de la Ley del Registro Civil español; Art. 167 del Reglamento de Registro Civil, Decreto de 14 de noviembre de 1958, Tít. V, Cap. I. Tienen cabida en el registro también: el matrimonio, la nacionalidad y la defunción. Todos estos atributos de la personalidad se caracterizan, entre otras cosas, por “[t]ener eficacia general, es decir frente a todos (*erga omnes*)”. Albaladejo, *op. cit.*, pág. 236. Comienza así con el nacimiento, el registro de datos vitales de cada persona, que lo individualiza y lo convierte en sujeto de derechos, y finaliza, evidentemente, con el fallecimiento. \*185

[9] La existencia del Registro se justifica en la medida que el Derecho y las relaciones que regula requieran seguridad, certidumbre y constancia sobre las condiciones de capacidad y el entorno familiar de la persona. El Registro se convierte entonces en un sistema de constatación de hechos relevantes de ese titular.<sup>11</sup> Así, lo que le da relieve es esencialmente su finalidad, ser “*el instrumento material para que conste públicamente la versión oficial sobre la existencia, estado civil y condición de las personas*”. (Énfasis nuestro.) E. Vázquez Bote, *Derecho Privado Puertorriqueño*, Orford, Equity

Publishing, 1992, Vol. III, pág. 400.<sup>12</sup> Por ser esa su función, “la veracidad e integridad del Registro del estado civil ha de tener singular importancia para el Estado, por cuanto representa, además, *un medio de conocer la exacta y auténtica situación jurídica de las personas*, al tiempo que pueden ser instrumentos muy convenientes para ordenar determinados servicios administrativos”. (Énfasis nuestro.) Íd.

<sup>11</sup> Históricamente, el precedente directo del Registro Civil español se halla en los registros parroquiales que lleva la Iglesia Católica para consignar los bautismos, matrimonios y defunciones desde mediados del siglo XIV y principios del XV. M. Albaladejo, *Derecho Civil*, Barcelona, Ed. Bosch, 1991, T. I, Vol. 1, pág. 358. La Revolución Francesa secularizó estos registros, creando el moderno Registro Civil a cargo de funcionarios del Estado. J. Castán Tobeñas, *Derecho Civil español, común y floral*, Madrid, Ed. Reus, 1984, T. I, Vol. 2, pág. 508.

<sup>12</sup> Esta institución se incorpora a nuestro ordenamiento legal a finales del siglo XIX cuando, en 1885, comenzó a regir en Cuba y Puerto Rico la Ley Provisional del Registro Civil, decretada por España en 1870, a raíz de la Constitución española de 1869. Con el cambio de soberanía en 1898, la estructura del sistema de registro civil no sufrió cambio sustancial alguno. En 1931, sin embargo, con la Ley Núm. 24 de 2 de abril de 1931 ([24 L.P.R.A. sec. 1041 et seq.](#)) se produjo una reorientación del sistema tradicional del estado civil al crearse el Registro Demográfico. El nuevo esquema legislado centralizó las funciones del registro en manos del Comisionado de Salud, eliminando el control que tenía sobre el registro el municipio y el alcalde. [Municipio v. Fernós, Com., 63 D.P.R. 978 \(1944\)](#). La citada Ley Núm. 24 tiene como propósito también recopilar información de naturaleza estadística.

[10] En síntesis, el Registro Civil tiene como propósito fundamental garantizar una información fiable sobre la condición civil y hechos vitales de las personas y proporcionar un medio de prueba para éstos. Ello, para beneficio no tan sólo del inscrito, sino también del Estado y de los terceros que entran en relación con el primero. Es, por lo \*186 tanto, el Registro Civil un mecanismo que, al garantizar seguridad, constancia y certeza en la información a que da publicidad, evita, entre otros, el fraude y la simulación en las relaciones que establecen los individuos entre sí y que el Derecho regula. Véanse: Puig Ferriol, *op. cit.*, págs. 136–137; en igual sentido, Luces Gil, *op. cit.*, pág. 18; M. Planiol y G. Ripert, *Tratado Elemental de Derecho Civil*, 4ta ed., México, Ed. J.M. Cajica, 2003, Vol. 1, pág. 243 (“Las actas del estado civil constituyen un medio de prueba seguro y fácil, organizado por la ley para los nacimientos, matrimonios y defunciones”).

Pasemos entonces a discutir las disposiciones del Registro Demográfico.

#### IV

[11] La Ley del Registro Demográfico de Puerto Rico crea un Registro General Demográfico establecido en la División de Registro Demográfico o Estadísticas Vitales del Departamento de Salud de Puerto Rico. Éste se estableció con el propósito de registrar, coleccionar, custodiar, preservar, enmendar y certificar hechos vitales de las personas nacidas en Puerto Rico. [24 L.P.R.A. sec. 1042\(1\)](#). Acorde con el cambio habido en la legislación registral de 1931, el Registro Demográfico se convirtió principalmente en un registro estadístico confiable y formal que permite el estudio de estadísticas vitales de nuestra población.<sup>13</sup> Ciertamente, el propio cambio de nombre, de Registro Civil a Registro *Demográfico*, denota la intención de convertirlo en un instrumento para el estudio estadístico de la población de Puerto Rico conforme su composición y estado en un momento determinado, o conforme evolucione históricamente. Véase, en general, E.A. Wrigley, *Historia y población: introducción a la demografía histórica*, Madrid, Ed. Guadarrama, 1969. \*187

<sup>13</sup> Véase la Exposición de Motivos de la Ley Núm. 220 de 9 de agosto de 1998 (1998 (Parte 1) Leyes de Puerto Rico 941).

[12] No por ello, sin embargo, dejó de tener la finalidad esencial de ser el instrumento en el cual constan públicamente la versión oficial sobre la existencia, estado civil y hechos vitales de las personas nacidas en Puerto Rico; y, como tal, servir de instrumento de constatación para quienes entran en contacto con las personas registradas. Así, en reiteradas ocasiones hemos señalado que la información que consta en el Registro Demográfico constituye evidencia *prima facie* del hecho que se pretende constatar. [Medina v. Pons, 81 D.P.R. 1, 8](#) esc. 11 (1959); [Juan Bigas, Suers. v. Com. Industrial, 71 D.P.R. 336 \(1950\)](#); [Pueblo v. Ramírez, 65 D.P.R. 680 \(1946\)](#); [Mercado v. American Railroad Co., 61 D.P.R. 228 \(1943\)](#).

[13] El certificado de nacimiento es el documento que refleja los datos vitales de la persona al momento de su nacimiento. *Es, por lo tanto, una radiografía histórica de la persona al nacer, que deja constancia de la información siguiente: fecha y*



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*lugar de nacimiento, nombre de los padres, nombre y sexo de la persona inscrita. Véase K. v. Health Div., Dept. of Human Resources*, 560 P.2d 1072, 1072 (Or. 1977) (“it was the intent of the legislature of Oregon that a ‘birth certificate’ is an historical record of the facts as they existed at the time of birth”).

[14] Las constancias del registro están sujetas a enmiendas únicamente, de manera excepcional. Lacruz Berdejo nos señala sobre este particular que “excepcionalmente pueden corregirse los defectos ... restituyéndolos a la redacción que debieran tener, en diversos supuestos en los que no puede haber sospecha de posible fraude ...”. Lacruz Berdejo, *op. cit.*, pág. 177.

[15] La Ley del Registro Demográfico provee el procedimiento para enmendar el certificado de nacimiento, también a manera de excepción. Así, la ley dispone:

[L]as omisiones o incorrecciones que aparezcan en cualquier certificado antes de ser registrados en el Departamento de Salud podrán ser salvadas insertando las correcciones o adiciones necesarias en tinta roja en dicho certificado, *pero luego de \*188 haber sido archivado en el Departamento de Salud, no podrá hacerse en los mismos rectificación, adición ni enmienda alguna que altere sustancialmente el mismo, sino en virtud de orden del Tribunal de Distrito, cuya orden, en tal caso, será archivada en el Departamento de Salud haciendo referencia al certificado a que corresponda.*

Para obtener dicha orden deberá presentar el interesado una solicitud a la Sala del Tribunal de Distrito de su domicilio, exponiendo bajo juramento su pretensión y formulándola debidamente acompañada de la prueba documental pertinente en apoyo de su solicitud. Copia de la solicitud y de toda la prueba documental le será remitida al Ministerio Fiscal simultáneamente con su radicación quien deberá formular su posición dentro del término de 10 días.

.....

El cambio, adición o modificación de nombre o apellido sólo podrá hacerse a instancia del interesado, quien deberá presentar ante cualquier Sala del Tribunal de Distrito oportuna solicitud, expresando bajo juramento los motivos de su pretensión, acompañada de la prueba documental pertinente en apoyo de su solicitud. (Énfasis nuestro.) [24 L.P.R.A. sec. 1231.](#)

Esta disposición se complementa con la Sec. 1071-19 del Reglamento Núm. 1 del Registro Demográfico (Reglamento Núm. 316 del Departamento de Salud) de 16 de febrero de 1932, que a su vez dispone:

*Correcciones o alteraciones después de hecha la inscripción*— Después que un certificado haya sido aceptado por el registrador, no podrá ser objeto de ningún cambio, borradura o alteración, así como tampoco la transcripción hecha en el libro de récord, sin el debido procedimiento de ley. Los errores materiales que aparecieren en cualquier certificado al ser presentado para inscripción o luego de haber sido inscrito, consistentes en la equivocación de un nombre, apellido, palabra o frase no esenciales, podrán subsanarse escribiendo correctamente con tinta roja la palabra o palabras erróneamente escritas o insertando la palabra o palabras omitidas. Las tachaduras que fueren necesarias se harán de modo que siempre se pueda leer la palabra tachada. Para efectuar dichas correcciones los registradores exigirán la prueba que, según los casos, estimen oportuna.

[16] Una lectura de estas disposiciones deja establecido que hay dos procesos de corrección o rectificación de errores: uno, antes de haberse registrado un certificado y, *\*189* el otro, luego de archivado y registrado en el Departamento de Salud. En el primero de los casos, la ley permite que el propio Registrador pueda corregir “omisiones o incorrecciones” en la inscripción antes de que quede inscrito el certificado, insertando las correcciones correspondientes en tinta roja. Luego de registrado el certificado, la Ley del Registro Demográfico prohíbe que se efectúe cambio, rectificación o enmienda alguna que altere sustancialmente el certificado, salvo en virtud de una orden judicial a esos efectos.

El Reglamento, por su parte, aclara que el Registrador puede corregir equivocaciones en el nombre o en los apellidos, palabras o frases *no esenciales* en el certificado, luego de registrado sin una orden judicial. No obstante, *cuando se trata de correcciones o enmiendas sustanciales* después de haber registrado el certificado en el Registro Demográfico, la ley sólo permite que se diluciden en un tribunal competente.



En muy pocas ocasiones nos hemos expresado sobre el procedimiento de enmienda o rectificación al certificado de nacimiento o el de inscripción de datos en el Registro Demográfico. *Ex parte Pérez*, 65 D.P.R. 938 (1946); *León Rosario v. Torres*, 109 D.P.R. 804 (1980). En ambas ocasiones interpretamos restrictivamente la Ley del Registro Demográfico y las disposiciones que permiten enmendar los asientos del Registro o registrar información en éste, concluyendo que los cambios solicitados tenían que haber sido autorizados previamente por ley antes de acceder a ellos.

Así, en *Ex Parte Pérez*, supra, nos enfrentamos a una solicitud de cambio de nombre en el certificado de nacimiento. Resolvimos que, ante la ausencia de disposición alguna en nuestra la Ley del Registro Demográfico que específicamente autorizara el cambio solicitado, estábamos impedidos de acceder a éste. Al así resolver, indicamos que le correspondía a la Legislatura hacer viable el cambio de nombre en un certificado de nacimiento. Señalamos específicamente que la Legislatura debía “corregir lo \*190 que entendemos es un defecto en nuestra legislación”. *Ex Parte Pérez*, supra, págs. 942–943.

[17] Posteriormente, la Asamblea Legislativa aprobó la Ley Núm. 119 de 12 de abril de 1950 (24 L.P.R.A. sec. 1231), para enmendar la Ley del Registro Demográfico y autorizar el cambio de nombre y apellido de una persona en su certificado de nacimiento. Esta ley se aprobó precisamente para atender el problema que creaba la ausencia de autorización legislativa para efectuar un cambio de nombre en el Registro Demográfico, situación que advertimos en *Ex Parte Pérez*, supra. Véase Actas de la Cámara de Representantes, 17ma Asamblea Legislativa, Sesión Ordinaria, 1950, pág. 643.

De otra parte, en *León Rosario v. Torres*, supra, denegamos una petición de que se inscribiera en el Registro Demográfico el nacimiento de una niña nacida en Estados Unidos de padres puertorriqueños residentes todos en Puerto Rico, ya que la Ley del Registro Demográfico no lo permitía. La ley sólo autoriza, de ordinario, la inscripción de niños nacidos en Puerto Rico. Señalamos en esa ocasión que “las excepciones consignadas en la ley son de *restrictiva interpretación*” — (énfasis nuestro) *íd.*, pág. 810— ya que el legislador siempre ha indicado expresamente lo que ha querido permitir que se inscriba en el Registro Demográfico. <sup>14</sup> “No hay lugar en este esquema legislativo para una interpretación liberal en cuanto a los hechos vitales que son inscribibles.” *Íd.*

<sup>14</sup> En las instancias que el legislador ha querido permitir que se inscriban en el Registro Demográfico los acontecimientos ocurridos fuera de Puerto Rico, lo ha autorizado expresamente en ley. Así, ha dispuesto para: la inscripción de defunciones ocurridas en un barco o avión en travesía o en el caso de ausentes, Ley Núm. 1 de 23 de febrero de 1978 (24 L.P.R.A. secs. 1042, 1101, 1131–1132, 1231, 1237 y 1301); la inscripción de nacimientos ocurridos en un barco o avión durante su travesía, *íd.*; la anotación de divorcios o anulaciones de matrimonios decretados fuera de Puerto Rico, de personas cuyos matrimonios se hubieren celebrado en Puerto Rico, Ley Núm. 4 de 2 de marzo de 1971 (24 L.P.R.A. sec. 1168), y la inscripción de adopciones realizadas fuera de Puerto Rico de personas nacidas aquí, y las realizadas aquí de personas nacidas fuera, Ley Núm. 84 de 15 de junio de 1953 (24 L.P.R.A. sec. 1139).

[18] Lo anteriormente reseñado denota claramente \*191 que hemos interpretado restrictivamente las disposiciones de la Ley del Registro Demográfico. Hemos dispuesto que cualquier cambio o rectificación en el certificado de nacimiento, una vez registrado, o cualquier solicitud de inscripción de un hecho vital, tiene que haber sido autorizado previamente mediante legislación para que proceda. Ello quiere decir que allí donde la Ley del Registro dispone que una *enmienda sustancial* a las constancias del certificado de nacimiento *sólo procede en virtud de una “orden del tribunal”*, la orden sólo procederá si el ordenamiento legal autoriza el cambio solicitado mediante legislación a esos efectos.

[19] Habida cuenta de lo anterior, concluimos que *la Ley del Registro Demográfico establece, a modo de “numerus clausus”, las únicas instancias en que se pueden realizar cambios en las anotaciones de datos vitales en el certificado de nacimiento*. Siendo ello así, no hay margen para una interpretación liberal o expansiva de las disposiciones de la Ley del Registro Demográfico.

[20] Ello es cónsono con la normativa vigente sobre qué hechos son inscribibles en el Registro Civil. En ese sentido nos indica Luces Gil: “Pero, en la práctica, hay que reconocer *la imposibilidad de acceso al Registro de hechos o cualidades de estado civil no declarados expresamente inscribibles en la Legislación registral*.” (Énfasis nuestro.) Luces Gil, *op. cit.*, págs. 30–31. Recordemos que el Registro Demográfico tiene como fin, entre otros, dar publicidad a los hechos que afectan el

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estado civil o datos vitales de las personas *cuando éstas entran en relación con el Estado o con terceros*, y que el certificado de nacimiento constituye, además, un documento que *recoge información histórica sobre hechos vitales de la persona al momento de su nacimiento*. Todo ello aconseja, como hemos hecho en el pasado y reafirmamos hoy, una interpretación restrictiva de la Ley del Registro Demográfico como garantía de certeza jurídica sobre la información allí contenida.

[21] A la luz de lo anterior debemos forzosamente \*192 concluir que la Ley del Registro no contempla, y mucho menos autoriza, un cambio como el solicitado por el aquí peticionario. En ausencia de legislación que expresamente lo autorice, estamos impedidos de reconocer como viable un cambio sustancial en las constancias del certificado de nacimiento de lo que es un hecho vital de la persona, esto es, su sexo.

[22] No cabe hablar en este caso de que existe laguna en la Ley del Registro Demográfico. Por el contrario, existe una prohibición expresa de hacer cambios sustanciales en las constancias originales del certificado de nacimiento. Según el diccionario de la Real Academia Española, es “sustancial” todo aquello que constituye lo esencial y más importante de algo. *Diccionario de la Lengua Española*, 22da ed., Madrid, Ed. Espasa-Calpe, 2001, T. II, pág. 2115. Los cambios requeridos por el peticionario afectan el estado civil de la persona, eje central del Registro Demográfico, por lo que estamos ante un cambio sustancial cuya modificación sólo compete a la Asamblea Legislativa. La juez Patricia Wald, con gran claridad ha indicado:

Personal experience has revealed that the nearly universal view among federal judges is that when we are called upon to interpret statutes, it is our primary responsibility, within constitutional limits, to subordinate our wishes to the will of Congress because the legislator's collective intention, however discerned, trumps the will of the court. P. Wald, *The Sizzling Sleeper: The Use of Legislative History in Construing Statutes in the 1988–89 Term of the United States Supreme Court*, 39 *Am. U.L. Rev.* 277, 281 (1990).

[23] Cuando el lenguaje de la ley es claro e inequívoco, nuestra responsabilidad es respetar la voluntad legislativa, independientemente de nuestro criterio personal. *Alonso García v. S.L.G.*, 155 D.P.R. 91 (2001); *Lasalle v. Junta Dir. A.C.A.A.*, 140 D.P.R. 694 (1994); *Silva v. Adm. Sistemas de Retiro*, 128 D.P.R. 256 (1991). Corresponde a la Asamblea Legislativa y los legisladores electos que allí sirven determinar cuál deba ser la política pública que encarnen nuestras leyes. \*193 *Pueblo v. Zayas Rodriguez*, 147 D.P.R. 530 (1999). Las leyes son, en última instancia, el reflejo de la voluntad del pueblo expresada democráticamente a través de los legisladores electos y recogen aquello que el pueblo está dispuesto a aceptar en un momento dado.<sup>15</sup> El juzgador no debe sustituir su sentido de justicia por la letra clara del estatuto. *Berrocal v. Tribl. de Distrito*, 76 D.P.R. 38, 65 (1954).

<sup>15</sup> Valga señalar que en veinte y ocho estados de Estados Unidos se ha legislado para permitir que se enmiende un certificado de nacimiento para que refleje los cambios habidos como resultado de una operación de reasignación de sexo.

En algunos de esos estados, el procedimiento establecido sólo requiere que se solicite del tribunal el cambio de sexo en el certificado de nacimiento, sin más, o que se expida un nuevo certificado. Véanse: *Ala. Code Sec. 22–9A–19(d)*; *Ark. Code Ann. Sec. 20–18–307(d)(4)*; *California Health and Safety Code Sec. 103425*; *Colo. Rev. Stat. Ann. Sec. 25–2–115(4)*; *Conn. Gen. Stat. Ann. Sec. 19a–42*; *D.C. Code Ann. Sec. 7–217(d)*; *Ga. Code Ann. Sec. 31–10–23(e)*; *Md. Code Ann. Health–Gen. I Sec. 4–214(b)(5)*; *Miss. Code Ann. Sec. 41–57–21*; *Mo. Stat. Sec. 193.215*; *Mont. Code Ann. Sec. 50–15–204*; *Nv. Adm. Code sec. 440.130*; *Or. Rev. Stat. Sec. 432–235*; *Utah Code Ann. Sec. 26–2–11*; *Va. Code Ann. Sec. 32.1–269*; *Wisc. Stat. Sec. 69.15(1)(a)*. Otros estados, sin embargo, requieren una declaración jurada del médico o cirujano que llevó a cabo la operación, para que el tribunal pueda emitir su dictamen en el que se ordene el cambio en el certificado de nacimiento. Véanse: *Ariz. Rev. Stat. Sec. 36–337(a)(4)*; *Haw. Rev. Stat. Sec. 338–17.7(4)(b)*; *410 Ill. Comp. Stat. Ann. Sec. 535/7(d)*; *Iowa Code IV Sec. 144.38*; *Ky. Rev. Stat. Ann. Sec. 213.121(5)*; *La. Rev. Stat Ann. 40:62*; *Mass. Gen. Laws Ann. Ch. 46 Sec. 13(e)*; *Mich. Comp. Laws Sec. 333.2891(9)(a)*; *N.J. Stat. Ann. 26:8–40.12*; *Neb. Rev. Stat. Sec. 71–904.01*; *N.M. Stat. Ann. Sec. 24–14–25(D)*; *N.C. Gen. Stat. Sec. 130A–118*.

Tennessee es el único estado que tiene un estatuto que expresamente prohíbe el cambio de sexo en el certificado de nacimiento. *T.N. Stat. Ann. Secs. 191.028, 192.011*. Véase, también, *Changing Name & Sex On Birth Certificate United States, Canada & UK*, United States Department of State, [http://www.kindredspiritalakeside .homestead.com/BirthRecord.html](http://www.kindredspiritalakeside.homestead.com/BirthRecord.html). Última revisión: 3 de noviembre de 2004.

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Justipreciadas las preguntas que nos formulamos al inicio, somos del criterio que le corresponde a la Asamblea Legislativa sopesar todos los intereses involucrados en la controversia que trasluce el tema de la transexualidad, conjurar éstos y proponer la respuesta legislativa que se estime apropiada. En última instancia, bajo un sistema de separación de poderes como el establecido en nuestra Constitución, la facultad de aprobar las leyes la tiene la Asamblea Legislativa y le corresponde al Poder Judicial, entonces, la responsabilidad de resolver los litigios mediante la interpretación de la ley aprobada.

Habida cuenta de lo anterior, resolvemos que no procede autorizar el cambio solicitado en el certificado de nacimiento \*194 del peticionario para cambiar su sexo, ya que la Ley del Registro Demográfico no lo autoriza expresamente.

## V

Antes de concluir debemos señalar, como indicamos al inicio, que el Tribunal de Apelaciones, al revocar la resolución del Tribunal de Primera Instancia, dejó sin efecto —suponemos que ha sido por inadvertencia— la determinación de dicho foro de autorizar el cambio de nombre del peticionario en su certificado de nacimiento. Al así hacerlo, sin embargo, erró.

Hemos revisado el expediente y de éste surge que el peticionario cumplió con todos los requisitos exigidos por la Ley del Registro Demográfico para autorizar un cambio de nombre. Además, el Procurador General no cuestionó dicha determinación ante el foro apelativo intermedio. Por lo tanto, no procedía revocar esa determinación del foro de instancia. En su consecuencia, dejamos sin efecto esa determinación del Tribunal de Apelaciones. En cuanto a lo demás, se confirma el dictamen recurrido.

Por los fundamentos antes expuestos y expedido el auto de *certiorari*, se confirma la sentencia dictada por el Tribunal de Apelaciones en este caso en cuanto a la determinación de dejar sin efecto el cambio de sexo en el certificado de nacimiento del peticionario autorizado por el Tribunal de Primera Instancia. Asimismo, se revoca la determinación del tribunal apelativo de dejar sin efecto el cambio de nombre del peticionario en su certificado de nacimiento que había determinado el tribunal de instancia.

*Se dictará sentencia de conformidad.*

El Juez Asociado Señor Rivera Pérez emitió una opinión de conformidad. El Juez Asociado Señor Fuster Berlingeri y la Jueza Asociada Señora Fiol Matta emitieron sendas opiniones disidentes. \*195

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Opinión de conformidad emitida por el Juez Asociado Señor Rivera Pérez.

Estamos de acuerdo con el resultado de confirmar la sentencia recurrida dictada por el Tribunal de Apelaciones y con sus fundamentos. Coincidimos con la opinión mayoritaria sobre los impedimentos existentes, según la Ley del Registro Demográfico de Puerto Rico,<sup>1</sup> que imposibilitan que se reconozca en los registros oficiales del Estado la reasignación física del sexo de un transexual. No obstante, entendemos como necesario expresarnos sobre otros aspectos de igual o mayor importancia dentro del “caso y controversia” ante nos. Entendemos que la controversia ante nuestra consideración, además del análisis circunscrito a la Ley del Registro Demográfico de Puerto Rico merece un análisis desde otra perspectiva. Es imprescindible evaluar y analizar las consecuencias que este asunto pueda acarrear en la estabilidad y formalidad de las instituciones del Estado. Tal es el caso, por ejemplo, del efecto acumulativo que tendría sobre importantes áreas e instituciones, partes del derecho de familia y del derecho sucesorio, entre otros.

<sup>1</sup> 24 L.P.R.A. secs. 1071–1074, 1101–1110, 1131–1139, 1161–1166, 1191, 1211 y 1231–1238.

## I

En *Andino Torres, Ex parte*, 151 D.P.R. 794 (2000), este Tribunal tuvo la oportunidad de expresarse en un caso con una situación esencialmente idéntica a la que hoy nos ocupa. En aquella ocasión, el Sr. Andrés Andino Torres se sometió a una intervención quirúrgica y, posteriormente, compareció ante el Tribunal de Primera Instancia para solicitar que

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se enmendara el asiento que consigna su nacimiento en el Registro Demográfico de Puerto Rico, que se cambiara su nombre a Alexandra y se hiciera constar su \*196 sexo como femenino. Luego del correspondiente trámite procesal ante el Tribunal de Primera Instancia y el Tribunal de Apelaciones, este Tribunal, mediante Sentencia emitida el 30 de junio de 2000, accedió a concederle lo solicitado. El Juez Asociado Señor Negrón García emitió una opinión concurrente. Apoyó tal proceder en el principio de equidad, establecido en el Código Civil de Puerto Rico, que dispone lo siguiente: “[c]uando no hay ley aplicable al caso, el tribunal resolverá conforme a equidad, según la define el Artículo 7 del Código Civil.”<sup>2</sup>

<sup>2</sup> El Art 7 del Código Civil dispone:

“El Tribunal que rehúse fallar a pretexto de silencio, obscuridad, o insuficiencia de la ley, o por cualquier otro motivo, incurrirá en responsabilidad.

“Cuando no haya ley aplicable al caso, el tribunal resolverá conforme a equidad, que quiere decir que se tendrá en cuenta la razón natural de acuerdo con los principios generales del derecho, y los usos y costumbres aceptados y establecidos.” <sup>31</sup> L.P.R.A. sec. 7.

En *Andino Torres, ex parte*, supra, el entonces Juez Asociado Señor Corrada Del Río emitió una opinión disidente en la cual hizo constar las razones que, además de las limitaciones impuestas por la Ley del Registro Demográfico de Puerto Rico, imposibilitan el reconocimiento del cambio de sexo en los documentos oficiales del Estado. Hoy subscribimos aquella evaluación, análisis y sus fundamentos, e incluimos otros motivos que ha expresado el Gobierno, que igualmente imposibilitan el reconocimiento de la llamada reasignación física de sexo en los documentos oficiales del Estado como una cuestión de interés apremiante. Veamos.

## II

El 27 de octubre de 1970, el Sr. Alexis Delgado Hernández nació en Puerto Rico, exhibiendo fenotipo masculino. El 23 de mayo de 2003, en el estado de Colorado, se sometió a una intervención quirúrgica. El 22 de diciembre de 2003 presentó una petición ante el Tribunal de Primera Instancia de Puerto Rico para que se enmendara el asiento que refleja su nacimiento en el Registro Demográfico de \*197 Puerto Rico y su licencia de conducir y, así, se cambiara en ambos su nombre a Alexandra y se hiciera constar su sexo como femenino. El Tribunal de Primera Instancia de Puerto Rico ordenó, mediante una resolución, al Registro Demográfico y al Departamento de Transportación y Obras Públicas hacer los cambios solicitados, tanto el cambio de nombre como el cambio de sexo.

Posteriormente, compareció el Procurador General ante el Tribunal de Apelaciones para solicitar que se revocara la resolución recurrida, dictada por el Tribunal de Primera Instancia. Ese tribunal, previa comparecencia de ambas partes, procedió a revocar la referida orden emitida por el Tribunal de Primera Instancia. Utilizó como fundamento principal que la Ley del Registro Demográfico de Puerto Rico no contiene una disposición que permita que el asiento del nacimiento se enmiende para variar el sexo de la persona inscrita, en ausencia de circunstancias que indiquen que el asiento original fue producto de un error.

Acude ante nos el Sr. Alexis Delgado Hernández para solicitar que revoquemos la sentencia emitida por el Tribunal de Apelaciones y mantengamos en vigor la orden emitida originalmente por el Tribunal de Primera Instancia.

## III

No albergamos duda alguna sobre el derecho que le asiste a toda persona de expresar y vivir su sexualidad de la manera que entienda apropiada, dentro del ámbito protegido por el derecho constitucional a la intimidad. No obstante, esos deseos no pueden trascender y trastocar la formalidad y oficialidad de los documentos que emite el Gobierno; mucho menos puede el Estado legitimar y oficializar algo que no estuvo sostenido con prueba pericial y científica como que haya ocurrido.

En *Andino Torres, ex parte*, supra, pág. 837, el Juez Asociado Señor Corrada Del Río expuso, citando al tratadista Díez Del Corral Rivas: “por mucho que una persona se sienta mujer esa circunstancia no puede bastar para fomentar \*198 y admitir oficialmente un estado o situación que sólo existe en la psicología del individuo.”<sup>3</sup> Partiendo de esa premisa, nos planteamos la interrogante siguiente, como cuestión de realidad científica: ¿ se produjo un cambio de sexo?<sup>4</sup> El

factor psicológico determina el carácter y el comportamiento social e individual de un ser humano, pero no altera la realidad científica de su sexo.<sup>5</sup>

<sup>3</sup> J. Díez Del Corral Rivas, *Estado Civil y Sexo: Transexualidad*, 2 Actualidad Civil 2135, 21565 (1987).

<sup>4</sup> *Andino Torres, Ex parte*, 151 D.P.R. 794, 834 (2000).

<sup>5</sup> Íd., pág. 840.

El asunto medular en el caso de autos reside en el hecho de que al haberse sometido el peticionario a una cirugía y las partes genitales externas de su cuerpo aparenten haber sufrido algún cambio, no fue establecido con prueba pericial y científica por el peticionario que, en efecto, se haya producido una transformación en sus cromosomas. No obstante, para determinar el sexo de una persona que fue sometida a una intervención quirúrgica, no basta con auscultar la parte exterior de su cuerpo. Es menester evaluar, además, sus características cromosómicas, genéticas, hormonales y psicológicas.<sup>6</sup>

<sup>6</sup> Íd., pág. 835.

La clasificación sexual que corresponde a una persona queda definida al momento de su nacimiento, tomando en consideración el fenotipo exhibido por la persona nacida. Ese fenotipo exhibido, salvo limitadas excepciones, normalmente coincide con una estructura cromosómica típica del sexo correspondiente. Es por esto que, mediante pruebas científicas, podemos determinar con exactitud, por medio de un examen cromosómico, cuál es el sexo de esa persona, toda vez que el sexo masculino se distingue por poseer cromosomas XY y el sexo femenino por poseer cromosomas .

Somos conscientes de la existencia de una variedad de desórdenes que se manifiestan de distintas maneras. Tal es el caso de los hermafroditas, por mencionar alguno de \*199 ellos. En estos casos la persona no puede permanecer indefinidamente en un estado de incertidumbre sobre cuál es su sexo ni en una clasificación especial, por lo que existe la necesidad de que esa persona escoja entre una de las dos opciones que, como una anomalía, su cuerpo presenta. Es decir, en estos casos la persona tiene que definir su sexo con posterioridad al nacimiento. Esa no es la situación ante nos. La posibilidad de que se reconozca un cambio de sexo en los documentos oficiales del Estado, sin la prueba pericial y científica que lo justifique, crearía una situación anómala en diferentes áreas de nuestro ordenamiento jurídico. Permitiría, entre otros, soslayar la prohibición existente en nuestro Código Civil relativa a la celebración de matrimonios entre personas del mismo sexo. El Art. 68 de nuestro Código Civil,<sup>7</sup> dispone:

<sup>7</sup> [31 L.P.R.A. sec. 221.](#)

El matrimonio es una institución civil que procede de un contrato civil en virtud del cual *un hombre y una mujer se obligan mutuamente a ser esposo y esposa, y a cumplir el uno para con el otro los deberes que la ley les impone*. Será válido solamente cuando se celebre y solemnice con arreglo a las prescripciones de aquélla, y sólo podrá disolverse antes de la muerte de cualquiera de los dos cónyuges, en los casos expresamente previstos en este título. *Cualquier matrimonio entre personas del mismo sexo o transexuales contraído en otras jurisdicciones, no será válido ni reconocido en derecho en Puerto Rico.* (Énfasis suplido.)

El matrimonio es un contrato en virtud del cual *un hombre y una mujer se obligan mutuamente a ser esposo y esposa*. Cualquier matrimonio entre *personas del mismo sexo o transexuales* contraído en otra jurisdicción, *no es válido ni reconocido* como válido en Puerto Rico. Incluir o hacer constar, como pretende el peticionario, los resultados externos de una intervención quirúrgica en el área de los genitales de su cuerpo en el asiento del Registro Demográfico, donde se registró su nacimiento, permitiría que se realicen los matrimonios entre personas del mismo sexo, una de ellas transexual, cuando la condición cromosómica y \*200 biológica de este último no se ha demostrado que fuera alterada con evidencia pericial y científica. Para todos los efectos legales, se trataría de un matrimonio entre personas del mismo sexo, en abierta violación a la prohibición estatutaria.

A pesar de que el referido estatuto hace referencia a la prohibición de contraer matrimonio entre personas del mismo sexo o transexuales *en otras jurisdicciones*, resulta obvio que dicha prohibición es extensiva a matrimonios de ese tipo



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que se celebren en Puerto Rico. Interpretar el estatuto como que la referida prohibición no incluye a los matrimonios de ese tipo celebrados en Puerto Rico, sería absurdo. Ese estatuto prohíbe la celebración de matrimonios entre personas del mismo sexo o transexuales en Puerto Rico. Contiene un claro mandato sobre la invalidez de ese tipo de matrimonio, de celebrarse.

Autorizar la oficialización del cambio de sexo en los documentos del Estado, en casos como el presente, abre la puerta para la concesión de adopciones de menores de edad por parejas adoptantes del mismo sexo, acción que opera en contra de los valores y las normas jurídicas vigentes en nuestra jurisdicción.

Otra consecuencia de permitirse un cambio de sexo en los documentos oficiales del Estado es el detrimento que esto tendría sobre la certeza y confiabilidad de la que gozan actualmente esos documentos, muy en particular el certificado de nacimiento, expedido por el Registro Demográfico de Puerto Rico. El certificado de nacimiento es quizás el documento personal más importante que emite el Gobierno en Puerto Rico. A través de ese documento, el ciudadano en Puerto Rico comienza a obtener el cúmulo de documentos que usualmente poseemos y que utilizamos para establecer nuestra identidad en todo tipo de transacciones oficiales. Si permitiéramos oficializar en el asiento del nacimiento de una persona en el Registro Demográfico un supuesto cambio de sexo, que en realidad no ha sido acreditado con prueba científica, le estaríamos restando \*201 certeza y confiabilidad a un documento tan importante como lo es el certificado de nacimiento emitido por esa agencia. Esto tendría graves consecuencias con relación a asuntos locales, nacionales e internacionales de nuestros ciudadanos, pues estos documentos son evidencia indispensable de su identidad, y ya no gozarían de la certeza y confianza que hoy se les concede.

El aspecto psicológico y emocional de un ser humano no altera los componentes cromosómicos, hormonales y genéticos que determinan el sexo. El sexo es una cualidad de la persona. Cuando una persona, que nació varón, pretende asumir un rol femenino, es meramente una forma particular de vivir su propia sexualidad. Al someterse una persona a una intervención quirúrgica, como en el caso ante nos, sólo obtiene una simple apariencia externa de cambio en el área de sus genitales, mientras no se demuestre con prueba pericial y científica lo contrario.

Los fundamentos antes expuestos, además de los impedimentos establecidos por la Ley del Registro Demográfico de Puerto Rico, constituyen una barrera al reconocimiento al llamado cambio de sexo en los documentos oficiales del Estado como resultado de una intervención quirúrgica, como la del caso ante nos.

IV

Por los fundamentos expuestos, estamos conformes con el resultado a que llega el Tribunal y los fundamentos utilizados para sostenerlo, según la Ley del Registro Demográfico de Puerto Rico. \*202

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Opinión disidente emitida por el Juez Asociado Señor Fuster Berlingeri.

“The force of precedent in the law is heightened by that almost universal sense of justice which urges that all men are properly to be treated alike in like circumstances.”

“Mira, Sancho ... Cuando pudiese y debiere tener lugar la equidad, no cargues todo el rigor de la ley al delincuente; que no es mejor la fama del juez riguroso que la del

Karl Llewellyn   compasivo.”

Consejo de Don Quijote



de la Mancha a  
Sancho en ocasión  
de la gobernación  
de la Insula  
de Barataria.

El asunto del que trata el caso de autos fue resuelto por este Tribunal en [Andino Torres, Ex parte, 151 D.P.R. 794 \(2000\)](#). Conforme a una imperiosa tradición jurídica, que atañe a la propia esencia del proceso judicial, una vez hemos resuelto un asunto de determinada manera, la pauta que rigió en ese primer caso debe regir también para todos los casos iguales o similares que surjan posteriormente. Fundamentales consideraciones de trato igual, y sobre la estabilidad y la certidumbre que debe tener el Derecho, informan la referida tradición, que abarca cualquier decisión novel nuestra, aunque se anuncie sólo mediante una sentencia. Por ser tan fundamentales las razones referidas, baluartes contra la arbitrariedad y la confusión, hemos resuelto que una decisión nuestra sobre determinado asunto no debe ser variada en casos posteriores en que dicho asunto se vuelva a plantear, a menos que nuestra decisión anterior haya sido “*tan manifiestamente errónea que no puede sostenerse sin violentar la razón y la justicia*”. (Énfasis suplido.) [Capestany v. Capestany, 66 D.P.R. 764, 767 \(1976\)](#). Véanse: [San Miguel & Cía. v. Guevara, 64 D.P.R. 966, 974 \(1946\)](#); [Banco de Ponce v. Iriarte, 60 D.P.R. 72, 79 \(1942\)](#), según citado en [García Fernández, Ex parte, 44 D.P.R. 296, 297 \(1932\)](#). \*203

La mayoría del Tribunal ahora se ampara en una mera política gerencial de este Foro, en la provinciana distinción entre una *sentencia* y una *opinión*, para resolver el caso de autos en forma contraria a como decidimos *Andino Torres, ex parte*, supra. Acude a la excusa simplista de que nuestra decisión en ese caso fue sólo una sentencia y, por lo tanto, que no estamos obligados por ella. Lo que la mayoría no hace es explicar qué diferencias, si algunas, existen entre los hechos del caso de autos y los de *Andino Torres, ex parte*, supra, que *justifique una decisión en el caso de autos contraria a la de aquél*. La mayoría del Tribunal parece no darse cuenta de que si este Foro, o cualquier otro, puede decidir casos esencialmente idénticos en formas dispares, *entonces no prevalece el Derecho, sino que prevalece la arbitrariedad*. La esencia del imperio de la ley en cuanto a la función judicial es precisamente el *trato igual de los casos similares*. Se trata de la piedra angular sobre la cual se erige cualquier sistema judicial legítimo y la confianza del pueblo en la justicia, proclamado así por los más grandes juristas de nuestro tiempo, tales como: Cardozo,<sup>1</sup> Brandeis,<sup>2</sup> Llewellyn,<sup>3</sup> Pound<sup>4</sup> y Bodenheimer.<sup>5</sup> Ese principio fundamentalísimo lo hemos aplicado expresamente en Puerto Rico desde hace casi cien años. Véase [Delgado v. Pimentel, 20 D.P.R. 556 \(1914\)](#). Se extiende a todas las *decisiones judiciales* sin que importe si éstas se emiten mediante sentencias u opiniones.

<sup>1</sup> B. Cardozo, *The Nature of the Judicial Process*, New Haven, Yale U. Press, 1921, pág. 149.

<sup>2</sup> [Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406 \(1932\)](#).

<sup>3</sup> “Case Law”, 3 *Encyclopedia of the Social Sciences*, pág. 249 (1930).

<sup>4</sup> R. Pound, [The Theory of Judicial Decision, 36 Harv. L. Rev. 641 \(1923\)](#).

<sup>5</sup> E. Bodenheimer, *Jurisprudence: the Philosophy and Method of the Law*, Cambridge, Harvard U. Press, 1962, pág. 193.

La mayoría apoya su racionalización de un gran dislate en [Rivera Maldonado v. E.L.A., 119 D.P.R. 74 \(1987\)](#). Allí ciertamente hicimos una distinción sobre el valor como precedente que existe entre nuestras sentencias y nuestras opiniones. *Pero también explicamos claramente la razón de \*204 economía judicial, y no de autoridad o legitimidad, en que se fundamenta esa distinción*, algo que la mayoría del Tribunal ha ignorado al apoyarse en dicha decisión ahora. Explicamos, entonces, que como regla general en nuestras opiniones, mediante las cuales atendemos los asuntos que requieren pautarse, “se consideran ampliamente las cuestiones envueltas y se fundamentan con razonamientos, precedentes explicados y tratadistas reconocidos”. En cambio, las sentencias se utilizan “*para disponer lo más rápidamente posible del*

*enorme número de casos que [el Tribunal] tiene que resolver*”, aquellos que plantean “*cuestiones reiteradamente resueltas por este Tribunal*”. (Énfasis suplido.) Íd., pág. 80 esc. 7. Estas sentencias, que evidentemente no utilizamos de ordinario para resolver cuestiones *noveles*, tienen “*el valor persuasivo intrínseco de sus fundamentos*”. (Énfasis suplido.) Íd., pág. 80. Son, pues, una de las dos variantes ordinarias de nuestro quehacer judicial: un tipo de dictamen del Tribunal que usualmente no tiene una extensa exégesis del Derecho aplicable, pero que tiene fuerza de ley, y que en algunas ocasiones ordenamos publicar.

Con arreglo a lo anterior, para hacer caso omiso de nuestra decisión en *Andino Torres, ex parte*, supra, que fue publicada, la mayoría ha debido explicar al menos por qué le parecen erróneos sus fundamentos, sobre todo en vista de que mediante dicha decisión se resolvió *una cuestión novel*. La sentencia de *Andino Torres, ex parte*, supra, incorporó por referencia expresa los fundamentos de la opinión concurrente que la acompaña, por lo que la mayoría del Tribunal ahora debería señalar por qué los estima erróneos. Véase *Am. Railroad Co. v. Comisión Industrial*, 61 D.P.R. 314, 326 (1943). Sin embargo, la mayoría del Tribunal *no explica* en el caso de autos por qué considera errada nuestra anterior decisión en *Andino Torres, ex parte*, supra. Y, como ya indicamos, tampoco señala qué diferencias, si algunas, existen entre los hechos de dicha decisión y los de autos que justifiquen llegar a un resultado distinto. Por ende, es claro que *la mayoría no ha formulado razón meritoria alguna en virtud de la cual sea legítimo \*205 hacer caso omiso de nuestro dictamen anterior sobre el asunto que aquí nos concierne*.

La mayoría del Tribunal en el caso de autos ha debido resolver como lo hicimos en *Andino Torres, ex parte*, supra. Nuestra decisión allí no fue manifiestamente errónea; *mucho menos violaría la razón y la justicia resolver el caso de autos tal como lo hicimos en el caso anterior*. Aquella decisión fue criticada severamente por algunos sectores religiosos del país y *así pagamos el precio que tiene ejercer nuestra fundamental misión judicial con verticalidad*. Pero este Foro no puede amilanarse por temor de esa crítica. Yo, por lo menos, no puedo dar marcha atrás como Juez sólo porque unos poderosos sectores de la opinión pública estén en desacuerdo con la manera en que cumplo con un deber de consciencia, sobre todo cuando tengo razones para creer que la crítica referida ni siquiera ponderó con objetividad los sólidos fundamentos de nuestra anterior decisión.

## I

Para concluir este breve disenso, creo menester resaltar dos puntos sobre el asunto que aquí nos concierne. El primero es relativo al grupo de personas a que pertenece el peticionario Alexis Delgado. Los *transexuales* como él deben distinguirse de otros grupos con los cuales erróneamente se les confunde, tales como los *travestistas*, los *intersexuales*, los *homosexuales* y los *bisexuales*. Véase T. Flynn, *Transforming the Debate: Why we Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality*, 101 *Columbia L. Rev.* 392 (2001). Los transexuales son personas *muy distintas* de las otras, reconocidos así no sólo por las ciencias de la Medicina y de la psiquiatría, sino también por los tribunales<sup>6</sup> y la literatura *\*206* profesional jurídica.<sup>7</sup> El transexual sufre de una *conocida condición médica*, para la cual se han desarrollado diversas terapias y tratamientos particulares pertinentes sólo a ellos. Tales personas transexuales sufren de la grave discordancia de sentir con todo su ser que son hombre o mujer a pesar de que sus rasgos anatómicos son del sexo contrario. La literatura científica está llena de estudios y monografías sobre esta anómala condición, que resaltan la *angustiosa existencia* que tienen los que la padecen, llevando a algunos de ellos al suicidio o, al menos, al intento de quitarse la vida. Lo más que desean estas personas transexuales es poder enderezar el involuntario trastorno de identidad sexual que sufren, para así poder integrar su existencia y *vivir de la forma más normal posible*. Su condición de transexual, como tal, nada tiene que ver, por ejemplo, con la inclinación de los travesti a vestirse con ropas del sexo contrario o con la inclinación de los homosexuales a las relaciones íntimas con personas del mismo sexo, sino todo lo contrario.

<sup>6</sup> Véase el señalamiento sobre el particular en *Littleton v. Prange*, 9 S.W.3d 223, 226 (1999), en que el Tribunal Supremo de Texas resuelve en contra de un transexual, pero reconoce que su condición es distinta a la de un homosexual.

<sup>7</sup> La condición de los transexuales y sus particularidades han sido objeto de numerosas monografías eruditas en el campo del Derecho. Sólo a modo de ilustración, véanse: M. Bell, *Transsexuals and The Law*, 98 *Nw. U.L. Rev.* 1709 (2004); M. Aubin, *Defying Classification: Intestacy Issues for Transsexual Surviving Spouses*, 82 (Núm. 4) *Ore. L. Rev.* 1155 (2003).

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El segundo punto que debe resaltarse es que favorecer la particular solicitud de Alexis Delgado en este caso sólo significa, en mi opinión, que no hay fundamentos jurídicos suficientes que justifiquen aquí *agravarle la vida al peticionario*, como ha de suceder como resultado de la decisión mayoritaria.

*Es muy importante tener en cuenta claramente qué es lo que está ante nuestra consideración en este caso; qué es exactamente lo que se nos solicita.* Lo que procura Delgado en este caso es *únicamente* que se modifique un aspecto de su identidad en dos documentos legales: su certificado de nacimiento y su licencia de conducir vehículos de motor. Es decir, se nos pide que se *enmienden dos documentos para que su identificación sexual en ellos coincida con su apariencia \*207 física actual.* Es fácil entender la gran necesidad que Delgado tiene de lograr la modificación de documentos que solicita. Basta pensar en el *lío que ha de ocurrir*, por ejemplo, si es detenido por un policía que le pide ver su licencia de conducir en la cual su identificación sexual no corresponde a su actual apariencia física; igual sucedería si va a abrir una cuenta en un banco, a solicitar un empleo o a tantas otras gestiones cotidianas en las que tiene que producir algún documento de identificación.

El peticionario se había realizado ya la operación de cambio de sexo antes de acudir a este Tribunal. *Las nuevas circunstancias del peticionario son un dato irreversible que nadie puede remediar.* Sólo nos compete decidir si le facilitamos su vida ahora *en el modo específico en que se nos ha solicitado aquí* o si nos unimos a los que no les duele la angustiada existencia que ha sufrido este ser humano por su largo trastorno de la identidad sexual, angustiada existencia que *ha de continuar sufriendo* por razón de la decisión mayoritaria.

Para mí resulta claro el curso de acción que por razones de derecho y de solidaridad humana deberíamos tomar.<sup>8</sup> Sobran los fundamentos jurídicos para acceder a lo que se nos solicita, conforme a lo que resolvimos en *Andino Torres, ex parte*, supra. No hacerlo no sólo constituye el injustificado y ominoso abandono de un precedente nuestro, sino el rechazo a compadecernos de la honda desdicha de un ser humano. Se falta así tanto a la justicia como a un deber de solidaridad.

<sup>8</sup> Véase J. Fuster Berlingeri, *La solidaridad en el proceso judicial*, 41 (Núm.1) Rev. Der. [Pur. 1 \(2002\)](#).

En resumen, no estamos decidiendo ahora aquí si son válidos o no los llamados “matrimonios” de homosexuales o las llamadas “uniones de hecho” de personas del mismo sexo, ni ningún otro escabroso asunto similar. Sólo se trata, en este caso, de ayudar a un ser humano que ha sufrido una angustiada existencia a que su vida futura sea un poco más llevadera mediante la modificación de dos documentos *\*208* particulares. Lamento que la mayoría del Tribunal no comparta esta visión, y disiento de su dictamen.

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Opinión disidente emitida por la Jueza Asociada Señora Fiol Matta.

Hace cinco años, este Tribunal tuvo ocasión de resolver una controversia idéntica a la que nos presenta este caso. Lo hizo mediante una sentencia publicada, a favor de lo solicitado. Dispusimos, en ese caso, que el Registro Demográfico podía enmendar el certificado de nacimiento de un ser humano transexual<sup>1</sup> que se había sometido a una operación de reasignación de sexo.<sup>2</sup> *Andino Torres, Ex parte, 151 D.P.R. 794 (2000).*<sup>3</sup> Hoy el péndulo se orienta en la dirección contraria. Sin embargo, nuestra conciencia jurídica nos obliga a hacer constar que coincidimos con el criterio pluralista anterior de este Tribunal y, en particular, con los fundamentos expuestos en la opinión concurrente emitida en ese caso por el Juez Asociado Señor Negrón García, a la cual se unieron los Jueces Asociados Señores Hernández Denton y Fuster Berlingeri. *\*209*

<sup>1</sup> Según la obra de la Universidad de Navarra, *Diccionario de Medicina*, Madrid, Ed. Espasa Calpe, 2001, pág. 1200, el transexualismo es un “[t]rastorno de la identidad sexual que consiste en el deseo de vivir y ser aceptado como un miembro del sexo opuesto. Suele acompañarse por sentimientos de malestar o desacuerdo con el sexo anatómico propio y con la intención de someterse a un tratamiento quirúrgico u hormonal para hacer que el propio cuerpo concuerde, lo más posible, con el sexo preferido”. En casi todas las sociedades y épocas han existido personas que desarrollaban trabajos o incluso se relacionaban socialmente como si fueran de un sexo distinto. Véanse: C. Garaizabal Elizalde, *Problemas de diagnóstico en los casos de transexualidad*, 40 Rev. Psicoterapia (1999); A. Becerra-Fernández, *Transexualidad*, Madrid, Ed. Díaz de Santos, 2003.

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<sup>2</sup> Esta operación es completamente válida en nuestro sistema de derecho y no existe disposición alguna que la proscriba.

<sup>3</sup> Andino Torres, Ex parte, 151 D.P.R. 794 (2000), trataba solamente sobre una petición *ex parte* para que el nombre y sexo de una persona transexual operada fueran enmendados en el certificado de nacimiento; no se solicitaba que dicha información se enmendara de igual forma en la licencia de conducir. El asunto concerniente a la posibilidad de enmendar esta información en la licencia de conducir, planteado por la peticionaria, lo atenderemos en el acápite IV de nuestra opinión disidente.

La controversia que está nuevamente ante nuestra consideración nos ofrece la oportunidad de utilizar nuestra facultad adjudicativa para dictar una decisión amparada en los principios elementales de equidad y atemperar la interpretación de nuestras leyes a los adelantos de la ciencia moderna. Por entender que la opinión mayoritaria se niega injustificadamente a conceder el remedio solicitado, recurriendo a una interpretación excesivamente rígida del Derecho, respetuosamente disintimos.

## I

El 22 de diciembre de 2003 la peticionaria, quien fue inscrita al nacer con el nombre de Alexis Delgado Hernández, presentó ante el Tribunal de Primera Instancia una petición jurada para que se corrigiera su certificado de nacimiento con relación a su nuevo nombre, Alexandra Delgado Hernández, y a su sexo, de masculino a femenino. Además, solicitó que se enmendara del mismo modo su licencia de conducir y su expediente en el Departamento de Transportación y Obras Públicas. Junto a la solicitud, anejó su certificado de nacimiento, del cual se desprende que nació el 27 de octubre de 1970, que fue inscrita en el Registro Demográfico el 16 de noviembre del mismo año bajo el nombre de Alexis y que fue identificada como un varón. Además, presentó prueba documental de que se había sometido a una operación de cambio de sexo. Esta prueba consistía de una declaración jurada del Dr. Stanley H. Biber, otorgada el mismo día de la operación —23 de mayo de 2003— dando fe de que había operado a Alexandra en el Hospital Mount San Rafael en Colorado. En específico, certificó que como consecuencia de esta operación “*the sex designation of the same person was changed completely from male to female*”.

El 20 de enero de 2004 el foro de instancia ordenó a la peticionaria que sometiera una certificación negativa de antecedentes penales emitida a nombre de Alexis Delgado Hernández. Además, concedió un término al Ministerio Fiscal \*210 para que se expresara acerca de la solicitud de corrección de acta. *Especificó que, de no hacerlo, el tribunal entendería que se allanaba a la petición.* La parte peticionaria sometió oportunamente la certificación solicitada, *pero el Ministerio Fiscal nunca compareció para expresar su posición.*<sup>4</sup> Finalmente, el 23 de febrero de 2004 el tribunal de instancia emitió una resolución, en la que declaró lo siguiente:

<sup>4</sup> Este hecho denota una falta crasa de diligencia de la parte recurrida, que si consideraba, como ahora plantea ante nosotros, que el asunto reviste gran importancia, debió cumplir con la orden dentro del término concedido originalmente.

Este Tribunal ORDENA al Registro Demográfico corregir el asiento de inscripción de nacimiento de la peticionaria para que aparezca que su sexo es FEMENINO y que su nombre es ALEXANDRA DELGADO HERNÁNDEZ, nombre con el cual es conocida y que es el que ha escogido para usar conforme a su nueva realidad. También ordena al Departamento de Transportación y Obras Públicas, Negociado de Vehículos de Motor, realizar los cambios correspondientes en términos de nombre y sexo en la licencia de conducir. Apéndice, Anejo 2, pág. 2.

Luego de dictada la referida resolución y casi tres meses después del término concedido por el Tribunal de Primera Instancia para que el Ministerio Público compareciera, el Fiscal de Distrito solicitó a la Secretaria General de ese tribunal unas copias de los documentos en el expediente. El 12 de abril de 2004 presentó una petición de *certiorari* ante el Tribunal de Apelaciones, en la que solicitó la revocación de la resolución emitida. Once días después, el 23 de abril de 2004, ese foro expidió el auto solicitado y concedió un término a la parte recurrida, aquí peticionaria, para someter su alegato. Finalmente, el 22 de junio de 2004 el Tribunal de Apelaciones dictó sentencia en la que revocó en su totalidad la decisión del tribunal de instancia.

El 5 de agosto de 2004, la parte peticionaria presentó la petición de *certiorari* que nos ocupa. Como único error señaló que el foro apelativo intermedio se equivocó al revocar la resolución del tribunal de instancia y negarle su solicitud para que

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se enmendaran las actas de su certificado de \*211 nacimiento y su licencia de conducir. Expedimos el auto de *certiorari* y el recurso quedó sometido una vez el Procurador General presentó su alegato, el 3 de marzo de 2005.

## II

Suscribimos en su totalidad la opinión concurrente emitida en *Andino Torres, ex parte*, supra, por el entonces Juez Asociado Señor Negrón García junto al hoy Juez Presidente Señor Hernández Denton y el Juez Asociado Señor Fuster Berlingeri.<sup>5</sup> Ésta examinó detenidamente las disposiciones de la Ley del Registro Demográfico de Puerto Rico, Ley Núm. 24 de 22 de abril de 1931 (24 L.P.R.A. secs. 1071–1074, 1101–1110, 1131–1139, 1161–1166, 1191, 1211 y 1231–1238), que regulan las enmiendas a la información contenida en el Registro Demográfico. Concluyó que la ley contenía una laguna con respecto a las enmiendas por cambio de sexo y que este Tribunal estaba obligado a llenar esa laguna, aplicando la equidad, según requiere el Art. 7 del Código Civil, 31 L.P.R.A. sec. 7:

<sup>5</sup> *Andino Torres, ex parte*, supra, págs. 797–811. La Jueza Asociada Señora Naveira de Rodón concurrió con el resultado de la decisión “por entender que ésta se limita a interpretar el concepto ‘sexo’ dentro del contexto específico de este caso, en cuanto a realizar un cambio en la constancia que aparece en el Certificado de Nacimiento que se expide por el Registro Demográfico. Ésta es un área que tiene que irse desarrollando caso a caso y la sentencia que hoy se certifica, no debe entenderse como que se proyecta más allá del cambio que autoriza”. Íd., pág. 796. El Juez Asociado Señor Rebollo López emitió una opinión disidente a la que se unió el Juez Presidente Señor Andréu García. El Juez Asociado Señor Corrada Del Río emitió una opinión disidente.

El Tribunal que rehúse fallar a pretexto de *silencio, obscuridad, o insuficiencia de la ley*, o por cualquier otro motivo, incurrirá en responsabilidad.

Cuando no haya ley aplicable al caso, el tribunal resolverá conforme a *equidad*, que quiere decir que se tendrá en cuenta la razón natural de acuerdo con los principios generales del derecho, y los usos y costumbres aceptados y establecidos. (Énfasis suplido.)

Al aplicar este artículo al caso ante nos, debemos precisar, de entrada, dos conceptos fundamentales. El primero es \*212 el concepto base o elemento *sine qua non* de “silencio, obscuridad o insuficiencia de la ley”; el segundo es, precisamente, el principio de “equidad”, con su enorme riqueza normativa y ética.

Hace medio siglo, Felipe Clemente de Diego, en un discurso publicado por la Real Academia de Jurisprudencia y Legislación de Madrid, abordó el tema de las llamadas “lagunas” en la ley, que es lo que el Art. 7 de nuestro Código, supra, denomina “silencio, obscuridad, o insuficiencia” de ésta.<sup>6</sup> En una extensa discusión que hoy conserva la misma vigencia y pertinencia, el insigne tratadista concluye como sigue:

<sup>6</sup> A pesar de que algunos estudiosos niegan la posibilidad de lagunas en la ley, “el propio legislador reconoce la existencia de lagunas cuando, en defecto de ley o de costumbre aplicable, remite al Juez a los principios generales del Derecho”. G. García Valdecasas, *Parte general del Derecho Civil español*, Madrid, Ed. Civitas, 1983, pág. 115. Véase, por ejemplo, D. Espin Cánovas, *Manual de Derecho Civil Español*, 3ra ed., Madrid, Ed. Edersa, 1968, Vol. I, págs. 129 y ss.

Parece, pues, que la palabra laguna representa en nuestro espíritu algo que falta en una cosa o serie que quebranta, rompe o detiene su continuidad, limitando su extensión y contenido y quedando por ello incompleta e insuficiente. ... *Con toda propiedad también se aplica a la ley que en la regulación de las relaciones de la convivencia social y de sus posibles conflictos no contenga una disposición necesaria o conveniente para la protección de los intereses de la Comunidad o de sus miembros.* (Énfasis suplido.) F.C. de Diego y Gutiérrez, *De las lagunas de la ley*, Madrid, Real Academia de Jurisprudencia y Legislación, 1945, págs. 39–40.<sup>7</sup>

<sup>7</sup> Puig Brutau no favorece el término de “laguna” de la ley. Según explica, “sería más adecuado hablar de imperfección legal o falta de previsión de las normas promulgadas”. Señala también que el concepto corresponde en inglés al “*unprovided case* o caso no previsto, o de *case of first impression*, caso que se presenta por primera vez”. J. Puig Brutau, *Fundamentos de Derecho Civil*, 2da ed., Barcelona, Ed. Bosch, 1989, T. preliminar, pág. 309.

Las lagunas ocurren debido a que “la ley pocas veces nace perfecta, completa, de la mente del legislador, como la experiencia en todas las épocas ha comprobado. Y aún naciendo perfecta, con aquella perfección relativa a las obras



humanas, muy pronto se advierte su insuficiencia”. De \*213 Diego y Gutiérrez, *op. cit.*, pág. 54. El autor amplía este concepto al afirmar:

El legislador, aun con su experiencia y extensa visión del conjunto de los principios jurídicos y del complejo de las relaciones sociales, aun sabedor de las necesidades sociales de su pueblo, no puede comprender en su ley, para regularlos, todos los casos y problemas que puedan presentarse en la vida. De un lado, su atención recae sobre los hechos y casos más importantes y frecuentes que suelen presentarse, y con ello no agota las posibilidades ni regula por tanto, ni tiene en cuenta las variadísimas circunstancias con que pueden presentarse. *Íd.*, pág. 10.

Entre las circunstancias sobre las que la ley calla, están aquellas que se deben no sólo a la falta de previsión del legislador, sino “a un cambio posterior de la realidad social que plantea cuestiones imposibles de resolver cuando se dictó la ley”. G. García Valdecasas, *Parte general del Derecho Civil español*, Madrid, Ed. Civitas, 1983, págs. 115–116.<sup>8</sup> En este sentido, la ley no es la totalidad del Derecho, sino una expresión incompleta de éste. Clemente de Diego, *op. cit.*, pág. 53. Los vacíos que se presentan en la ley y que generalmente se denominan “lagunas” son el supuesto necesario para que se forme y reconozca el Derecho judicial en sentido estricto. Es aquí donde se manifiesta la iniciativa de jueces y tribunales, que perfilan, moldean y adaptan la ley a esas nuevas situaciones. *Íd.*, pág. 8.

<sup>8</sup> Para una exposición detallada de otros supuestos en que pueden presentarse lagunas legales, véase Puig Brutau, *op. cit.*, págs. 309–316.

Este Tribunal tiene la obligación de llenar las lagunas existentes en la ley, conforme al mandato del Art. 7 del Código Civil, *supra*, en tanto éste nos requiere que, en ausencia de ley aplicable al caso, resolvamos conforme a equidad y tratemos de armonizar las disposiciones de ley que estén o parezcan estar en conflicto.<sup>9</sup> Por eso, si aparecen \*214 lagunas en un estatuto, éstas se suplirán a través de la jurisprudencia. *Olmo v. Young & Rubicam of P.R.*, 110 D.P.R. 740 (1981). En *Pueblo v. Ortega Santiago*, 125 D.P.R. 203, 214 (1990), abundamos sobre el particular y expresamos:

<sup>9</sup> *Asoc. Cond. Balcones S.Ma. v. Los Frailes*, 154 D.P.R. 800 (2001). Véanse: *Corraliza v. Bco. Des. Eco.*, 153 D.P.R. 161 (2001); *Flores v. Meyers Bros. of P.R.*, 101 D.P.R. 689 (1973); *Robles Ostolaza v. U.P.R.*, 96 D.P.R. 583 (1968); *Collazo Cartagena v. Hernández Colón*, 103 D.P.R. 870 (1975). Véase, además, *Asoc. Fcias. Com. v. Depto. de Salud*, 156 D.P.R. 105 (2002).

Los tribunales estamos autorizados a interpretar las leyes cuando, entre otras, éstas no son claras o concluyentes sobre un punto en particular; cuando el objetivo, al realizarlo, es el de suplir una laguna en la misma; o cuando, con el propósito de mitigar los efectos adversos de la aplicación de una ley a una situación en particular, la justicia así lo requiere. (Énfasis suprimido.)

Al hablar de equidad, tenemos que tomar en consideración que se trata de un principio que ha regido el Derecho desde hace más de veinte siglos. Según Aristóteles, la equidad es una expresión de lo justo, pero no como lo es la ley, sino a modo de “rectificación de la justicia”; es decir, la rectificación de los resultados injustos de su aplicación a un caso particular. A. Hernández Gil, *Conceptos Jurídicos Fundamentales, Obras Completas*, Madrid, Ed. Espasa Calpe, 1987, T. 1, pág. 72. Según el filósofo, el Derecho debe ser complementado por la equidad y la regla general por la excepción, para poder alcanzar siempre una solución justa en el plano humano. J. Puig Brutau, *Fundamentos de Derecho Civil*, 2da ed., 1989, T. preliminar, pág. 309. Esta discusión aristotélica sobre la interpretación de las leyes en las que se emplea la equidad influyó, no solamente en los juristas romanos,<sup>10</sup> sino que a través de Santo Tomás de Aquino<sup>11</sup> ha influido en todo el mundo occidental. *Íd.* Véase, también, *Silva v. Comisión Industrial*, 91 D.P.R. 891, 899 (1968).

<sup>10</sup> En el Derecho romano, la equidad caracterizaba las normas que consideraban las circunstancias del caso particular (“*Ius aequum*”) *versus* las que no admitían que se consideraran tales circunstancias (“*Ius strictum*”). García Valdecasas, *op. cit.*, pág. 118.

<sup>11</sup> Para una discusión sobre el significado de la obra de la escolástica de Santo Tomás, véase Hernández Gil, *op. cit.*, págs. 75–82. Por su facultad moderadora de la rigidez de la ley, el término “equidad”, que se define de diversos modos, en ocasiones \*215 se utiliza como sinónimo de justicia.<sup>12</sup> García Valdecasas, *op. cit.*, pág. 118. Así, “[u]na solución equitativa es



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la que parece adecuada o correcta en circunstancias determinadas, como algo que corresponde a la justicia natural”. Puig Brutau, *op. cit.*, pág. 332.

<sup>12</sup> Se ha dicho: “Las ciudades y todas las agrupaciones de seres humanos están unidas entre sí por el aglutinante de la equidad, que es la conservadora y el alma de toda sociedad humana.” L. Legaz y Lacambra, *El Derecho y el Amor*, Barcelona, Ed. Bosch, 1976, pág. 113 esc. 33, citando, en la edición de las *Obras Completas*, a L. Vives, *De tradendis disciplinis* (L. River, trad.), Madrid, Ed. Aguilar, 1948, T. II, pág. 1948.

Es asunto trillado que las normas generales, por su generalidad y abstracción intrínsecas, no pueden prever todas las circunstancias de las situaciones de hechos que caerán bajo sus dominios. García Valdecasas, *op. cit.*, pág. 118. Por eso, “una aplicación rigurosa de la norma general que no tome en consideración las particularidades de cada situación concreta, puede conducir, en ocasiones, a resultados injustos. Para evitarlo, la equidad exige tener en cuenta dichas particularidades, derivando de la norma general la norma individual justa y adecuada al caso concreto”. (Énfasis suplido.) *Íd.*, pág. 119. En ocasiones, esto es necesario porque la norma general pierde concordancia con la situación regulada y ya no está debidamente ajustada a la necesidad actual: “La equidad en este caso tiene otro sentido porque puede anunciar un Derecho nuevo, mejor que el proclamado por la norma vigente. En este supuesto la equidad significa una reflexión sobre la misión del Derecho, o como ha dicho PRINGSHEIM, *la equidad es la conciencia del Derecho*.” (Énfasis suplido.) Puig Brutau, *op. cit.*, pág. 333.

Por último, es vital aclarar que al utilizar la equidad para llenar una laguna en la ley, los tribunales no usurpamos la función del legislador. Más bien, utilizamos los principios que informan la ley aplicable para derivar una norma que permita resolver una nueva situación, que si bien está dentro del ámbito de la ley, no está expuesta por ésta en su particularidad. Así, la misión del juez al amparo \*216 del Art. 7 del Código Civil, *supra*, no es legislar, sino extraer una norma para el caso particular, de lo ya ha normado para el caso general. Si los tribunales abdican de esta función,

... las situaciones sociales dignas de protección habían de quedar desamparadas, infligiendo grave daño a los interesados y aun al mismo bien común; y no hay que decir que también a los juzgadores se les pondría en el duro trance de denegar amparo o protección a tales situaciones .... Clemente de Diego, *op. cit.*, pág. 31.

### III

El certificado de nacimiento es un documento oficial expedido y custodiado por el Estado que incluye, entre otros datos, el nombre y sexo de la persona inscrita, la fecha y el lugar de su nacimiento, el nombre y la edad de sus padres, y el lugar de nacimiento de éstos. Este certificado se usa para autenticar la identidad de una persona y su nacionalidad, y también para obtener otros documentos oficiales del Gobierno. Aquí descansa la importancia para toda persona de que los datos en el certificado de nacimiento sean correctos, para que también lo sean los demás documentos que descansan en esa información.

La primera laguna legal que debemos subsanar se encuentra en el Art. 31 de la Ley de Registro Demográfico de Puerto Rico, [24 L.P.R.A. sec. 1231](#), específicamente en el procedimiento para enmendar el certificado de nacimiento:

... Disponiéndose, que las omisiones o incorrecciones que aparezcan en cualquier certificado antes de ser registrado en el Departamento de Salud podrán ser salvadas insertando las correcciones o adiciones necesarias en tinta roja en dicho certificado, pero *luego de haber sido archivado* en el Departamento de Salud, no podrá hacerse en los mismos rectificación, adición ni enmienda alguna que altere sustancialmente el mismo, *sino en virtud de orden del Tribunal de Distrito, cuya orden, en tal caso, será archivada en el Departamento de Salud haciendo referencia al certificado a que corresponda* .... (Énfasis suplido.) \*217

A continuación, el citado Art. 31 del Código Civil describe el procedimiento para obtener la orden judicial que permite enmendar el registro. Este artículo, entre otras cosas, dispone lo siguiente:

El auto en que se autorice la rectificación o enmienda de un asiento en el antiguo Registro Civil se inscribirá mediante anotación extendida en debida forma al margen de la inscripción rectificada. La rectificación, adición o enmienda de un certificado ya archivado en el Registro General Demográfico se hará insertando en él las correcciones, adiciones

o enmiendas autorizadas por el tribunal. *Las tachaduras que fueren necesarias se harán de modo que siempre se pueda leer la palabra tachada.*

El cambio, adición o modificación de nombre o apellido sólo podrá hacerse a instancia del interesado, quien deberá presentar ante cualquier Sala del Tribunal de Distrito la oportuna solicitud, expresando bajo juramento los motivos de su pretensión, acompañada de la prueba documental pertinente en apoyo de su solicitud. Copia de la solicitud y de toda la prueba documental le será remitida al Ministerio Fiscal simultáneamente con su radicación.

Transcurridos 10 días desde la remisión y notificación al Ministerio Fiscal, sin que éste haya formulado objeción alguna, el tribunal entenderá y resolverá los méritos de la petición sin necesidad de celebrar vista o discrecionalmente podrá celebrar vista de estimarlo procedente y dictará el auto que proceda. (Énfasis suplido.)

Finalmente, el referido Art. 31 establece el procedimiento interno sobre la forma como se enmendarán las correcciones ordenadas mediante una orden judicial:

El auto en que se autorice el cambio, adición o modificación de nombre o apellido se inscribirá en el antiguo Registro Civil mediante anotación extendida al margen de la inscripción de nacimiento del interesado y al margen de la partida de su matrimonio. El cambio, adición o modificación de nombre o apellido se verificará en el Registro General Demográfico tachando en el certificado de nacimiento y en la certificación de la celebración del matrimonio del interesado el nombre o apellido sustituido y consignando el nuevo nombre o apellido autorizado por el tribunal. *Las tachaduras se harán de modo que siempre pueda leerse el nombre o apellido suprimido.* (Énfasis nuestro.)

Por su parte, la Sec. 1071-19 del Reglamento Núm. 1 del \*218 Registro Demográfico (Reglamento Núm. 316 del Departamento de Salud) de 16 de febrero de 1932, regula las correcciones o alteraciones después de hecha la inscripción:

Después que un certificado haya sido aceptado por el registrador, no podrá ser objeto de ningún cambio, borradura o alteración, así como tampoco la transcripción hecha en el libro de errores materiales de récord, *sin el debido procedimiento de ley.* Los errores materiales que aparecieren en cualquier certificado al ser presentado para inscripción o luego de haber sido inscrito, consistentes en la equivocación de un nombre, apellido, palabra o frase no esenciales, podrán subsanarse escribiendo correctamente con tinta roja la palabra o palabras erróneamente escritas o insertando la palabra o palabras omitidas. *Las tachaduras que fueren necesarias se harán de modo que siempre se pueda leer la palabra tachada.* Para efectuar dichas correcciones los registradores exigirán la prueba que, según los casos, estimen oportuna. (Énfasis suplido.)

La opinión mayoritaria hace una extensa descripción de la figura del Registro Civil español, fundamentándose en tratadistas españoles. Sin embargo, aunque menciona varias sentencias del Tribunal Supremo de España que interpretan la Ley del Registro Civil, no explica que éstas han permitido que se enmienden *el nombre y el sexo* de personas transexuales en certificados de nacimiento en el Registro Civil español.<sup>13</sup> Los jueces concurrentes en *Andino Torres, ex parte*, supra, llamaron nuestra atención a esta realidad jurídica del país de donde, como señala la opinión mayoritaria, proviene nuestro sistema de Registro Demográfico. Así, explican que en España el Tribunal Supremo español ha resuelto reiteradamente

<sup>13</sup> Sentencias de 2 de julio de 1987, 15 de julio de 1988, 3 de marzo de 1989 y 19 de abril de 1991.

... que la enmienda de la anotación de sexo en el Registro Civil producto de una modificación quirúrgica no está contemplada en la Ley de Registro Civil, segundo, que esta omisión constituye una laguna en la ley que los tribunales deben superar aplicando la equidad y, tercero, *que de la aplicación de la equidad resulta permisible el cambio de la anotación de sexo en el Registro Civil.* (Énfasis suplido.) *Andino Torres, ex parte*, supra, pág. 804. \*219

Al llenar las lagunas en las disposiciones que regulan las enmiendas al certificado de nacimiento, debemos tomar en cuenta cuál es la corriente actual. Son al punto, claro está, las sentencias españolas mencionadas. Además, recientemente

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la Corte Europea de Derechos Humanos reconoció el derecho de las personas transexuales a enmendar su certificado de nacimiento, en el caso de una persona transexual que nació varón pero se operó para vivir su vida como una mujer. *Goodwin v. United Kingdom*, 35 Eur. Ct. H.R. 18 (2002). En Estados Unidos, la Administración de Seguro Social permite realizar un cambio en la designación de sexo en los expedientes del Seguro Social cuando se presente “clinical or medical record or other combination of documents showing the sex change surgery has been completed”.<sup>14</sup>

<sup>14</sup> Order RM 00203.210, Changing Numident Data—Name Change, October 3, 2002. De igual forma, el Departamento de Estado de Estados Unidos de América ha permitido enmendar tanto el nombre como el sexo en el pasaporte, si se cumplen con ciertos requisitos. M. Bell, *Transsexuals and the Law*, 98 Nw. U.L. Rev. 1709, 1738 (2004).

Hay una preocupación generalizada, reflejada tanto en la opinión mayoritaria como en la sentencia del Tribunal de Apelaciones y en el alegato del Procurador General, de que permitir las enmiendas solicitadas vulnera la naturaleza histórica del Registro y disminuye la utilidad del certificado para fines estadísticos.<sup>15</sup> Además, se especula sobre la posibilidad de fraude a terceros. \*220

<sup>15</sup> La opinión mayoritaria también menciona que este Tribunal ha resuelto que el procedimiento de enmienda o rectificación al certificado de nacimiento debe interpretarse restrictivamente. A esos efectos, se refiere a dos casos, uno de 1946, resuelto antes de enmendarse la ley para permitir enmiendas al certificado, y otro de 1980, cuyos hechos no guardan relación con lo que nos ocupa, *Ex parte Pérez*, 65 D.P.R. 938 (1946), y *León Rosario v. Torres*, 109 D.P.R. 804 (1980). Ambos casos son claramente distinguibles de la controversia que hoy estudiamos. Cabe señalar que al referirse a *Ex Parte Pérez*, supra, la opinión concurrente en *Andino Torres, ex parte*, supra, pág. 801, concluyó que era improcedente la interpretación restrictiva allí utilizada para negar el cambio de apellido de la parte peticionaria, pues aunque “la Ley de 1931 no disponía *expresamente* para el cambio de nombre, *tampoco lo prohibía*”. (Énfasis en el original.) Evidentemente, un análisis restrictivo nos alejaría de la metodología civilista que debe imperar en nuestro sistema jurídico y que nos ordena interpretar la ley utilizando la equidad. Pero, más importante aún, *en ninguno de estos casos había la posibilidad de una violación a derechos fundamentales salvaguardados en nuestra Constitución*. Rechazamos una interpretación restrictiva en estas circunstancias.

No compartimos estas preocupaciones. En primer lugar, según explicaron los Jueces concurrentes en *Andino Torres, ex parte*, supra, pág. 798, “el carácter histórico del certificado es lo que compele la adopción de mecanismos de enmienda que, sin dejar de reflejar la condición del recién nacido, reflejen también los datos vitales de su historia. Menuda historia sería la que cesara al nacer!”. (Énfasis suprimido.)<sup>16</sup> Por otra parte, la ley y el reglamento del Registro Demográfico requieren que, para enmendar el certificado de nacimiento original, se utilicen tachaduras, lo que permite que la información original se conserve para fines estadísticos e históricos. De esta forma, se mantiene el documento histórico para el uso interno del Registro y se evita la alegada posibilidad de fraude a terceros,<sup>17</sup> porque *la información original no desaparece, sino que es enmendada*.

<sup>16</sup> Además, obsérvese el compromiso que se le impone al Registro Demográfico de consignar los datos tal cual son, *aún luego de certificados*. En específico, en el Art. 31 de la Ley del Registro Demográfico, supra, se consigna “... que los certificados que se reciban mensualmente en su Departamento procedentes de los encargados de registros sean examinados cuidadosamente y requerirá la información adicional que sea necesaria en aquellos que aparezcan incompletos o defectuosos, *para lo cual toda persona que tenga conocimiento de hechos concernientes a cualquier nacimiento, casamiento o defunción, estará obligada a suministrar dicha información, cuando a ello sea requerida por el Secretario de Salud en persona o por medio de su representante acreditado, por correo, o por conducto del Registrador del distrito.*” (Énfasis suplido.)

<sup>17</sup> “El transexual no tiene intención de defraudar a la sociedad sino, por el contrario, de corregir una disyuntiva de su personalidad que considera, por sí misma, fraudulenta.” (Énfasis suplido.) *Andino Torres, ex parte*, supra, pág. 809.

La sentencia del foro apelativo que la mayoría de este Foro confirma sostiene que la operación de reasignación de sexo no altera los cromosomas de la persona operada y que, por lo tanto, debemos concluir que la persona transexual realmente no cambia de sexo. Este argumento fue acogido en la opinión de conformidad emitida por el Juez Asociado Señor Rivera Pérez y se encuentra subyacente en la opinión mayoritaria.

Es cierto que la operación de reasignación de sexo no altera los cromosomas, pero esto nada tiene que ver con la naturaleza de la identificación del sexo que se realiza *a los* \*221 *únicos fines de emitir un certificado de nacimiento*. La determinación del sexo de un recién nacido se limita a la observación de la apariencia de los genitales, sin necesidad de

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un examen de laboratorio para determinar si los cromosomas del recién nacido corresponden a la apariencia exterior. Por lo tanto, en el Registro Demográfico se completa la información para marcar el encasillado correspondiente al sexo, utilizando, como único y exclusivo criterio, la apariencia exterior. No podemos requerir a las personas transexuales, que solicitan enmendar su certificado de nacimiento, un estándar diferente para probar su sexo del que se emplea de ordinario. *En el caso específico de Alexandra, debemos utilizar el mismo estándar que se utilizó cuando la peticionaria nació hace treinta y cinco años, es decir, la apariencia de sus genitales y otras características perceptibles a la vista, según certificadas por un médico autorizado. El médico que operó a Alexandra certificó que había hecho un procedimiento médico de reasignación de sexo. Esto, unido a la expedición de un certificado negativo de antecedentes penales y una orden judicial, es suficiente, en términos legales, para autorizar el cambio de sexo en el Registro Demográfico.*

Nuestro análisis de la Ley del Registro Demográfico nos lleva a concluir, contrario a la opinión de la que disentimos, que la descripción de enmiendas que contiene la ley es “*numerus apertus*” y que no existe impedimento legal alguno para que el Registro Demográfico cumpla con la orden del foro de instancia de enmendar el sexo y el nombre de la peticionaria en su certificado de nacimiento. La ley no prohíbe la enmienda solicitada, sino que admite claramente la posibilidad de que los asientos del Registro sean enmendados. Por otra parte, el procedimiento de enmiendas mediante tachaduras nos permite derivar los principios a partir de los cuales elaborar la norma para el caso particular que nos concierne. De esa forma, la equidad y la propia ley nos llevarían a resolver que debemos autorizar la enmienda solicitada mediante el procedimiento de enmiendas \*222 al amparo del Art. 33 de la Ley Núm. 24, *supra*, [24 L.P.R.A. sec. 1233](#).

#### IV

Pasemos ahora a analizar si existe la posibilidad de que el Departamento de Transportación y Obras Públicas enmiende el nombre y sexo de la peticionaria en su licencia de conducir y en sus expedientes en el Departamento de Transportación y Obras Públicas. *Este asunto no fue atendido por la opinión mayoritaria, a pesar de que la parte peticionaria claramente lo plantea en su señalamiento de error.* Como veremos, aquí también existe una laguna que es preciso subsanar utilizando la equidad.

La Ley de Vehículos y Tránsito de Puerto Rico, Ley Núm. 22 de 7 de enero de 2000 ([9 L.P.R.A. sec. 5001](#)), no especifica cuál es el proceso que se ha de seguir si una persona está interesada en cambiar la información que aparece en su licencia de conducir. Tan sólo se circunscribe a mencionar, en su Art. 3.14 ([9 L.P.R.A. sec. 5064](#)), que el procedimiento de renovación de licencias será establecido por el Secretario del Departamento de Transportación y Obras Públicas mediante reglamento. Por su parte, el Reglamento para Establecer los Requisitos para la Expedición, Renovación, Cambio de Categoría o de Nombre, Duplicado, Reciprocidad de Certificado de Licencia de Conducir y Endoso Especial para Transportar Materiales y Sustancias Peligrosas, Reglamento Núm. 6277 del Departamento de Transportación y Obras Públicas de 2 de enero de 2001 (Reglamento), tampoco regula de manera específica el cambio de sexo en la licencia de conducir. Al igual que la Ley del Registro Demográfico, este reglamento provee un procedimiento general de cambios en la información contenida en la licencia, en el cual incluye cambios de nombre, dirección y categoría. Art. VII(G), (H) e (I). Para el cambio de nombre requiere lo siguiente: \*223

1. Cumplir con los requisitos establecidos en Parte A, Requisitos Generales, de este Artículo, Incisos (5), (6), (7) y (9). [18](#)

[18](#)

Estos requisitos son:

“5. Sellos de rentas internas según la transacción solicitada ....

“6. Dos (2) fotografías recientes ....

“7. Certificado de ASUME, si aplica.

“9. Satisfacer cualquier multa administrativa pendiente de pago.” Reglamento Núm. 6277 del Departamento de Transportación y Obras Públicas de 2 de enero de 2001, Art. VII(A)(5), (6), (7) y (9), pág. 11.

2. Declaración Jurada firmada ante Notario Público Autorizado haciendo constar las razones que motivan su petición, la cual deberá estar acompañada de *uno* de los siguientes documentos:

a) Escritura de Reconocimiento.

b) *Sentencia o resolución del Tribunal.*

c) *Certificado de Nacimiento.*

d) Cualquier otro documento debidamente autenticado. (Énfasis suplido.) Reglamento, *supra*, pág. 13.

De entrada, observamos que este reglamento tampoco prohíbe que se cambie la información correspondiente al sexo del conductor. Además, el procedimiento de cambio de nombre establecido resulta igualmente adecuado para solicitar el cambio de sexo, para lo cual sería suficiente presentar tan sólo uno de los documentos enumerados, entre éstos, una sentencia o resolución del tribunal o un certificado de nacimiento. Por lo tanto, no vemos impedimento legal para que, al interpretar esta insuficiencia de la ley utilizando la equidad, permitamos cambiar no sólo el nombre del conductor en la licencia, sino el encasillado correspondiente al sexo.

## V

Aunque la decisión mayoritaria sostiene que “[n]o queda claro ... cuáles son los fundamentos legales esbozados para sostener la validez de la determinación del foro de instancia” (opinión mayoritaria, pág. 178), la realidad es que la peticionaria comparece ante nosotros mediante un alegato \*224 que se fundamenta en la esencia misma de la Justicia.<sup>19</sup> Claramente se ampara en nuestra Ley Suprema, la Constitución del Estado Libre Asociado de Puerto Rico, para reclamar su derecho a la intimidad y dignidad, a la vez que se refiere a nuestra sentencia en *Andino Torres, ex parte*, *supra*, y varias sentencias españolas, con ánimo de persuadirnos a reiterar el criterio que adoptamos entonces.<sup>20</sup> De esa forma, lo que pretende la petición es que utilicemos nuestra facultad como intérpretes de la Constitución y de las leyes para interpretar una laguna en la ley.

<sup>19</sup> En la vida social, “el hombre necesita del Derecho”. J. Vallet de Goytisolo, *Panorama del Derecho Civil*, 2da ed., Barcelona, Ed. Bosch, 1973, pág. 7. “Se trata de una necesidad espiritual de Justicia, casi tan intensa como la necesidad material que del agua tiene el pez.” Íd.

<sup>20</sup> También utiliza como material persuasivo varios artículos relacionados con el tema.

Coincidimos con la opinión concurrente de los Jueces Asociados Señores Negrón García, Hernández Denton y Fuster Berlinger en *Andino Torres, ex parte*, *supra*, en cuanto afirma que negarle a la peticionaria el derecho a enmendar su certificado de nacimiento (y en lo que respecta al caso ante nos, su licencia de conducir) *violaría los principios garantizados en las Secs. 1 y 8 de nuestra Carta de Derechos, L.P.R.A., Tomo 1, que protegen respectivamente el derecho a la dignidad e igualdad de todos los seres humanos y a su intimidad.*<sup>21</sup> *Andino Torres, ex parte*, *supra*, págs. 806–810. Cabe señalar en este sentido que la decisión de la Corte Europea en el caso *Goodwin v. United Kingdom*, *supra*, se basó parcialmente en que negar una enmienda respecto al sexo de una persona transexual operada en el certificado de nacimiento violaba el Art. 8 de la Convención Europea para la Protección de Derechos Humanos \*225 y Libertades Fundamentales, que dispone, de forma similar a nuestra Constitución: “Everyone has the right to respect for his private and family life, his home, and his correspondence.”

<sup>21</sup> La Constitución del Estado Libre Asociado dispone: “La dignidad del ser humano es inviolable. Todos los hombres son iguales ante la Ley. No podrá establecerse discrimen alguno por motivo de raza, color, sexo, nacimiento, origen o condición social, ni ideas políticas o religiosas. Tanto las leyes como el sistema de instrucción pública encarnarán estos principios de esencial igualdad humana.” *Art. II, Sec. 1, Const.* E.L.A., L.P.R.A., Tomo 1, ed. 1999, pág. 257. Por su parte, la Constitución del Estado Libre Asociado también establece: “Toda persona tiene derecho a protección de ley contra ataques abusivos a su honra, a su reputación y a su vida privada y familiar.” *Art. II, Sec. 8, Const.* E.L.A., *supra*, pág. 301.

Ya establecimos firmemente que las *Secs. 1* y 8 de la Carta de Derechos de nuestra Constitución, *supra*, operan sin necesidad de ley que las implante. *Figueroa Ferrer v. E.L.A., 107 D.P.R. 250 (1978).*<sup>22</sup> Ni la Ley del Registro Demográfico ni el Reglamento del Departamento de Transportación, mucho menos las decisiones de este Tribunal, pueden ir por encima de las disposiciones de nuestra Ley Suprema.



<sup>22</sup> Precisamente, en el caso *Figueroa Ferrer v. E.L.A.*, 107 D.P.R. 250 (1978), este Tribunal se enfrentó a la interpretación de nuestra ley de divorcio, la que no incluía ni prohibía un divorcio bajo el fundamento jurídico de consentimiento mutuo. En esa ocasión nos fundamentamos en ambos derechos, el de la dignidad y el de la intimidad, para realizar una interpretación jurídica que, al igual que en el caso de autos, no pretendió usurpar las funciones delegadas a la Legislatura, sino interpretar las leyes promulgadas por esa rama del Gobierno.

## VI

“La actividad del jurista se vuelve vana logomaquia o juego fútil de conceptos si, preocupándose únicamente por un extrínseco aunque hábil tecnicismo, pierde de vista el fin esencial que le ha sido asignado: la realización de la justicia.” L. Legaz y Lacambra, *El Derecho y el Amor*, Barcelona, Ed. Bosch, 1976, pág. 113, citando a Del Vecchio, *Aspectos y problemas del Derecho*, Madrid, Ed. Espesa, 1967, págs. 284–285.

Las razones para impedir que una persona transexual cambie los datos respecto a su nombre y sexo en el Registro Demográfico y en su licencia de conducir, pierden valor si las oponemos al perjuicio resultante de esa decisión. Recordemos que, por definición, se trata de una persona que cambia totalmente su asignación sexual, como sucede con la peticionaria, quien aunque nació varón se identifica con el otro sexo hasta el punto de someterse a una compleja cirugía y a un tratamiento hormonal. *Podemos no comprender \*226 la angustia que lleva a un ser humano a una decisión tan drástica. Incluso, podemos estar, en nuestro fuero interno individual, en contra de tan drástica solución a esa situación de angustia existencial.* Pero lo cierto es que nuestro ordenamiento permite utilizar los medios que provee la ciencia para conformar la apariencia al sexo deseado, si la persona transexual, ejerciendo su libre albedrío, decide hacerlo. Ejercido así el derecho a cambiar de sexo, en la intimidad que protege nuestra Ley Fundamental, no debemos los tribunales, guardianes de la Constitución, condenarle a someterse diariamente a discrimen al presentar una licencia de conducir que no corresponde a su realidad o un certificado de nacimiento que no corresponde a su identidad.<sup>23</sup>

<sup>23</sup> Tomamos conocimiento judicial del uso de la licencia de conducir para propósitos de identificación en actividades del diario vivir y del certificado de nacimiento para asuntos tan importantes como la búsqueda de empleo. En cuanto a esto, hemos resuelto que un trabajador en busca de empleo no debe tener que abdicar su derecho a la intimidad al permitir que el patrono invada su mente y ausculte sus pensamientos. *Ambos derechos, a la intimidad y al trabajo, son consustanciales con la dignidad humana. Arroyo v. Rattan Specialties, Inc.*, 117 D.P.R. 35 (1986).

A los tribunales nos toca la delicada responsabilidad de armonizar nuestra interpretación del Derecho con los avances de la ciencia y la tecnología.<sup>24</sup> Situaciones que en un principio eran inconcebibles, hoy día son posibles por los adelantos de la ciencia. Así lo hemos reconocido en asuntos relacionados con la filiación jurídica. Véanse: *Castro v. Negrón*, 159 D.P.R. 568 (2001); *Ramos v. Marrero*, 116 D.P.R. 357 (1985); *Moreno Álamo v. Moreno Jiménez*, 112 D.P.R. 376 (1982); *Ortiz v. Peña*, 108 D.P.R. 458 (1979). Hace apenas dos meses este Tribunal decidió permitir una prueba de DNA para impugnar el reconocimiento voluntario. *Mayol v. Torres*, 164 D.P.R. 517 (2005). La solución que adopta la mayoría en este caso constituye una anomalía dentro de esta trayectoria y es contraria a los fundamentos de estas decisiones. \*227

<sup>24</sup> Según la Real Academia Española, *armonizar* significa “[p]oner en armonía, o hacer que no discuerden o se rechacen dos o más partes de un todo, o dos o más cosas que deben concurrir al mismo fin”. *Diccionario de la Lengua Española*, 22da ed., Madrid, Ed. Espasa-Calpe, 2001, pág. 207.

Las personas transexuales no encajan dentro de la categoría de “femenino” ni “masculino”. Por eso recurren a la ciencia, que les permite operarse y someterse a un tratamiento hormonal para vivir su vida según uno de estos dos sexos: “Una persona que se somete a una operación irreversible para adecuar su sexo físico a su deseo psicológico no desea vivir como un transexual, como una clasificación extraña y discordante con la dualidad de sexos culturalmente reconocida.” *Andino Torres, ex parte*, supra, pág. 808. El Derecho nos concede la facultad de interpretar esta realidad y la Constitución nos impone la responsabilidad de hacerlo, ordenando una simple enmienda de su nombre y su sexo en el Registro Demográfico y en el Departamento de Transportación y Obras Públicas.

*El dilema de la peticionaria no se resuelve ni aminora con el “remedio” a medias que dispone la opinión mayoritaria.* Concederle el permiso para cambiar su nombre en el certificado de nacimiento, de “Alexis” a “Alexandra”, a la vez que se mantiene la descripción de su sexo como “masculino”, deja a la merced del escrutinio público el propio hecho que la



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parte peticionaria desea enmendar. No podemos olvidar que “[u]na cierta bondad es necesaria para la efectividad del Derecho, y la caridad quiere un Derecho que lo sea efectivamente”. Legaz Lagambra, *op. cit.*, pág. 92. Por eso se ha dicho que el Derecho es “el Arte de lo justo”. J.B. Vallet de Goytisoló, *Panorama del Derecho Civil*, 2da ed., Barcelona, Ed. Bosch, 1973, págs. 38–39. En este sentido, nos sorprende que la opinión mayoritaria reconozca que quienes “han decidido someterse a una operación de reasignación de sexo, son personas que han tomado medidas extraordinarias en su ardiente deseo de vivir una vida ordinaria” y, sin embargo, no les permita vivir esa vida ordinaria, que no es otra cosa que una vida donde le garanticemos su intimidad y dignidad como seres humanos.

Por los fundamentos que anteceden, disintimos. Revocaríamos en su totalidad la sentencia del foro apelativo y confirmaríamos la orden del Tribunal de Primera Instancia \*228 que autorizó el cambio de nombre y sexo en el certificado de nacimiento de Alexandra, en los expedientes computadorizados de ese certificado, en su licencia de conducir y en los expedientes del Departamento de Transportación y Obras Públicas.

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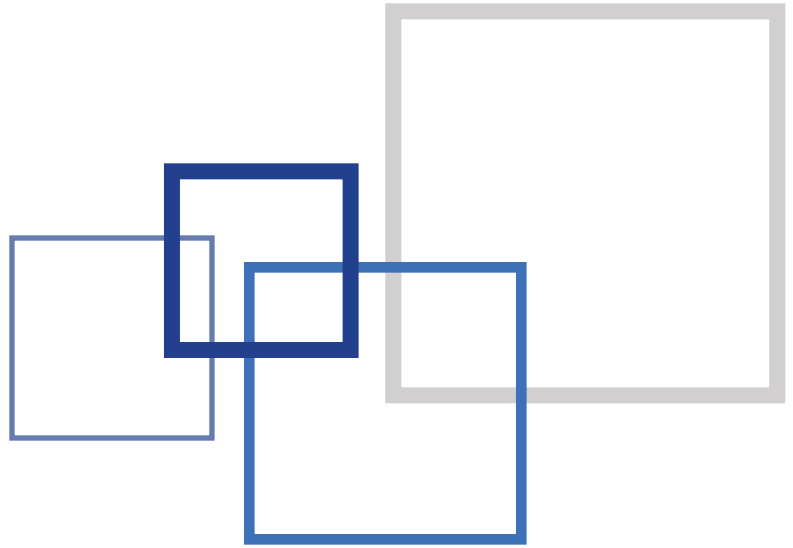
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*Arroyo González v. Rosselló Nevares*

Civil No. 3:17-cv-01457-CCC

Declaration of Omar Gonzalez-Pagan

# Exhibit B



THE REPORT OF THE

2015

U.S.

TRANSGENDER

SURVEY

# EXECUTIVE SUMMARY

December 2016

# USTS Executive Summary

**T**he 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents from all fifty states, the District of Columbia, American Samoa, Guam, Puerto Rico, and U.S. military bases overseas. Conducted in the summer of 2015 by the National Center for Transgender Equality, the USTS was an anonymous, online survey for transgender adults (18 and older) in the United States, available in English and Spanish. The USTS serves as a follow-up to the groundbreaking 2008–09 National Transgender Discrimination Survey (NTDS), which helped to shift how the public and policymakers view the lives of transgender people and the challenges they face. The report of the 2015 USTS provides a detailed look at the experiences of transgender people across a wide range of categories, such as education, employment, family life, health, housing, and interactions with the criminal justice system.

The findings reveal disturbing patterns of mistreatment and discrimination and startling disparities between transgender people in the survey and the U.S. population when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community. Survey respondents also experienced harassment and violence at alarmingly high rates. Several themes emerge from the thousands of data points presented in the full survey report.

## Pervasive Mistreatment and Violence

Respondents reported high levels of mistreatment, harassment, and violence in every aspect of life. One in ten (10%) of those who were out to their immediate family reported that a family member was violent towards them because they were transgender, and 8% were kicked out of the house because they were transgender.

The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender. Further, 17% experienced such severe mistreatment that they left a school as a result.

In the year prior to completing the survey, 30% of respondents who had a job reported being fired, denied a promotion, or experiencing some other form of mistreatment in the workplace due to their gender identity or expression, such as being verbally harassed or physically or sexually assaulted at work.

In the year prior to completing the survey, 46% of respondents were verbally harassed and 9% were physically attacked because of being transgender. During that same time period, 10% of respondents were sexually assaulted, and nearly half (47%) were sexually assaulted at some point in their lifetime.

## Severe Economic Hardship and Instability

The findings show large economic disparities between transgender people in the survey and the U.S. population. Nearly one-third (29%) of respondents were living in poverty, compared to 14% in the U.S. population. A major contributor to the high rate of poverty is likely respondents' 15% unemployment rate—three times higher than the unemployment rate in the U.S. population at the time of the survey (5%).

Respondents were also far less likely to own a home, with only 16% of respondents reporting homeownership, compared to 63% of the U.S. population. Even more concerning, nearly one-third (30%) of respondents have experienced homelessness at some point in their lifetime, and 12% reported experiencing homelessness in the year prior to completing the survey because they were transgender.

## Harmful Effects on Physical and Mental Health

The findings paint a troubling picture of the impact of stigma and discrimination on the health of many transgender people. A staggering 39% of respondents experienced serious psychological distress in the month prior to completing the survey, compared with only 5% of the U.S. population. Among the starkest findings is that 40% of respondents have attempted suicide in their lifetime—nearly nine times the attempted suicide rate in the U.S. population (4.6%).

Respondents also encountered high levels of mistreatment when seeking health care. In the year prior to completing the survey, one-third (33%) of those who saw a health care provider had at least one negative experience related to being transgender, such as being verbally harassed or refused treatment because of their gender identity. Additionally, nearly one-quarter (23%) of respondents reported that they did not seek the health care they needed in the year prior to completing the survey due to fear of being mistreated as a transgender person, and 33% did not go to a health care provider when needed because they could not afford it.

## The Compounding Impact of Other Forms of Discrimination

When respondents' experiences are examined by race and ethnicity, a clear and disturbing pattern is revealed: transgender people of color experience deeper and broader patterns of discrimination than white respondents and the U.S. population. While respondents in the USTS sample overall were more than twice as likely as the U.S. population to be living in poverty, people of color, including Latino/a (43%), American Indian (41%), multiracial (40%), and Black (38%) respondents, were up to three times as likely as the U.S. population (14%) to be living in poverty. The unemployment rate among transgender people of color (20%) was four times higher than the U.S. unemployment rate (5%). People of color also experienced greater health disparities. While 1.4% of all respondents were living with HIV—nearly five times the rate in the U.S. population (0.3%)—the rate among Black respondents (6.7%) was substantially higher, and the rate for Black transgender women was a staggering 19%.

Undocumented respondents were also more likely to face severe economic hardship and violence than other respondents. In the year prior to completing the survey, nearly one-quarter (24%) of undocumented respondents were physically attacked. Additionally, one-half (50%) of undocumented respondents have experienced homelessness in their lifetime, and 68% have faced intimate partner violence.

Respondents with disabilities also faced higher rates of economic instability and mistreatment. Nearly one-quarter (24%) were unemployed, and 45% were living in poverty. Transgender people with disabilities were more likely to be currently experiencing serious psychological distress (59%) and more likely to have attempted suicide in their lifetime (54%). They also reported higher rates of mistreatment by health care providers (42%).

## Increased Visibility and Growing Acceptance

Despite the undeniable hardships faced by transgender people, respondents' experiences also show some of the positive impacts of growing visibility and acceptance of transgender people in the United States.

One such indication is that an unprecedented number of transgender people—nearly 28,000—completed the survey, more than four times the number of respondents in the 2008–09 NTDS. This number of transgender people who elevated their voices reflects the historic growth in visibility that the transgender community has seen in recent years. Additionally, this growing visibility has lifted up not only the voices of transgender men and women, but also people who are non-binary, which is a term that is often used to describe



people whose gender identity is not exclusively male or female, including those who identify as no gender, as a gender other than male or female, or as more than one gender. With non-binary people making up over one-third of the sample, the need for advocacy that is inclusive of all identities in the transgender community is clearer than ever.

Respondents' experiences also suggest growing acceptance by family members, colleagues, classmates, and other people in their lives. More than half (60%) of respondents who were out to their immediate family reported that their family was supportive of them as a transgender person. More than two-thirds (68%) of those who were out to their coworkers reported that their coworkers were supportive. Of students who were out to their classmates, more than half (56%) reported that their classmates supported them as a transgender person.

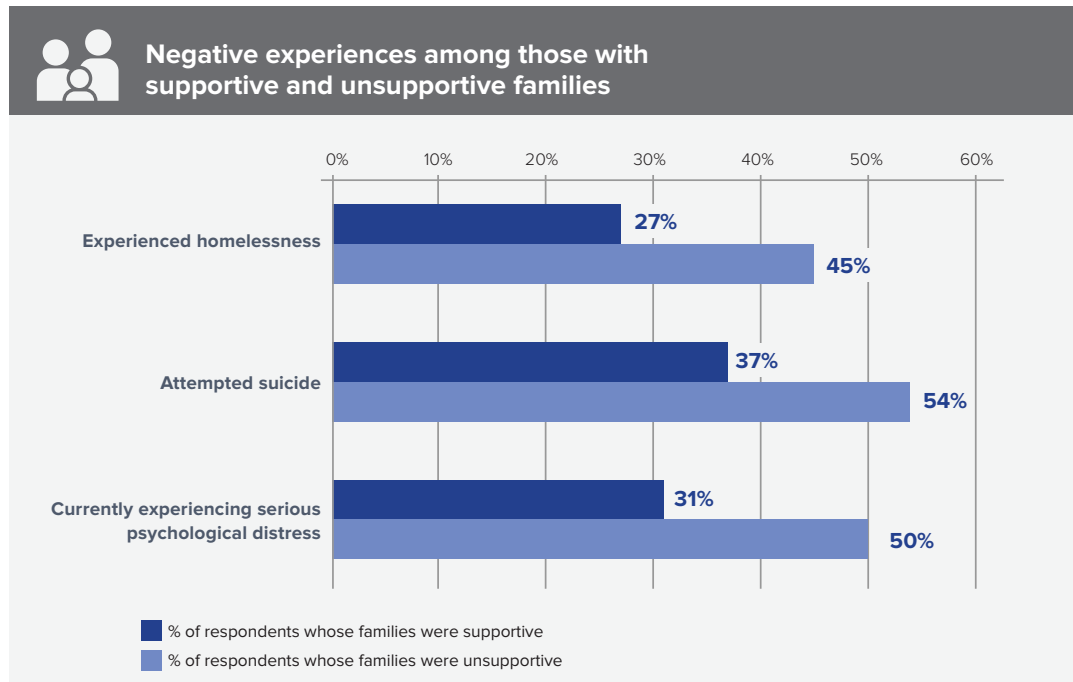
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**O**verall, the report provides evidence of hardships and barriers faced by transgender people on a day-to-day basis. It portrays the challenges that transgender people must overcome and the complex systems that they are often forced to navigate in multiple areas of their lives in order to survive and thrive. Given this evidence, governmental and private institutions throughout the United States should address these disparities and ensure that transgender people are able to live fulfilling lives in an inclusive society. This includes eliminating barriers to quality, affordable health care, putting an end to discrimination in schools, the workplace, and other areas of public life, and creating systems of support at the municipal, state, and federal levels that meet the needs of transgender people and reduce the hardships they face. As the national conversation about transgender people continues to evolve, public education efforts to improve understanding and acceptance of transgender people are crucial. The rates of suicide attempts, poverty, unemployment, and violence must serve as an immediate call to action, and their reduction must be a priority. Despite policy improvements over the last several years, it is clear that there is still much work ahead to ensure that transgender people can live without fear of discrimination and violence.

# Overview of Key Findings

## Family Life and Faith Communities

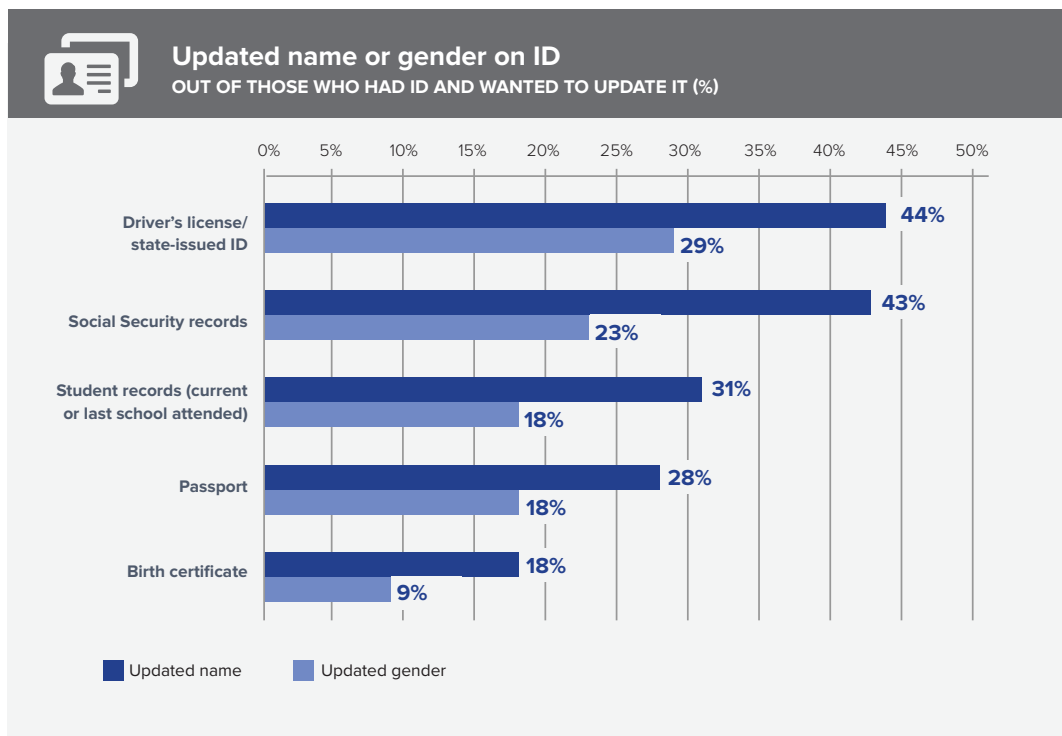
- **A majority of respondents (60%) who were out to the immediate family they grew up with said that their family was generally supportive of their transgender identity,** while 18% said that their family was unsupportive, and 22% said that their family was neither supportive nor unsupportive.
- **Those who said that their immediate families were supportive were less likely to report a variety of negative experiences related to economic stability and health,** such as experiencing homelessness, attempting suicide, or experiencing serious psychological distress.



- **One in ten (10%)** respondents who were out to their immediate family reported that a **family member was violent towards them** because they were transgender.
- **One in twelve (8%)** respondents who were out to their immediate family **were kicked out of the house**, and one in ten (10%) ran away from home.
- **Nineteen percent (19%)** of respondents who had ever been part of a **spiritual or religious community left due to rejection**. Forty-two percent (42%) of those who left later found a welcoming spiritual or religious community.

## Identity Documents

- Only 11% of respondents reported that *all* of their IDs had the name and gender they preferred, while more than two-thirds (68%) reported that *none* of their IDs had the name and gender they preferred.



- The cost of changing ID documents was one of the main barriers respondents faced, with 35% of those who have not changed their legal name and 32% of those who have not updated the gender on their IDs reporting that it was because they could not afford it.
- Nearly **one-third (32%)** of respondents **who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.**

## Health Insurance and Health Care

- **One in four (25%) respondents experienced a problem in the past year with their insurance related to being transgender**, such as being denied coverage for care related to gender transition or being denied coverage for routine care because they were transgender.
- **More than half (55%) of those who sought coverage for transition-related surgery in the past year were denied**, and 25% of those who sought coverage for hormones in the past year were denied.
- **One-third (33%) of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender**, with higher rates for people of color and people with disabilities. This included being refused treatment, verbally harassed, or physically or sexually assaulted, or having to teach the provider about transgender people in order to get appropriate care.
- In the past year, **23% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person**, and 33% did not see a doctor when needed because they could not afford it.

## Psychological Distress and Attempted Suicide

- **Thirty-nine percent (39%) of respondents experienced serious psychological distress** in the month before completing the survey (based on the Kessler 6 Psychological Distress Scale), compared with only 5% of the U.S. population.
- **Forty percent (40%) have attempted suicide in their lifetime**, nearly nine times the rate in the U.S. population (4.6%).
- **Seven percent (7%) attempted suicide in the past year**—nearly twelve times the rate in the U.S. population (0.6%).

## HIV

- Respondents were **living with HIV (1.4%) at nearly five times the rate in the U.S. population (0.3%)**.
- **HIV rates were higher among transgender women (3.4%)**, especially transgender women of color. **Nearly one in five (19%) Black transgender women were living with HIV**, and American Indian (4.6%) and Latina (4.4%) women also reported higher rates.

## Experiences in Schools

- **More than three-quarters (77%)** of those who were out or perceived as transgender at some point between Kindergarten and Grade 12 (K–12) **experienced some form of mistreatment**, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought they were transgender.
- **Fifty-four percent (54%)** of those who were out or perceived as transgender in K–12 **were verbally harassed, nearly one-quarter (24%) were physically attacked, and 13% were sexually assaulted in K–12 because of being transgender.**
- **Seventeen percent (17%)** faced such severe mistreatment as a transgender person that they left a K–12 school.
- **Nearly one-quarter (24%)** of people who were out or perceived as transgender in college or vocational school **were verbally, physically, or sexually harassed.**

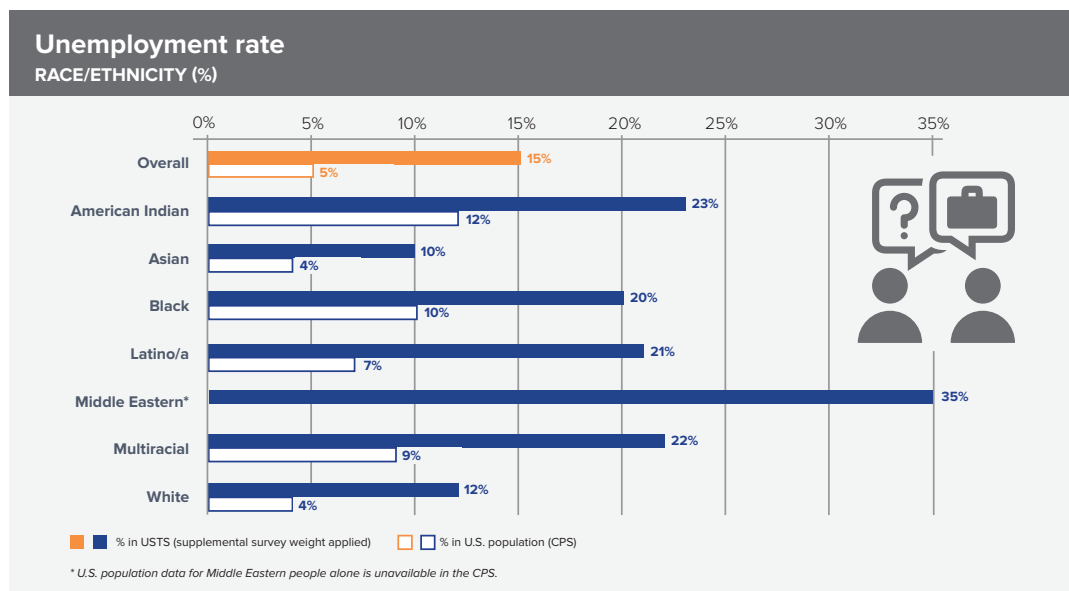


### Experiences of people who were out as transgender in K–12 or believed classmates, teachers, or school staff thought they were transgender

EXPERIENCES	% OF THOSE WHO WERE OUT OR PERCEIVED AS TRANSGENDER
Verbally harassed because people thought they were transgender	54%
Not allowed to dress in a way that fit their gender identity or expression	52%
Disciplined for fighting back against bullies	36%
Physically attacked because people thought they were transgender	24%
Believe they were disciplined more harshly because teachers or staff thought they were transgender	20%
Left a school because the mistreatment was so bad	17%
Sexually assaulted because people thought they were transgender	13%
Expelled from school	6%
<b>One or more experiences listed</b>	<b>77%</b>

## Income and Employment Status

- **The unemployment rate among respondents (15%) was three times higher than the unemployment rate in the U.S. population (5%),** with Middle Eastern, American Indian, multiracial, Latino/a, and Black respondents experiencing higher rates of unemployment.



- **Nearly one-third (29%) were living in poverty, more than twice the rate in the U.S. population (14%).**

## Employment and the Workplace

- **One in six (16%)** respondents who have ever been employed—or 13% of all respondents in the sample—**reported losing a job because of their gender identity or expression** in their lifetime.
- **In the past year, 27%** of those who held or applied for a job during that year—19% of all respondents—**reported being fired, denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.**
- **Fifteen percent (15%)** of respondents who had a job in the past year were verbally harassed, physically attacked, and/or sexually assaulted at work because of their gender identity or expression.
- **Nearly one-quarter (23%)** of those who had a job in the past year reported other forms of mistreatment based on their gender identity or expression during that year,



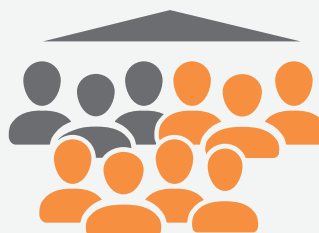
such as being forced to use a restroom that did not match their gender identity, being told to present in the wrong gender in order to keep their job, or having a boss or coworker share private information about their transgender status without their permission.

- **Overall, 30% of respondents who had a job in the past year reported being fired, denied a promotion, or experiencing some other form of mistreatment related to their gender identity or expression.**
- **More than three-quarters (77%) of respondents who had a job in the past year took steps to avoid mistreatment in the workplace,** such as hiding or delaying their gender transition or quitting their job.

## Housing, Homelessness, and Shelter Access

- **Nearly one-quarter (23%) of respondents experienced some form of housing discrimination in the past year,** such as being evicted from their home or denied a home or apartment because of being transgender.
- **Nearly one-third (30%) of respondents have experienced homelessness at some point in their lives.**
- **In the past year, one in eight (12%) respondents experienced homelessness** because of being transgender.
- **More than one-quarter (26%) of those who experienced homelessness in the past year avoided staying in a shelter because they feared being mistreated as a transgender person.** Those who did stay in a shelter reported high levels of mistreatment: **seven out of ten (70%)** respondents who stayed in a shelter in the past year reported some form of mistreatment, including being harassed, sexually or physically assaulted, or kicked out because of being transgender.

**Seven out of ten respondents who stayed in a shelter in the past year reported being mistreated because of being transgender.**



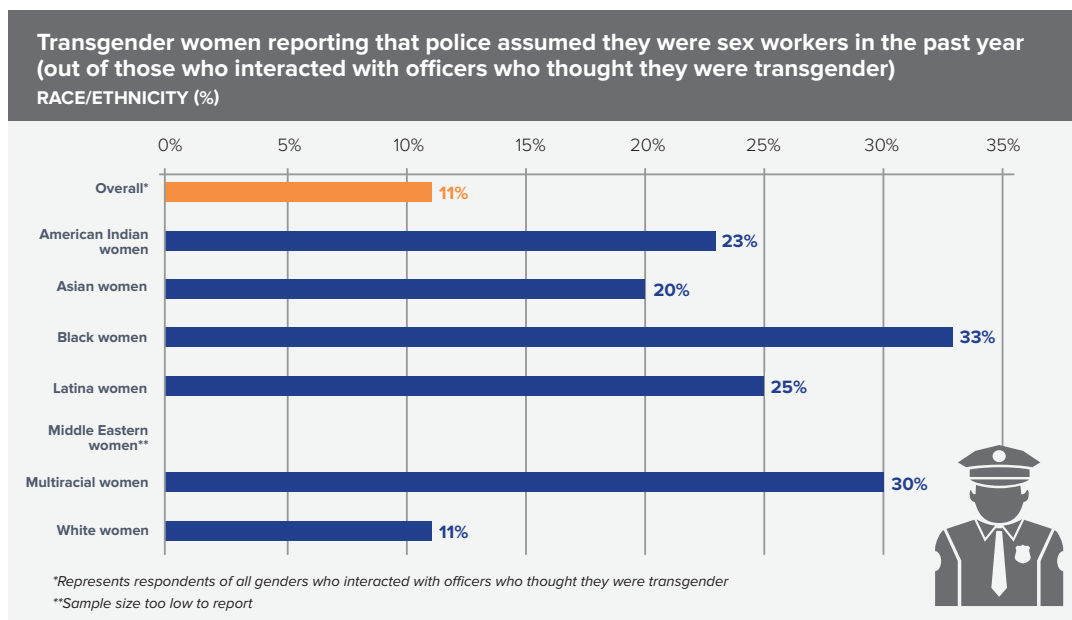
- Respondents were nearly **four times less likely to own a home (16%) compared to the U.S. population (63%).**

## Sex Work and Other Underground Economy Work

- Respondents reported high rates of experience in the underground economy, including sex work, drug sales, and other work that is currently criminalized. **One in five (20%) have participated in the underground economy** for income at some point in their lives—including 12% who have done sex work in exchange for income—and 9% did so in the past year, with higher rates among women of color.
- Respondents who interacted with the police either while doing sex work or while the police mistakenly thought they were doing sex work reported high rates of police harassment, abuse, or mistreatment, with **nearly nine out of ten (86%) reporting being harassed, attacked, sexually assaulted, or mistreated in some other way by police.**
- **Those who have done income-based sex work were also more likely to have experienced violence.** More than three-quarters (77%) have experienced intimate partner violence and 72% have been sexually assaulted, a substantially higher rate than the overall sample. Out of those who were working in the underground economy at the time they took the survey, nearly half (41%) were physically attacked in the past year and over one-third (36%) were sexually assaulted during that year.

## Police Interactions and Prisons

- **Respondents experienced high levels of mistreatment and harassment by police.** In the past year, of respondents who interacted with police or law enforcement officers who thought or knew they were transgender, **more than half (58%) experienced some form of mistreatment.** This included being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest.
- **Police frequently assumed that respondents—particularly transgender women of color—were sex workers.** In the past year, of those who interacted with law enforcement officers who thought or knew they were transgender, one-third (33%) of Black transgender women and 30% of multiracial women said that an officer assumed they were sex workers.
- **More than half (57%)** of respondents said they would feel **uncomfortable asking the police for help** if they needed it.
- Of those who were arrested in the past year (2%), **nearly one-quarter (22%) believed they were arrested because they were transgender.**



- Respondents who were held in jail, prison, or juvenile detention in the past year faced **high rates of physical and sexual assault by facility staff and other inmates**. In the past year, nearly one-quarter (23%) were physically assaulted by staff or other inmates, and one in five (20%) were sexually assaulted. Respondents were over **five times more likely to be sexually assaulted by facility staff** than the U.S. population in jails and prisons, and over **nine times more likely to be sexually assaulted by other inmates**.

## Harassment and Violence

- **Nearly half (46%) of respondents were verbally harassed** in the past year because of being transgender.
- **Nearly one in ten (9%) respondents were physically attacked** in the past year because of being transgender.
- **Nearly half (47%) of respondents were sexually assaulted** at some point in their lifetime and **one in ten (10%) were sexually assaulted in the past year**. Respondents who have done sex work (72%), those who have experienced homelessness (65%), and people with disabilities (61%) were more likely to have been sexually assaulted in their lifetime.
- **More than half (54%) experienced some form of intimate partner violence**, including acts involving coercive control and physical harm.
- **Nearly one-quarter (24%) have experienced severe physical violence by an intimate partner, compared to 18% in the U.S. population.**

## Places of Public Accommodation

- Respondents reported being denied equal treatment or service, verbally harassed, or physically attacked at many places of public accommodation—places that provide services to the public, like retail stores, hotels, and government offices. Out of respondents who visited a place of public accommodation where staff or employees thought or knew they were transgender, **nearly one-third (31%) experienced at least one type of mistreatment in the past year in a place of public accommodation.** This included 14% who were denied equal treatment or service, 24% who were verbally harassed, and 2% who were physically attacked because of being transgender.
- **One in five (20%) respondents did not use at least one type of public accommodation** in the past year because they feared they would be mistreated as a transgender person.

### Denied equal treatment or service, verbally harassed, or physically attacked in public accommodations in the past year because of being transgender

LOCATION VISITED	% OF THOSE WHO SAID STAFF KNEW OR THOUGHT THEY WERE TRANSGENDER
Public transportation	34%
Retail store, restaurant, hotel, or theater	31%
Drug or alcohol treatment program	22%
Domestic violence shelter or program or rape crisis center	22%
Gym or health club	18%
Public assistance or government benefit office	17%
Department of Motor Vehicles (DMV)	14%
Nursing home or extended care facility	14%
Court or courthouse	13%
Social Security office	11%
Legal services from an attorney, clinic, or legal professional	6%



## Experiences in Restrooms

The survey data was collected before transgender people's restroom use became the subject of increasingly intense and often harmful public scrutiny in the national media and legislatures around the country in 2016. Yet respondents reported facing frequent harassment and barriers when using restrooms at school, work, or in public places.

- **Nearly one in ten (9%) respondents reported that someone denied them access to a restroom in the past year.**
- In the past year, **respondents reported being verbally harassed (12%), physically attacked (1%), or sexually assaulted (1%)** when accessing a restroom.

- **More than half (59%)** of respondents **avoided using a public restroom** in the past year because they were afraid of confrontations or other problems they might experience.
- **Nearly one-third (32%)** of respondents **limited the amount that they ate and drank** to avoid using the restroom in the past year.
- **Eight percent (8%)** reported having a **urinary tract infection, kidney infection, or another kidney-related problem** in the past year as a result of avoiding restrooms.

**More than half (59%)** of respondents **avoided using a public restroom** in the past year because they were afraid of confrontations or other problems they might experience.



## Civic Participation and Party Affiliation

- **More than three-quarters (76%)** of U.S. citizens of voting age in the sample reported that they were registered to vote in the November 2014 midterm election, compared to 65% in the U.S. population.
- **More than half (54%)** of U.S. citizens of voting age reported that they had voted in the midterm election, compared to 42% in the U.S. population.
- **Half (50%)** of respondents identified as Democrats, **48%** identified as Independents, and **2%** identified as Republicans, compared to 27%, 43%, and 27% in the U.S. population, respectively.

### Political party affiliation

POLITICAL PARTY	% IN USTS	% IN U.S. POPULATION (GALLUP)
Democrat	50%	27%
Independent	48%	43%
Republican	2%	27%



## About the National Center for Transgender Equality

The National Center for Transgender Equality (NCTE) is the nation's leading social justice policy advocacy organization devoted to ending discrimination and violence against transgender people. NCTE was founded in 2003 by transgender activists who recognized the urgent need for policy change to advance transgender equality. NCTE now has an extensive record winning life-saving changes for transgender people. NCTE works by educating the public and by influencing local, state, and federal policymakers to change policies and laws to improve the lives of transgender people. By empowering transgender people and our allies, NCTE creates a strong and clear voice for transgender equality in our nation's capital and around the country.

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The Report of the  
**2015 U.S. Transgender Survey: Executive Summary**

by:

Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, and Ma'ayan Anafi  
**December 2016**

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The full report of the 2015 U.S. Transgender Survey is available at [www.USTransSurvey.org](http://www.USTransSurvey.org).

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*Arroyo González v. Rosselló Nevares*

Civil No. 3:17-cv-01457-CCC

Declaration of Omar Gonzalez-Pagan

# Exhibit C

## Experiences of Violence Among Transgender Women in Puerto Rico: An Underestimated Problem

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### ABSTRACT

Violence is a public health concern faced on a daily basis by transgender women. Literature has documented how it adversely affects quality of life and health and in some instances leads to homicide. Considering the lack of research documenting the experiences of violence among transgender women, the objective of this article was to explore manifestations of violence among this population in Puerto Rico. The data presented in this article are part of a larger study on transgender/transsexual health in Puerto Rico. For the purpose of this article we focus on the quantitative data analysis. Participants ( $N = 59$  transgender women) were recruited via respondent driven sampling. Implications and specific recommendations are discussed in light of these findings.

### KEYWORDS

Discrimination; Puerto Rico; respondent driven sampling; transgender; violence

Gender is a social construct that varies with the roles, norms, and values of a given social context. In Puerto Rico, scholarly literature has argued that traditional gender norms, usually described as *machismo* and *marianismo*, place cultural value on adherence to polarized and rigid definitions of gender and sexuality (Rodríguez-Madera, 2009; Rodríguez-Madera & Toro-Alfonso, 2007). In this cultural context, people whose gender identity or gender presentation are perceived as challenging the boundaries of what is socially permissible face multiple difficulties for living a dignified and healthy life due to the extreme intolerance toward gender non-normativity.

Transgender persons are individuals who cannot, or choose not to, conform to societal gender norms assigned to their sexual anatomy at birth (Xavier, Bobbin, Singer, & Budd 2005). In many cases they express their gender identity through physical changes that allow them to embody

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their self-ascribed gender. Intolerance toward transgender people in Puerto Rico is rooted in a strong Judeo-Christian religious heritage. Studies in this context have evidenced that religious beliefs are related to high levels of stigma toward socially marginalized and vulnerable populations (Reyes-Estrada, Varas-Díaz, & Martínez-Sarson, 2015; Varas-Díaz et al., 2013; Varas Díaz, Neilands, Malavé Rivera, & Betancourt, 2010). Therefore, this population faces the consequences of stigma in their everyday lives, resulting in vulnerability to HIV infection, lack of social support, reduced access to services, unemployment, and poverty (WHO, 2012). Some of the social factors that further contribute to HIV vulnerability in this population include commercial sex work, drug use, violence, and institutionalized discrimination (Bockting & Avery, 2005; Rodríguez-Madera, 2009; Xavier et al., 2005).

National data from the United States (Stotzer, 2009) indicate that transgender people are at risk for multiple types of violence, and that this threat continues throughout their lives. A significant proportion of transgender women<sup>1</sup> are affected by violence and are not reached by existing health and social services (Witten & Eyler, 1999). In recent years, Puerto Rico has seen an escalation of violence against transgender women that has dominated local media (Rivera-Quiñones, Toro-Alfonso, & Meléndez, 2013). Reports of anti-transgender violence largely have been eclipsed by the concerns of gay men and lesbians, an erasure that tacitly suggests that anti-transgender violence is less significant than other community concerns (Rodríguez-Madera, 2011). Although many transgender women experience interpersonal, institutional, and structural violence, there are few well-developed mechanisms for reporting and documenting violence against them (Rodríguez Madera, 2012b). In sum, the available research demonstrates that due to intense social stigma, transgender women in Puerto Rico constitute an invisible and underserved group (Rodríguez-Madera, 2007, 2009, 2012a; Rodríguez-Madera & Toro-Alfonso, 2007). Consequently, they are often overlooked in research, behavioral interventions, and health-related services, including initiatives for violence prevention and management. This oversight can have serious health consequences for transgender persons as well as the broader community.

Violence against transgender women has many similarities with hate crimes against individuals born female and other sexual minorities (WHO, 2012). Anti-transgender violence is often complicated by a lack of access to routine health care services to address the consequences of violence and by the often inadequate responses by authorities. A nationwide survey of bias-motivated violence against lesbian, gay, bisexual, transgender (LGBT) people

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<sup>1</sup>Transgender woman is a transgender person who was assigned male at birth but whose gender identity is that of a woman.

found that incidents targeting transgender persons accounted for 20% of all murders and about 40% of all police-initiated violence from 1985 to 1998 (Grant et al., 2011). A study in Lima, Perú, found that 65% of transgender participants identified as having been victims of violence (Instituto Runa, 2006). Violence from the police is commonly manifested toward transgender women who engage in sex work as a survival strategy, in part because the illegality and clandestine nature of street-based sex work exposes transgender women to frequent conflicts with the police. Laws and policies, including ones that criminalize sex work and justify police harassment, increase transgender women's vulnerability to violence (WHO, 2012).

In Puerto Rico, a prior study points to the many difficulties transgender women encounter when accessing social and health-related services through which they could presumably report such discrimination and violence (Rodríguez-Madera, 2009). Another study of public service employees in the island evidenced that the transgender population was the target of very high levels of stigma and was further burdened by a nearly total lack of resources for transgender persons to report such abuses (Toro-Alfonso, 2008).

In its most dramatic manifestation, violence against transgender women includes homicide. Between 2009 and 2011, 18 homicides against LGBT individuals were reported in Puerto Rico (Primera Hora, 2010; Rivera-Quiñones et al., 2013). While reporting of distinctions in homicide rates within these various stigmatized groups is inadequate, a significant proportion of these cases is considered to be the result of anti-transgender hate crimes (Rivera-Quiñones et al., 2013). Considering the lack of research efforts to document violence in this setting, this article aimed to document experiences of violence among transgender women in Puerto Rico.

## Method

The research undertaken by the present authors was carried out in Puerto Rico between 2011 and 2013 and was funded by the National Institute of Drug Abuse (1R21DA032288-01). The Institutional Review Boards from the Florida International University and the University of Puerto Rico approved the research protocol. The study used a mixed-method approach to achieve its aims to identify the meanings and practices of drug, hormone, and silicone injection among transgender women in Puerto Rico and to describe the social contexts where these practices took place (e.g., violence, social stigma, discrimination). Our research took a broad view to determine the social, economic, political, and cultural factors that shape transgender women's gender-transitioning experiences and their overall health. For the purpose of this article we focus on the quantitative data regarding violent experiences reported by participants.

### Participants

The sample was composed of 59 self-identified transgender women (see Table 1) who were Puerto Rican and 21 years of age or older. Participants were recruited via a respondent-driven sampling (RDS). RDS is a network sampling technique typically employed for hard-to-reach populations. It is similar to snowball sampling, but the initial seed respondents recruit additional respondents from their network of friends (Heckathorn, 1997, 2002; Salganik & Heckathorn, 2004). For this study, we identified nine community gatekeepers that functioned as “seeds.” Each one recruited two peers. This referral system via uniquely identified coupons is based on the theory that the diversification of networks via seed cases leads to a more representative sample over the course of multiple waves of recruitment.

**Table 1.** Demographics items: Counts and percentages.

Variable	N = 59	Raw %	RDS %
Sexual orientation			
Homosexual/gay	32	54	54
Heterosexual/straight	13	22	22
Bisexual	5	9	5
Other	9	15	20
Self-reported gender identity			
Female	18	31	25
Transgender/transsexual female	18	31	34
Transgender/transsexual male	4	7	6
Transvestite ( <i>draga, transformista</i> )/other/ missing	19	32	35
Age			
< 25	25	42	63
25–30	14	24	21
> 30	20	34	16
Civil status			
Single	46	78	81
Housing status			
Owns home	14	24	34
Children			
Have children	4	7	10
Education			
Less than high school	10	17	5
High school graduate	23	39	48
Post-high school education	26	44	47
Regular employment			
Employed	24	41	49
Incarceration			
Ever incarcerated	11	19	17
HIV testing			
Ever tested	56	95	98
HIV test result			
Negative	54	92	98
Sex work			
Ever engaged in sex work	33	56	30

Notes. Percentages may not sum to exactly 100% due to rounding.

We developed an instrument that consisted of questions on demographic information and the Transgender Person's Experiences Inventory (Rodríguez Madera, Padilla, & Varas Díaz, 2012). The instrument was programmed and administered using iSurvey/iPad technology (Reyes-Estrada, Rivera Diaz, & Varas-Diaz, 2012). The inventory was developed in the Puerto Rican context and included questions that address (a) gender identification, (b) HIV/AIDS knowledge, (c) social support, (d) body modification practices, (e) social stigma, and (d) experiences of violence and discrimination.

Members of the research team administered the instrument in a research office facility located in a street frequented by the transgender community in the San Juan metropolitan area. It took approximately 30 minutes to complete the instrument via face-to-face interview. Participants received a \$25 incentive for the time spent collaborating in the study to cover transportation costs.

### **Data analysis**

We used the user-written Stata commands `-rdsnetwork-` and `-rds-` to compute estimates of the population proportions of each variable (Schonlau & Liebau, 2012). `-rdsnetwork-` verifies that the respondent ID and all referral coupons are unique and that there is no self-referral. `-rdsnetwork-` is also used to determine the longest chain network, which is needed to determine convergence to equilibrium (i.e., sufficiently stable estimates of the proportions), and aggregates the referral network information into recruiter information variables that are then passed to the `-rds-` command, which estimates the proportions. As part of the estimation process, the `-rds-` command also simulates the minimum required number of referral chains for the analysis to reach equilibrium; if the number of simulated chains that RDS indicates are required is less than the number of actual chains reported by `-rdsnetwork-`, equilibrium is achieved (Schonlau & Liebau, 2012, p. 86). As required, variables' categories were collapsed to yield sufficient numbers of cases to obtain stable estimates in the Markov transition matrices used by the RDS software to generate the final proportion estimates. Due to the small sample and formative nature of the study, multivariable analyses were not performed.

### **Results**

The number of chains required by the variables examined in this study ranged from two to five, whereas the actual maximum chain length was 11; therefore, equilibrium was achieved in the RDS analyses, indicating that estimates of the proportions are stable. Proportion estimates for the demographic variables and measures of violence experiences appear in Tables 1 and 2, respectively.



**Table 2.** Transgender discrimination and violence items: Counts and percentages.

Variable	N = 59	Raw %	RDS %
Experienced discrimination			
For being a transgender person	25	42	38
When accessing social services	8	14	24
When accessing medical services	9	15	11
Victim of violence due to gender identity			
Verbal violence	22	37	35
Physical violence	16	27	25
Sexual violence	8	14	16
Experienced violence from sexual client	26	44	51
Experienced violence from police	20	34	34
Witnessed violence toward other transgender persons			
Knew a transgender person who was killed	49	83	74
Knew a transgender person who was beaten	49	83	69
Knew a transgender person who was mutilated	24	41	35

Note. Percentages may not sum to exactly 100% due to rounding.

In the transgender spectrum, most participants self-identified as females or transsexual females with regard to their gender identity, and gay or homosexual with regard to sexual orientation. This pattern is understandable in the Puerto Rican context because, as described in other studies (Valentine, 2007), the transgender community does not express a consistent distinction between gender identity and sexual orientation. The significant number of participants who self-identified as transvestites (*travesti* in Puerto Rico;  $n = 19$ ) or used related local terms to identify themselves (e.g., *draga*, *transformista*, *mujer trans*) further illustrates this point. Most participants were less than 25 years of age, unmarried, and had completed high school. A majority (51%) lacked formal employment. Thirty percent reported engaging in sex work at the time of the study.

Violence against transgender people is a violation of human rights and an extreme expression of the daily discrimination based on gender identity faced by this population. Consistent with other studies (FORGE, 2012; Stotzer, 2009), experiences of discrimination among our participants were common, with greater than one third having felt discriminated for being a transgender person. Meanwhile, one fourth reported that were discriminated against when they attempted to access social services and/or medical services (11%).

Verbal violence was the most common form among those who have experienced violence due to their gender identity (35%) followed by physical violence (25%) and sexual violence (16%). Violence exposure levels within one's social networks were also remarkable, with close to three quarters of the participants having known a transgender person who was killed. Among those participants who were sex workers, one half reported experiences of violence from a client.

## Discussion

The present study is the first to use RDS to estimate population proportions of exposure to violence among transgender women in Puerto Rico. Although the

overall aims of the study were not focused exclusively on violence but rather on the description of the social contexts for injection practices and other body modification procedures, we understood that documenting violence was particularly relevant in order to understand the extreme conditions in which health practices and decisions are made. We also hope to better inform policymakers, civil society actors, and intervention development experts regarding the urgent need to address exposure to violence in this community.

In the context of inconsistent reporting of violence by specific sexual minority categories, the estimates of the prevalence of violence in this survey provide important evidence regarding the extent of discrimination and violence in this population. The fact that the majority of participants did not have formal employment and that almost one third were engaging in sex work is evidence of social and economic marginalization due to discrimination based on their gender identity (The National Center for Transgender Equality, 2012). Unfortunately, this decision makes them even more vulnerable to violence in the local context, a situation that is compounded by the criminalization of sex work.

Findings from this research effort echo those from the National Transgender Discrimination Survey (FORGE, 2012), particularly in terms of the prevalence of physical violence and the violence perpetrated by the police. Moreover, data of sexual violence are similar to the rates mentioned in Stotzer's review (2009) on violence against transgender people in the United States.

In the Puerto Rican context, it is crucial that policymakers, service providers, the media, and society at large recognize the magnitude and effects of violence against transgender persons in order to develop interventions, strategies, and policies for reducing this public health and human rights problem. We echo WHO's recommendations (2012) for addressing violence against transgender people, including to (a) promote full protection of their human rights, (b) promote gender equality, (c) gather information about local patterns of violence, (d) use an integrated approach when implementing research studies or designing interventions, and (e) advocate for legal and policy reforms. These recommendations can contribute to preventing or reducing violence against transgender women.

### ***Limitations and conclusions***

Our study has two primary limitations: First, although RDS was used to improve sample diversity, the small sample should not be interpreted as representative of the population of transgender women. Second, because the overall aims of the study were not focused on violence, we did not explore all forms of violence (e.g., domestic violence), although we did incorporate several violence measures.

This research is significant in that it is the first to directly examine the extent and type of exposure to violence among transgender women in Puerto Rico. We find high levels of exposure to violence from multiple sources, combined with an underdeveloped infrastructure and system for tracking

cases of anti-transgender violence or hate crimes. Addressing the disturbing trends documented in this article—dramatically represented in a spate of recent killings of LGBT Puerto Ricans—will require integrated, high-level policy initiatives, improved tracking systems, and a social justice approach to transgender health and human rights.

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## References

- Bockting, W., & Avery, E. (Eds.). (2005). *Transgender health and HIV prevention: Needs assessment studies from transgender communities across United States*. New York, NY: Haworth Medical Press.
- FORGE. (2012). *Transgender rates of violence*. Retrieve from <http://forge-forward.org/wp-content/docs/FAQ-10-2012-rates-of-violence.pdf>
- Grant, J., Mottet, L., Tanis, J., Harrison, J., Herman, J., & Keisling, M. (2011). *Injustice at every turn: A report of the national transgender discrimination survey*. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force.
- Heckathorn, D. D. (1997). Respondent-driven sampling: A new approach to the study of hidden populations. *Social Problems*, 44, 174–199. doi:10.2307/3096941
- Heckathorn, D. D. (2002). Respondent-driven sampling II: Deriving valid population estimates from chain-referral samples of hidden populations. *Social Problems*, 49, 11–34. doi:10.1525/sp.2002.49.1.11
- Instituto Runa. (2006). *Invisible realities: Violence against transvestite, transsexual and transgender people that work in the sexual industry in Lima*. Retrieved from [http://trans\\_esp.ilga.org/trans/bienvenidos\\_a\\_la\\_secretaria\\_trans\\_de\\_ilga/biblioteca/libros/realidades\\_invisibles\\_violencia\\_contra\\_travestis\\_transexuales\\_y\\_transgeneros\\_que\\_ejercen\\_comercio\\_sexual\\_en\\_la\\_ciudad\\_de\\_lima](http://trans_esp.ilga.org/trans/bienvenidos_a_la_secretaria_trans_de_ilga/biblioteca/libros/realidades_invisibles_violencia_contra_travestis_transexuales_y_transgeneros_que_ejercen_comercio_sexual_en_la_ciudad_de_lima)
- National Center for Transgender Equality. (2012). *National Transgender Discrimination Survey: Full report*. Retrieved from <http://transequality.org/issues/resources/national-transgender-discrimination-survey-full-report>
- Primera Hora. (2010). “Epidemy” of murders of homosexuals and transsexuals. Retrieved from <http://www.primerahora.com/noticias/policia-tribunales/nota/epidemiadeasesinatosdehomosexualesotransexuales-389599/>

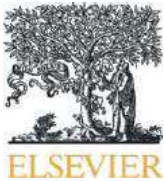
- Reyes-Estrada, M., Rivera Diaz, M., & Varas-Diaz, N. (2012). Mobile technology as a promising tool for health research in the social sciences. *Journal of Mobile Technology in Medicine*, 1(4S), 1–2. doi:10.7309/jmtm.26
- Reyes-Estrada, M., Varas-Díaz, N., & Martínez-Sarson, M. T. (2015). Religion and HIV/AIDS stigma: Considerations for the nursing profession. *New School Psychology Bulletin*, 12, 10–17.
- Rivera-Quiñones, C., Toro-Alfonso, J., & Meléndez, L. (2013). Minorities against the increase of criminality. Perception of security among the lesbian, gay, bisexual, and transgender community (LGBT) in Puerto Rico. *Puerto Rican Journal of Psychology*, 24(2), 1–14.
- Rodríguez Madera, S. (2012b). Structural violence as social determinant of health: Its effects for trans people. *Diversity*, 3, 7–22.
- Rodríguez Madera, S., Padilla, M., & Varas Díaz, N. (2012). *Transgender Person's experiences inventory*. San Juan, PR.
- Rodríguez-Madera, S. (2007). Transgressive citizenships: Gender, stigma and its implications for health. In N. Varas & F. Cintrón (Eds.), *Stigma and health in Puerto Rico: Detrimental consequences of the alternative* (pp. 36–72). San Juan, PR: Puerto Rican Publisher.
- Rodríguez-Madera, S. (2009). *Género TRANS*. San Juan, PR: Terranova.
- Rodríguez-Madera, S. (2011, November). *Structural violence as a social determinant of health: Its effects on trans*. Oral presentation at 58th Convention of the Puerto Rican Psychological Association, Río Grande, PR.
- Rodríguez-Madera, S. (2012a). Transactions of the flesh: Criminalization of Trans women sex workers. In S. Serrano (Ed.), *Contemporary criminological records* (pp. 107–150). San Juan, PR: Situm.
- Rodríguez-Madera, S., & Toro-Alfonso, J. (2007). Gender as an obstacle in HIV/AIDS prevention: Efforts for male-to-female transgenders. *International Journal of Transgenderism*, 8, 113–122. doi:10.1300/J485v08n02\_10
- Salganik, M. J., & Heckathorn, D. D. (2004). Sampling and estimation in hidden populations using respondent-driven sampling. *Sociological Methodology*, 34, 193–240. doi:10.1111/some.2004.34.issue-1
- Schonlau, M., & Liebau, M. (2012). Respondent-driven sampling. *Stata Journal*, 12, 72–93.
- Stotzer, R. L. (2009). Violence against transgender people: A review of United States data. *Aggression and Violent Behavior*, 14(3), 170–179. doi:10.1016/j.avb.2009.01.006
- Toro-Alfonso, J. (2008). *Por la vía de la exclusión: Homofobia y ciudadanía en Puerto Rico*. San Juan, PR: Comisión de Derechos Civiles de Puerto Rico.
- Valentine, D. (2007). *Imagining transgender: An ethnography of a category*. Durham, NC: Duke University Press.
- Varas Díaz, N., Neilands, T. B., Malavé Rivera, S., & Betancourt, E. (2010). Religion and HIV/AIDS stigma: Implications for health professionals in Puerto Rico. *Global Public Health*, 19, 109–118.
- Varas-Díaz, N., Neilands, T. B., Cintrón-Bou, F., Santos Figueroa, A., Marzán Rodríguez, M., & Marqués, D. (2013). Religion and HIV/AIDS stigma in Puerto Rico: A cultural challenge for training future physicians. *Journal of the International Association of Physicians in AIDS Care*, 13, 305–308. doi:10.1177/2325957412472935
- WHO. (2012). *Addressing violence against sex workers*. Retrieved from [http://www.who.int/hiv/pub/sti/sex\\_worker\\_implementation/swit\\_chpt2.pdf](http://www.who.int/hiv/pub/sti/sex_worker_implementation/swit_chpt2.pdf)
- Witten, T. M., & Eyler, A. E. (1999). Hate crimes against the transgendered: An invisible problem. *Peace Review*, 11, 461–468. doi:10.1080/10402659908426291
- Xavier, J., Bobbin, M., Singer, B., & Budd, E. (2005). A need assessment of transgendered people of color living in Washington, DC. *International Journal of Transgenderism*, 8(2–3), 31–47. doi:10.1300/J485v08n02\_04

*Arroyo González v. Rosselló Nevares*

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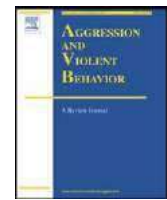
Declaration of Omar Gonzalez-Pagan

# Exhibit D



Contents lists available at ScienceDirect

# Aggression and Violent Behavior



## Violence against transgender people: A review of United States data<sup>☆</sup>

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 Hate crimes

### ABSTRACT

Transgender people face many challenges in a society that is unforgiving of any system of gender that is not binary. However, there are three primary sources of data in the United States for discerning the rates and types of violence that transgender people face throughout their lives — self-report surveys and needs assessments, hot-line call and social service records, and police reports. Data from each of these sources are discussed in length, as well as some of the methodological issues for these types of data sources. All three sources indicate that violence against transgender people starts early in life, that transgender people are at risk for multiple types and incidences of violence, and that this threat lasts throughout their lives. In addition, transgender people seem to have particularly high risk for sexual violence. Future research considerations, such as improving data collection efforts, are discussed.

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### 1. Introduction

Transgender people face violence because of their gender nonconformity, and the nature and extent of that violence has been the focus of recent research. Documenting violence is becoming



increasingly important as policymakers utilize these types of statistics to pass more effective and necessary policies at the local, state, and federal levels to protect people based on their gender identity and gender expression. This report summarizes the scant yet diverse research on violence against transgender people in the United States.

Although definitions of the term transgender itself are contested, ‘transgender’ is coming to represent an umbrella term under which resides anyone who bends the common societal constructions of gender, including cross-dressers, transsexuals, genderqueer youth, drag queens, and a host of other terms that people use to self identify their gender. This term is “gender neutral” in the sense that it includes both people born as males who express or identify their gender as female (male-to-female transgender, or MTFs), and people born female who express or identify their gender as male (female-to-male, or FTMs). Numerous studies have demonstrated that transgender people experience high levels of violence from strangers and known others alike, and that they often face a lifetime of repeated victimization. The number of gender non-conforming people in the United States is unknown, making estimates of victimization risk uncertain (Stotzer, 2007). In addition, assessing the level, extent, and nature of violence against people with non-conforming gender identities and presentations has been challenging for a variety of social and methodological reasons.

One qualitative study paints a picture of what life is like for transgender people. Wyss (2004) interviewed seven transgender high school students and asked about their experiences at school. This study discusses the “full-contact hallways” that seven gender non-conforming youth encounter in high school. Their descriptions of the physical violence are particularly informative considering the details that the youths describe. Many report that not just other students harassed them, but that people they even considered friends would either help or join with assailants during physical attacks. Two of the students were set on fire in school, one after shop class. There were also constant threats of sexual assault, or coercive sex, or physical assault, both verbal threats and notes left in lockers. The hallways were also the place to be grabbed or fondled by anyone in the school.

Despite the growing anecdotal knowledge that violence is a significant problem in the transgender community, data about this issue are not readily available. There are currently three possible sources for information about the violence and harassment that transgender people experience:

#### I. Self-report surveys

Self-report surveys directly ask transgender people about their experiences of victimization, and routinely find a high prevalence of violence. These studies rely on asking transgender people directly about their experiences of victimization, and can include written surveys, face-to-face interviews, and focus groups.

#### II. Hotline calls and social service reports

Advocacy groups, such as the National Coalition of Anti-Violence Programs, publish reports of violence and harassment across the country. These estimates of the incidence of violence against transgender people come from tracking hot-line calls and requests for social services. Other organizations track murders through newspaper reports and word-of-mouth reports.

#### III. Police reports

Currently, only 10 states include gender identity or gender expression in their hate crime laws. These reports come directly from crimes reported to local and state police.

This report identifies available information about violence against transgender people and other gender non-conforming people. Furthermore, this paper discusses the strengths and weakness of the methods employed in self-report surveys, advocacy group reports, and

state reports. Finally, utilizing all three of these sources, the knowledge that is available about the scope and nature of victimization in the transgender community is discussed as it relates to policy implementation and social service provision.

## 2. Self-report surveys

Early efforts at understanding the needs of gender non-conforming individuals came from public health interest in transsexual prostitutes (i.e. Boles & Elifson, 1994; Elifson, Boles, Posey, Sweat, Darrow, & Elsea, 1993). However, there was rarely emphasis on experiences of violence or harassment due to the conflation of gender-identity issues with sex work and the emerging HIV/AIDS crisis. However, the first substantial attempts at discerning the problems with violence faced by those with non-conforming gender-identity was the “First National Survey of Transgender Violence” conducted by GenderPAC in 1997 (and further analyzed in Lombardi, Wilchins, Priessing, & Malouf, 2001). This study found high levels of violence from harassment to physical and sexual assaults.

From that start, surveys targeting gender non-conforming people conducted across the United States (and internationally) have occasionally included questions about violence and harassment, with the most recent and most comprehensive survey of trans-people being the Virginia Transgender Health Initiative Survey (VTHIS) (Xavier, Honnold, & Bradford, 2007). Most large scale self-report surveying has been done in either cities or states, and are needs assessments conducted in part by Departments of Health. These surveys are often based on convenience samples composed of people accessing social services, or through social networks and word-of-mouth. More specifically, the most common type of recruitment is through snowball sampling of a convenience sample of transgender people utilizing identified leaders in the transgender community to serve as recruiters, interviewers, and/or survey administrators (Clements-Nolle, Marx, & Katz, 2006; Garofalo, Deleon, Osmer, Doll, & Harper, 2006; Kenagy, 2005; McGowan, 1999; Reback, Simon, Bemis, & Gatson, 2001; Risser et al., 2005; Sugano, Nemoto, & Operario, 2006; Xavier, 2000; Xavier, Bobbin, Singer, Budd, 2005). These convenience samples usually are focused around social service organizations (most often HIV/AIDS clinics or organizations), and bars or other social gathering places for transgender people. However, many studies also targeted specific populations, such as transgender prostitutes doing street work (Valera, Sawyer, & Schiraldi, 2000), or targeting locations, such as sex workers who came in for clinic visits (Cohan et al., 2006). A few others used mixed method designs that employed some mix of face-to-face recruitment, paper surveys and interviews, and/or the use of the internet as a tool for recruiting and surveying (Dang, 2007; FORGE, 2005; Lombardi et al., 2001; Wyss, 2004; Xavier et al., 2007). Topics related to violence commonly addressed three main categories: 1) sexual violence data, 2) physical violence data, and 3) harassment, verbal abuse, and other non-physical violence.

### 2.1. Sexual violence

“In my neighborhood, either they want to beat you up or they want a free blow job.” Interviewee (Bockting, Robinson, & Rosser, 1998)

One of the best documented types of violence against transgendered people is sexual assault and rape. This is due in part because most studies on transgender people are linked to Departments of Public Health and focus on sexual behavior, such as condom use, unprotected sex, and anal sex, in order to draw connections with HIV/AIDS status and transmission. As a consequence, this means that there are more reports and greater levels of detail about sexual assault and rape than any of the other types of violence experiences by transgendered people.

What becomes clear from surveys of trans-people is that there is a high prevalence of sexual assault and rape starting at a young

age. While all surveys have found evidence that sexual violence is shockingly common, the proportion of transgender people reporting violence varies from survey to survey. As discussed later, these variations in rates probably result from differences in how researchers conducted their surveys, and we cannot draw firm conclusions on the actual likelihood that a transgender person will experience sexual violence. However, the most common finding across surveys and needs assessments is that about 50% of transgendered persons report unwanted sexual activity. [Clements-Nolle et al. \(2006\)](#) surveyed 515 MTFs and FTMs and found that 59% reported a history of forced sex or rape, [Garofalo et al. \(2006\)](#) also found her/his survey of 51 MTF youths that 52% reported unwanted sexual intercourse, and [Kenagy \(2005b\)](#) found that 54% of participants reported that they had been forced to have sex. The report with the highest percentage of people who reported being either directly involved or secondary victims (i.e., witnesses) of sexual violence was the [FORGE \(2005\)](#) report, which had 66% of their 264 respondents in the mid-west state that they had been the victims or witnesses of sexual violence, and 23% had been the victims or witnesses of five or more incidences of sexual violence ([Tables 1 and 2](#)).

[Kenagy \(2005a\)](#) also found a significant difference between MTFs and FTMs, with 69% of MTFs reported having been the victims of forced sex, where only 30% of FTMs reported a history of forced sex. However, only one other study directly tested this difference. Contrary to the [Kenagy \(2005b\)](#) study, forced sexual activity was a larger problem for FTMs in the [Xavier et al. \(2007\)](#) sample: 35% of FTMs responded they had been sexually assaulted compared to 23% of MTFs.

Other studies sometimes find lower rates of sexual violence between 10% and 15% (i.e., [Xavier, 2003](#), [Witten, 2003](#), and [Lombardi et al., 2001](#)). The report with the highest percentage of people who reported sexual violence is the [FORGE report \(2005\)](#). Results showed that 66% of the 264 mid-western respondents had been the victims or witnesses of sexual violence, and 23% had been the victims or witnesses of five or more incidences of sexual violence.

Not only is sexual violence occurring with a high level of frequency, but this violence starts at an early age. One study found that first rapes often occurred in the early teens, with a median of 14 years old for FTMs and 15 years old for MTFs ([Xavier et al., 2007](#)). The [FORGE \(2005\)](#) report found that young gender-nonconforming persons were particularly vulnerable to sexual violence, with the majority of incidents occurring before the age of 12, and that number steadily declining with age. This claim about younger transgender people being more at risk was also found in [Wyss' \(2004\)](#) study on high school-aged transgendered youth. Wyss, through a mix of surveying

and interviewing, found that 86% of respondents had experienced some type of sexual violence, often perpetrated by other students, because of their gender identity.

### 2.1.1. Motivation for sexual violence

These studies also provide insights into the motivation for sexual assaults, generating evidence that perpetrators are motivated by hatred or negative attitudes toward transgender people. It is important to keep in mind that in these questionnaires motivation of the perpetrator is determined by the victim and their perception of their victimization rather than any objective or legal determination of motivation. Although this is a common strategy for determining motivation in crime surveys, this method clearly only addresses perceptions of motivation. In [Xavier et al. \(2005\)](#), 13% of the 248 MTF and FTM participants reported being victims of sexual assault or rape, and that 43% of those victims believed that their victimization was because of the perpetrators' homophobia, while another 35% of victims reported that it was the perpetrators' transphobia that led to the assault. [Witten's \(2003\)](#) participants were asked if they believed they had ever been the victims of a hate crime: 23% were classified by the participant as sexual harassment, 15% as sexual abuse or attempted sexual abuse, and 6% had been raped because of their gender identity. In the [Xavier et al. \(2007\)](#) study of transgender Virginians, over half (57%) of the participants reported they felt the reason for one or more of the incidents of forced sex was due to their transgender status, gender identity, or gender expression, with 71% of MTFs attributing that motive to one or more of the incidents, compared to 40% of FTMs.

### 2.1.2. Perpetrators of sexual violence

Perhaps one of the most disappointing findings from self-report surveys are the findings that the largest percent of perpetrators of sexual violence are people who are known to the victim, including partners and family members. In a study of primary and casual sex partners, [Risser et al. \(2005\)](#) found that 16% of the 67 participating MTFs reported being forced to have sex by a casual sex partner, and 25% had been forced to have sex by their primary partner. Additional evidence for this trend comes from [Xavier et al. \(2007\)](#), who found that among those who had reported incidents of forced sex, 35% involved a person who lived in the participant's household at the time of the assault. In addition, in a survey of 26 MTF prostitutes in Washington D. C., [Valera et al. \(2000\)](#) found that 35% reported being raped since they entered prostitution. The most common perpetrator of these rapes were customers (60%), someone else (40%), and their pimp (20%).

Additional details about the perpetrators of these crimes comes from [Xavier et al. \(2007\)](#), who found that acquaintances were the most

**Table 1**

Self-report survey reports of the prevalence of violence against transgender people motivated by their gender identity or gender expression (as reported by victims).

	McGowan (1999)	Reback et al. (2001)	Lombardi et al. (2001)	Witten (2003)	Wyss (2004)	FORGE (2005)	Xavier et al. (2005)	Clements-Nolle et al. (2006)	Xavier et al. (2007)	Dang (2007)
Location	New York	Los Angeles	USA	US and abroad	Not spec.	Mid-west	D.C.	San Francisco	Virginia	USA
Sample										API
MTF	83		84			77	188	392	112	14
FTM	11		81			121	60	123	34	6
Other/not specified		244		174	24	16				52
Sexual assault/rape			13%	15%	86%	28%	<sup>a</sup> 10%		<sup>a</sup> 15%	
Sexual harassment				23%						
Violence "or crime"	33%		27%				<sup>a</sup> 15%			
Physical assault/beaten		47%	20%	39%	86%			36%	<sup>a</sup> 28%	49%
Robbed			14%	<sup>b</sup> 29%						
Objects thrown at you			17%							
Assaulted w/a weapon			10%							
Followed/stalked			23%	41%						
Harassment			56%	48%						<sup>c</sup> 69%
Verbal abuse		80%						83%		

<sup>a</sup> Reflects the fraction of the entire population.

<sup>b</sup> [Witten \(2003\)](#) reported "muggings" specifically, but this statistic was counted into the "robbery" category.

<sup>c</sup> [Dang \(2007\)](#) included 'discrimination or harassment' together.

**Table 2**  
Needs assessments and academic survey reports of the prevalence of general violence against transgender people (no particular motivation associated with victimization).

Location Sample	McGowan (1999)	Valera et al. (2000)	Xavier (2000)	Witten (2003)	Kenagy (2005a)	Kenagy (2005b)	Kenagy and Bostwick (2005)	FORGE (2005)	Risser et al. (2005)	Xavier et al. (2005)	Cohan et al. (2006)	Garofalo et al. (2006)	Clements-Nolle et al. (2006)	Sugano et al. (2006)	Xavier et al. (2007)
	New York	D.C.	D.C.	US and abroad	Philadelphia	Philadelphia	Chicago	Mid-west	Houston	D.C.	San Francisco Sex workers	Chicago Youth	San Francisco	San Francisco Racial Minorities	VA
MTF	83	26	180		49	113	78	77	67	188		51	392	332	112
FTM	11		60		32	69	33	121		60			123		34
Intersex			4												
Other/not specified				174				16		43%					
Violence/"crime"			43%				60%								
Physical assault		65%	16%	45%	51%	51%									
Emotional abuse				67%											
Neglect				26%											
Exploitation				8%											
Assaulted w/a weapon		88%	17%												
Sexual assault/rape		35%	14%	19%	53%	54%		66.0%	16/25%						27%
Threatened		88%													
Harassment			26%												
Robbed			14%												
Intimidation			18%												
Vandalism			4%												
Blackmail			2%												
Abduction			2%												
Bombing			1%												

Witten (2003) reported "muggings" specifically, but this was collapsed into the "robbery" category.

Risser et al. (2005) separately reported casual sex partner sexual violence, and primary partner sexual violence (casual partner/primary partner).

McGowan asked "Have you ever been a victim of domestic violence or rape?", and we are unable to determine what percent is rape vs. other forms of domestic violence.

Cohan et al. (2006) reported specifically on sex work related violence, without specifying what type of violence.

Sugano et al. (2005) separated prevalence by age, during childhood/during adulthood.

common perpetrators of sexual violence (48%), followed by complete strangers (26%), father or stepfather (16%), a former spouse or partner (14%), current spouse or partner (12%), and a brother or sister (12%). According to the FORGE (2005) report, amongst those who had identified the genders of the perpetrators of sexual assaults, 90% of victims said they had at some time been assaulted by a male perpetrator, 30% of victims had been assaulted by a female perpetrator, and 12% had been assaulted by a transgender perpetrator (totals do not add up to 100% because a single victim could have been a victim in one assault by a male perpetrator and in another assault by a female, etc.). In addition, they found that the most common relationship to the victim that the perpetrator had was as a family member (39%), an acquaintance (35%), an intimate partner (29%), a stranger (25%), a date (20%), or an individual in a helping profession such as police or healthcare/social service providers (11%).

2.1.3. Police and other authorities

Within the transgender community it is common knowledge that interacting with authorities invites a certain level of possible victimization, or revictimization for transgendered people. Only two studies directly ask about reporting sexual assault to the police. The Xavier et al. (2007) found that 83% of victims of sexual assaults did not report any of the incidences to the police. The FORGE (2005) report found a similar statistic — that only 9% of victims reported their sexual assaults to police, and that 47.5% did not tell ANYONE about their sexual assault. However, an interesting finding that might elucidate the lack of reporting to authorities was the fact that victims reported that 4.9% of incidences of sexual violence were perpetrated by police, and in 5.9% of cases the perpetrators was a social service or health care provider.

In summary, studies conducted since 1999 have shown that transgender people are the victims of a great deal of sexual violence, specifically sexual assault, attempted sexual assault, rape, and attempted rape. In addition, this violence is often being perpetrated specifically because of their gender identity or expression. Perhaps most painful, in only about a third of cases the perpetrator is a complete stranger, suggesting that a large volume of the sexual victimization of transgender people is at the hands of people they know, and that this victimization begins at an early age.

2.2. Physical violence and abuse

"I had these three guys that didn't like me and I'm not totally sure why they didn't. But I think a lot of it had to do with my gender expression and my sexuality and just basically who I was. [...T]hey beat my ass on my fifteenth birthday [with a leather belt....T]he guy that I was with [...] just sat back and watched while they did this to me" Interviewee (Wyss, 2004, p. 716)

In addition to high rates of sexual violence victimization, transgender people also suffer from a high prevalence of physical violence. The study with the highest level of detail about physical assault specifically is the study by Xavier et al. (2007). Among trans-Virginians, 40% reported experiencing physical assaults (since age 13), and the mean age of the first physical assault was at 16 years old. Of those who had reported being victimized, 18% reported one incident, 23% reported two incidents, 30% reported three to five incidents, 17% reported six to 19 incidents, and 12% reported 20 or more incidents of physical violence. This demonstrates that although there is some evidence for the lifetime probability of being victimized is high for transgender people, there is also a heightened risk of being multiply victimized. Of those who reported that they were victims of physical assault, 69% felt that for at least one or more of those incidences, the primary reason for victimization was their gender identity.

Physical violence appears particularly problematic for transgender sex workers. Valera et al. (2000) found that among MTF sex workers in Washington D.C., 65% had been physically assaulted, and that the most common perpetrator was a customer (71%). Weinberg, Shaver, and



Williams (1999) found that among sex workers in the San Francisco Tenderloin, in the last 12 months the mean number of rapes by a client was 0.013 per person, the mean number of times beaten by a client was 0.23, and the mean number of times robbed by a client was 0.52. [Cohan et al. \(2006\)](#) found that among 126 sex workers in San Francisco, 53% had experienced sex work related violence, which was higher and significantly different from the percent of male or female prostitutes who reported violence. Most often, the perpetrator was a customer (43%), though they had experienced violence at the hands of the police (17.5%), and their employer/manager/pimp (9%). In a qualitative study by [Nemoto, Operario, Keatley and Villegas \(2004\)](#), MTF sex workers identified their increased danger of “discovery” from potential clients who did not understand their transgender status. One participant summarized the constant danger by aptly stating “No one’s going to kill a gay man if he finds a dick between his legs. No one’s gonna kill a gay woman if he finds a pussy. But they will definitely put a knife through a tranny’s throat if they see breasts and dick” (p. 729).

### 2.2.1. Motivation for physical violence

Evidence about hate or bias motivation can also be found in other studies besides the Transgender Virginians study. Just as with sexual violence, perpetrators’ motivation for physical violence is most often based on the perceptions of victims, or their interpretation of the reasons behind the crime, or even their labeling of the crime as a “hate crime.” When asked about experiences of “anti-transgender violence or hate crime,” 33% of participants in [McGowan’s \(1999\)](#) study of 94 transgendered people in New York reported being victims. [Xavier \(2003\)](#) ([Xavier et al., 2005](#)) reported that 43% of respondents had been the victims of “violence and/or crime,” and of those who were victimized, 75% said that they believed at least one of their experiences of violence or crime was related to their gender identity. [Clements-Nolle et al. \(2006\)](#), asked the general question of whether or not participants had experienced “physical gender victimization,” and of the 515 participants, 36% reported that they had been victims. [Reback et al. \(2001\)](#) in surveying transgendered people in Los Angeles County found that 47% of the transgender participants reported being victims of physical abuse or were beaten because of their gender identity.

### 2.2.2. Perpetrators of physical violence

[Reback et al. \(2001\)](#) asked a follow-up question about perpetrators, and found that incidents involved strangers (37%), police (14%), parents (9%), siblings (4%), neighbors (4%), other relatives (3%), and even friends (3%). [Witten \(2003\)](#) also asked about crimes motivated by gender-identity motivated hatred, and found that among other crimes, such as sexual assaults and harassment, participants also reported being the victims of muggings based on hate (29%) and being beaten based on hate (39%).

This breakdown of perpetrators was similar to those found in [Xavier et al. \(2007\)](#), again suggesting that known others are the primary perpetrators of physical violence against transgender people. They also reported data on perpetrators, finding that 31% of physical assault perpetrators were living with the victim at the time of the assault. Again, the complete strangers were the most common perpetrators (47%), followed by acquaintances (27%), ‘other’ persons (who did not fall into the set categories (27%), fathers or stepfathers (16%), mothers or stepmothers (9%), current spouse/partner, brother/sister, or a former spouse or partner (8%). This suggests that similar to sexual violence, perpetrators of physical violence are often known to the victims.

[Kuehnle and Sullivan \(2003\)](#) also found that 30% of perpetrators were landlord/neighbor/tenants, 20% of the time the perpetrator was a stranger, 20% of perpetrators were “pick-ups,” and 10% of the time the crimes were committed by an acquaintance/friend, law enforcement/security personnel, or service providers respectively. In addition, [Kuehnle and Sullivan \(2003\)](#) is one of the few studies that asked about the location of physical violence, and compared “anti-gay”

violence against male, female, and transgender victims. Of the 10 transgender victims who reported violence to a social service agency, 50% reported that their victimization occurred in a private residence, 20% of crimes occurred on public transportation, 20% occurred in public accommodations, and 10% occurred in the street or in a public area.

Similar to sexual violence, physical violence is occurring at high rates, happens often, and takes a variety of forms from physical assault to attempted bombings and abductions. In addition, transgender people have high rates of multiple victimization of physical violence, and the perpetrators are often people known to the victim.

### 2.2.3. Violence in the home

Two studies conducted by Kenagy have asked the question: “Have you ever experienced violence in your home?” This question is broad enough to include incidences of domestic violence as well as attacks from strangers or family without being able to differentiate between them.<sup>1</sup> Although it is unclear what type of violence is occurring in the home in these surveys, it is still an important question when so much violence pervades the lives of transgender people. [Kenagy and Bostwick \(2005\)](#) found that 66% of respondents reported experiencing violence in their home, while [Kenagy \(2005b\)](#) found that 56.3% of participants reported experiencing violence in the home, with a statistically significant difference between MTFs (67.3%) and FTMs (38.7%) ( $p < .05$ ). Similarly, both studies asked about “physical abuse” which is difficult to determine whether it meant abuse in a domestic situation, or physical abuse in a wider lens of physical assault. However, [Kenagy and Bostwick \(2005\)](#) found that 60% of victims reported being physically abused at some point in their lives, and [Kenagy \(2005b\)](#) reported that 51.3% of participants had reported being physically abused, with a significant difference between MTFs (65.3%) and FTMs (29.0%) ( $p < .01$ ). Although the question is too vague to determine situations of domestic violence vs. other types of crimes in the home, these responses suggest that transgender people are not safe even in their own homes.

### 2.2.4. Feelings of safety

One unique study asked transgender people about their thoughts and beliefs about their own personal safety and life expectancy. [Kenagy and Bostwick \(2005\)](#) found that 56% of MTFs and FTMs reported that being transgendered made them feel unsafe in public, and 43% reported that being transgendered made them feel uncomfortable in public as well. In addition, there were statistically significant differences between FTMs and MTFs. FTMs (85%) were significantly more likely to say they felt unsafe ( $p < .0001$ ) than MTFs (43%) and uncomfortable (FTMs = 73%, MTFs = 30%,  $p < .0001$ ). Perhaps the most tragic results of this study were in the answers to questions about life expectancy. 40% of all respondents said they expected that their lifespan will be shorter than normal (reasons given were queer-bashing, being killed by police, the effects of hormones, and HIV status).

### 2.2.5. Police and other authorities

A story similar to that of report sexual assault to the police emerges with physical assault and violence. The VTHIS found that 70% of victims of physical violence did not report any of their assaults to the police. When examining just the most recent incident (which happened an average of 6.6 years prior for FTMs and 11 years prior for MTFs), only 26% reported their assaults to police. [Witten \(2003\)](#) found that of the 89 respondents who had experienced violence, only 22% had made reports to the authorities, and another 4% reported that they ‘sometimes’ had reported their victimization to police. However, of

<sup>1</sup> For further information specifically about domestic violence among transgender people, some national statistics by the NCAVP are available. However, intimate partner violence is beyond the scope of this paper.

those who had reported, 65% were dissatisfied with their experiences with authorities. Witten also found that 77% had at least told someone about their victimization, even if they did not tell authorities. But of those who had not reported to authorities, 28% said they were afraid of reprisal from the perpetrator, 11% feared abuse by the medical/legal system, 29% felt it would not make a difference if they reported or not, and 8% wanted to protect the perpetrator. [Lombardi et al. \(2001\)](#) found that a 7.7% of respondents also had suffered unjustified arrests, adding another reason there appears to be poor relationships with police and other authorities. As previously stated, [Reback et al. \(2001\)](#) also found that 37% of the perpetrators of verbal abuse were police.

### 2.3. Harassment, verbal abuse, and other non-physical violence

“At one point we were getting followed around by men that were talking shit. It’s like being a dog and making circles, looking to see who’s following you” Interviewee ([Felsenthal, 2005](#), p. 213)

In addition to sexual and physical violence, there is evidence of high rates of more subtle, yet pervasive violence. [Xavier \(2000\)](#) reported that 26% of respondents reported experiencing street harassment, but [Lombardi et al.’s \(2001\)](#) participants reported rates over twice that, at 56%. However, neither of these studies directly asked whether or not participants believed that their victimization was specific to their gender non-conformity. However, [Witten \(2003\)](#) reported that 48% of respondents felt that they had experienced harassment due to their transgender status at some point in their lives. [Clements-Nolle et al. \(2006\)](#) specifically asked whether or not their participants had experienced “verbal gender victimization,” and 63% of their respondents answered that they had experienced verbal gender victimization. [Dang \(2007\)](#) found that 69% of transgender Asian Pacific Islanders had reported discrimination based on their gender identity.

There are few reports of specific kinds of violence outside of sexual assault, physical assault, or verbal assaults. However, [Witten \(2003\)](#) found that 67% of those participating in the Transcience Longitudinal Aging Research Study reported having experienced emotional abuse violence, 26% had experienced some type of neglect, and 8% had experienced exploitation. In addition, when asked specifically about crimes based on their gender identity, 23% reported that they had been victims of sexual harassment, and 41% had been followed or stalked. [Xavier \(2000\)](#) also reported that 18% of participants had experienced intimidation in some form, in addition to vandalism (4%), and blackmail or extortion (2%). Finally, [Lombardi et al. \(2001\)](#) reported that 23% of participants had been followed or stalked.

#### 2.3.1. Perpetrators of harassment and verbal abuse

Possibly due to the pervasive nature of harassment and other forms of violence, only one study inquired specifically about the perpetrators of verbal abuse and harassment. When asked in general about verbal abuse, 80% of participants in [Reback et al. \(2001\)](#) reported being victims of verbal abuse because of their gender identity or presentation. However, unlike physical or sexual violence, most respondents reported that a stranger was the perpetrator (71%), but 37% were abused by police, 22% were abused by parents, 22% experienced abuse from neighbors, 17% from siblings, and 16% from friends. Another 14% were verbally abused by relatives outside the immediate family.

### 3. Hotline calls and social service reports

Throughout the United States there is a network of anti-violence programs under a variety of guises and names that serve their communities in a variety of ways, but emphasize a focus on preventing and punishing violence against lesbian, gay, bisexual, and transgender (LGBT) people. Although these organizations are often located in

major metropolises (e.g., [Community United Against Violence \[CUAV\]](#) in San Francisco, Center on Halsted/Horizons Anti-Violence Project in Chicago, Triangle Foundation in Detroit, or the New York City Gay and Lesbian Anti-Violence Program), the individual organizations can receive calls or information from a wide geographic area. For example, in their 2005 report, CUAV in San Francisco reported incidents from 15 counties in California besides San Francisco County (2006). In addition to any local publications or reports that each organization authors yearly, many of these organizations report their data to the National Coalition of Anti-Violence Projects (NCAVP). The NCAVP has been generating a yearly report about hate motivated incidences since at least 1997. Even since the late 1990s this organization has had the foresight to include gender identity in its data collection efforts. Thus, it is one of the few nationally representative samples, even if the data are heavily skewed toward the 10–20 city and state organizations that have reported to NCAVP in the last ten years.

This is not to say that NVACP is the only group collecting data. For example, *It’s Time, Illinois! Political Action for the Gender Variant Community* routinely writes reports for Illinois, gathering information from the Chicago Commission on Human Relations as well as reports made directly to their agency. The totals counted by this organization are often different from those reported by the NCAVP. For example, *It’s Time Illinois!* (2001) reported only one hate crime in all of Illinois in 1999, but the NVACP reported four in Chicago alone.

The National Coalition of Anti-Violence Programs has found among 20 regions in the United States since 1997 that there were 2133 hate crimes against transgender people. This is an average of 213 hate crimes per year. In addition, the “Remembering Our Dead” Program has tracked 353 murders of transgender people worldwide since the 1970s.

#### 3.1. National Coalition of Anti-Violence Programs (NCAVP)

As can be seen in [Table 3](#), the average number of crimes over the last decade from just these 20 NCAVP chapters alone suggests that there are an average 213 hate crimes with anti-transgender motivation reported to Anti-Violence programs per year in the United States. However, although the NCAVP report has information about perpetrators, locations, extent of injuries, demographic information about victims, types of crime, and a host of other variables, none of this information is separated by type of crime or type of victim. Thus all descriptive information about the crimes against transgender people are combined with information about crimes against lesbians, gay men, and bisexuals. So other than estimating incidence, the NCAVP offers little other data about hate crimes targeting transgender people.

#### 3.2. Tracking transgender murders

“People have tried to kill me since I was a child” Interviewee ([Witten & Eyler, 1999](#), p. 461)

In addition to tracking through hotline calls and service requests, other organizations have begun collecting information about the murder of transgender people. Organizations such as the Southern Poverty Law Center’s *Intelligence Report* collect information based on news accounts, police reports and other sources. Their report claimed that there were 27 murders of transgender people in 2002 and the first nine months of 2003 alone ([Moser, 2007](#)). In addition, this report suggests that at the time it was written, of those 27 cases, arrests had been made for only seven cases.

Another source of information about murders of transgender people is a report titled “50 Under 30” from the Gender Public Advocacy Coalition (GPAC). The report related stories of 51 transgender and gender non-conforming individuals under the age of 30 who were murdered in the United States between 1995 and 2005. In collecting

**Table 3**

NCAVP annual national reports of hate crimes with transgender bias motivation.

NCAVP chapter	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Average per city
Central Coast	0	0	0								0.0
Chicago		0	4	3	1	1	2	2	3	11	3.0
Cleveland	1	3	3	1	0	2	1	0	0		1.2
Colorado	0	4	5	5	12	35	16	5	24	60	16.6
Columbus	6	15	6	6	11	21	26	32	36	44	20.3
Connecticut					6	0					3.0
El Paso	1	11									6.0
Houston	3	3	4	1	2	10	2	0	2	1	2.8
Kansas City								4	5	1	3.3
Los Angeles	17	24	27	23	15	34	15	86	53		32.7
Massachusetts	14	13	2	12	7	7	3	5	0	0	6.3
Michigan/Detroit	2	3	13	6	7	7	5	5	9	8	6.5
Minnesota	0	0	1	10	4	4	8	3	5	12	4.7
New York	0	5	52	58	68	61	73	75	74	81	54.7
Orlando	0	0									0.0
Pennsylvania						3	8	11	3	7	6.4
Providence	0	1	0	0	0						0.2
San Francisco	0	32	56	70	66	96	85	84	50	64	60.3
St. Louis	0	0	0								0.0
Vermont								9	1	8	6.0
Average per year	44	114	173	195	199	281	244	321	265	297	213.3

Blank cells are when there was no information available about a particular location in a given year.

Sources: National Coalition of Anti-Violence Programs (1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007).

information about these murder victims, they also attempted to gather some basic demographic information as well. They found that most victims were people of color (91%), most victims were poor and lived in major cities, most were biologically male but had some variant of a feminine presentation (92%), few murders received media coverage, all the assailants were male and used extreme levels of violence, and most of the murders were not investigated as hate crimes (71%), and most assailants go free. Only 46% had been solved, compared to 69% of other murders (Wilchins & Taylor, 2006). In addition, as of 2006, the “Remembering Our Dead” project, sponsored by Gender Education and Advocacy and authored by Gwendolyn Ann Smith has reported 353 transgender people murdered across the globe since the 1970s.

#### 4. Police reports

The federal government currently does not include gender identity in legislation covering hate crimes — neither in sentence-enhancements nor in mandated tracking of hate crimes in the Uniform Crime Reports. Furthermore, although police agencies record victim data such as race, gender, and location, in the Uniform Crime Reports for crimes *not* motivated by hate, these reports also do not include information about gender identity. Hence, the Uniform Crime Reports published by the FBI offers no information about violence against members of the transgender community.

However, California, Colorado, Connecticut, Hawaii, Maryland, New Mexico, Minnesota, Missouri, Pennsylvania, and Vermont include gender identity in their hate crime laws that cover a variety of criminal acts, though none specify statistical tracking (Human Relations Commission, 2005). When surveying reports from states that include gender identity in their definitions of hate crime, and that publish reports about their data collection, these states provide very little information on hate crimes based on gender identity. Of the 10 states that cover gender identity in their hate crime laws, none reports any gender-identity based hate crimes. At this point, it is unclear whether or not gender identity based hate crimes are being reported to police. Then, if they are being reported, it is possible that these reports are being subsumed in either the sexual orientation or gender based hate crime sections of these yearly summaries.

Data from the police can also occur in unexpected places. Among the other 40 states, one can find sporadic inclusion of gender identity based hate crimes, even among those who do not include gender

identity in their hate crime laws. For example, in 2001 Connecticut reported a hate crime against a “transsexual” (listing it under sexual orientation based hate crimes), and New York in 2002 reported one hate crime based on “gender identity expression.”

Police reports are one of the most commonly used for estimates of violence. However, in the case of violence against transgender people, reports suffer from a variety of problems that make estimating the total incidence of violence challenging.

##### 4.1. Social surveys and police reporting

“I got raped at 18 because they wanted to set me straight. I went to the police and the police said to me, ‘he who lays with dogs should expect to get fleas,’ that’s what I got. So from that moment on I knew the police were never gonna help me.” Interviewee (Moran & Sharpe, 2002 p. 279)

Evidence of reporting assaults to the police coincides with theoretical pieces that suggest that transgender people are hesitant to report to authorities (Moran & Sharpe, 2002; Moran & Sharpe, 2004). As previously discussed in both the sexual violence and physical violence sections, transgender victims are unlikely to report to police.

Based on this limited evidence, it appears that reporting physical violence to the police is distressingly low. This troubling rate could exist for many reasons, however, two research projects might offer an insight into why reporting rates are so low. Lombardi et al. (2001) found that a 7.7% of respondents also had suffered unjustified arrests, and as previously stated, Reback et al. (2001) also found that 37% of the perpetrators of verbal abuse were police, and 14% of perpetrators of physical assaults were police personnel. Thus, one could infer that authorities such law enforcement may have a low level of trust with transgender victims of violence.

#### 5. Methodological limitations of violence and transgender people

Although these three sources offer a wide variety of information about the violence faced by transgender people, it is important to consider the limitations in each source. Each of these data gathering strategies has numerous methodological issues that are too numerous to discuss reasonably within the scope of this paper. However, there are significant issues shared by all three forms of measurement, and



that are unique to each, that are critical for understanding how these different sources inform us about violence against transgender people.

Foremost among these methodological issues are issues of sampling. Police reports have sampling issues directly related to biases in reporting. Vulnerable populations have notoriously low faith in the police, and often have low crime reporting rates (e.g., Harlow, 2005). Relying on social service records or hotline calls also suffers from sampling issues because of inequality of access and willingness to report. Although one could assume that those people who have access to these types of services dealing with experiences of violence that are trans-sensitive will decrease the reporting bias, there are still those who are unwilling to access them for a variety of other reasons. Finally, self-report surveys often use samples that are easiest to access and the most visible, such as transgender people accessing drug rehabilitation centers, HIV/AIDS services, or who are engaged in sex work. This clearly does not reflect a representative sample of the wide variety of transgender people in the United States and around the world.

In addition to sampling bias, there is another methodological issue shared by all three sources of data. Transgender people suffer a similar problem with categorization that lesbian, gay, and bisexual people do — namely, there is confusion about what defines a transgender person. This confusion is not just among the general population, but even the portions of the population expected to be serving transgender people. For example, when interviewing prosecutors about gender-based hate crimes, McPhail and DiNitto (2005) found that interviewers had to explain the differences between hate crimes based on gender and sexual orientation to many prosecutors.

There are indications that prosecutors are not alone in being unable to effectively do their jobs in regard to transgender people, and government attempts to consolidate a system of measurement to help clarify and standardize this process have failed. After being dropped from initial hate crime laws and early workplace anti-discrimination laws in the 1990s, in 2007 both the House and Senate passed versions of a hate crime law, called the Matthew Shepard Act, that would have mandated the FBI to count transgender hate crimes in the United States as they counted those based on race, ethnicity, sexual orientation, religion, and disability. The bill would have also provided federal resources to jurisdictions that needed help investigating and prosecuting any hate crimes that they felt they were unprepared for, including those based on gender identity. However, because this bill was attached to Defense spending in the Senate version, later attempts to reconcile the language of the House and Senate versions proved unsuccessful, and this bill has effectively died. This means that currently there is no federal system for collecting statistics measuring the violence against transgender people, or laws that clarify the relationship between gender identity and violence. Thus, discrepancies in how transgender people are categorized, how data are tracked and stored, and how it is presented will continue.

Besides sampling issues shared by all three sources, there is also a serious methodological issue in how questions are framed or are being asked or included in data. Police data only include those crimes where a police officer had the foresight to ask about or recognize someone's non-standard gender identity, then report it in official documentation, and to investigate how gender identity might have contributed to a crime. The NCAVP chapters generally use a standard intake form emergency calls and requests for social services, which increases the standardization of their results, but they only report a single number — the total number of victims — without actually reporting or digging deeper into other information in the victim reports. Although self-report surveys tend to have the highest level of data, often due to the fact that their main focus is not violence or victimization, the information is highly simplistic, and questions are often added as an afterthought with little true planning. For example, the most common questions of “have you ever been raped” or “have you ever been the victim of violence” with only “yes” or “no” answers do not offer a lot of

insight into violence other than a raw number of people who have been victims of some kind of violence. The reasons that a meta-analysis is not possible from current self-report surveys are because of the wide variety of questions and their generally poor construction, making comparisons across self-report studies nearly impossible.

All three sources also share the problem of offering little in the way of explanation for how or why transgender people are victimized. Although there are many theoretical suggestions (e.g., Felsenthal, 2005) for why transgender people are targeted for high levels of violence and discrimination, little to no data exist or are being reported that offers insight into the reasons. Stotzer (2008) re-analyzed data from five years worth of reports of hate crimes against transgender people made to the Los Angeles County Commission on Human Relations, and found suggestions in the crime details that the reasons for hate crimes against transgender people are far more complex than just possessing non-normative gender-identities. There was evidence of intersections of gender identity, race, class, and education as causes for the crimes of violence against transgender people. However, the self-report surveys to date have asked few questions about violence, and even fewer about crime details that could illuminate causes. Organizations that report their data about violence against transgender people, such as the NCAVP, often have rich data from their intake surveys, but report on just the bare essential descriptive statistics with little statistical complexity. Finally, large-scale police reports often have nothing more than a raw number of crimes reported. Thus, this methodological issue becomes a large barrier to implement effective laws or policies when so little is known about the violence being perpetrated against transgender people.

Although there are more methodological issues that could be discussed at length in regard to measuring violence against transgender people from all three sources, what is clear is that better methods need to be employed to get more accurate data about transgender people. Right now inconsistent methods — including non-representative sampling, inconsistent survey questions, confusion about the category of “transgender”, and more — are only allowing hints of the scope of the problem of violence against transgender people. Improvement in methodology would move the field closer to an accurate approximation of the violence transgender people encounter throughout their lives. As this field moves forward, more research can focus on the strengths of transgender people that have allowed the transgender movement to grow throughout the 1990s and 2000s. Identifying the nature and extent of the violence is on the first step in understanding the effect that violence has in the lives of transgender people.

## 6. Conclusion

When combining all three forms of violence reporting it becomes clear that among transgender people, known others are physically and sexually assaulting transgender people at high rates, and strangers are physically and sexually assaulting transgender people, but also harassing them and causing other types of violence and abuse. These acts of violence are not single incidents, but happen across a lifetime, and often a single individual experiences multiple acts of violence or intolerance on a daily basis. However, although these three sources can offer some information about raw numbers of victims, and some information about types of crimes, the data are extremely limited by methodological concerns that make it impossible to determine causes or determinants of violence. Thus, these sources of information can offer a hazy picture of the problem without the clarity needed to effectively implement changes to law or policy, and even less for determining what are appropriate services for preventing violence or dealing with it effectively when violence does happen.

Not only are transgender people suffering from physical assaults, sexual assaults, and harassment in public places by strangers, but a large portion also suffer these forms of violence in their homes from people that they know. Self-reports have offered the highest level of

details about the prevalence of hate crimes, suggesting that the majority of transgender people will experience violence in their lifetimes, and that risk for violence starts at an early age. Reports from hotline calls and to the police offer an estimate of the high incidence of hate crimes against transgender people as well. However, the problems inherent to police reports — namely the lack of data being collected on bias crimes against transgender people because gender identity is not included in hate crime legislation — make estimating a national incidence rate difficult. Legislation aimed at including gender identity into federal hate crime tracking mandates can help to solve this problem in police reporting.

Policy is often based on “official” sources such as law enforcement crime statistics; however, transgender victims of violence are almost absent from the law enforcement view of crime. Yet, without adequate statistics on the victimization of transgender people, it is unlikely that these issues of violence will move onto law enforcement’s agenda. Self-report surveying is starting to bridge that gap, but with severe limitations on methods where convenience sampling of the most vulnerable transgender people does not give a complete view to the needs of transgender people to protect them from, and support them after, experiences of violence. And although the Herculean effort of special interest groups such as the NCAVP are to be admired, these data too are sadly skewed based on victims who are willing to report, and those who live near one of the urban anti-violence projects in the country. Therefore, at this point, although these three methods are painting a beginning to illuminate the public about the violence faced by transgender people, they are not yet adequate to truly understand the nature, severity, consequences, or antecedents of this violence.

What is beginning to emerge from these multiple sources of data are the increased risks of variety of types of violence, though in particular sexual violence, faced by transgender people. This risk starts early in life and continues throughout the lifetime. Transgender people appear to be victimized by strangers and people they know, including their families and loved ones, with equal frequency. In addition, it appears that this violence occurs at home, at work, and in public places. Although transgender people face these heightened risks and horrific instances of violence, the transgender movement is still growing and flourishing. However, in order for effective laws and policies to be enacted, and for effective social service organizations to be implemented, research that addresses the serious methodological failings of these three data sources must be addressed.

## References

- Bockting, W., Robinson, B., & Rosser, B. R. S. (1998). Transgender HIV prevention: A qualitative needs assessment. *AIDS Care, 10*(4), 505–526.
- Boles, J., & Elifson, K. W. (1994). The social organization of transvestite prostitution and AIDS. *Social Science Medicine, 39*(1), 85–93.
- Cohan, D., Lutnick, A., Davidson, P., Cloniger, C., Herlyn, A., Breyer, J., et al. (2006). Sex worker health: San Francisco style. *Sexually Transmitted Infections, 82*(4), 418–422.
- Community United Against Violence (n.d.). Hate Violence in 2005 summary. San Francisco: Author.
- Clements-Nolle, K., Marx, R., & Katz, M. (2006). Attempted suicide among transgender persons: The influence of gender-based discrimination and victimization. *Journal of Homosexuality, 51*(3), 53–69.
- Dang, A. (2007). *Living in the margins: A national survey of lesbian, gay, bisexual and transgender Asian and Pacific Islander Americans*. Washington D. C.: National Gay and Lesbian Task Force Policy Institute Retrieved on May 1, 2008 from [http://www.thetaskforce.org/downloads/reports/reports/APL\\_LivingInTheMargins.pdf](http://www.thetaskforce.org/downloads/reports/reports/APL_LivingInTheMargins.pdf)
- Elifson, K. W., Boles, J., Posey, E., Sweat, M., Darrow, W., & Elesa, W. (1993). Male transvestite prostitutes and HIV risk. *American Journal of Public Health, 83*(2), 260–262.
- Felsenthal, K. D. (2005). Socio-spatial experiences of transgender individuals. In J. L. Chin (Ed.), *The psychology of prejudice and discrimination: Bias based on gender and sexual orientation* Westport, CT: Praeger Publishers.
- For Ourselves: Reworking Gender Expression (FORGE) (2005). *Transgender Sexual Violence Project*. Retrieved May 3, 2007 from [http://www.forge-forward.org/transviolence/docs/FINAL\\_Graphs.pdf](http://www.forge-forward.org/transviolence/docs/FINAL_Graphs.pdf)
- Garofalo, R., Deleon, J., Osmer, E., Doll, M., & Harper, G. W. (2006). Overlooked, misunderstood and at-risk: Exploring the lives and HIV risk of ethnic minority male-to-female transgender youth. *Journal of Adolescent Health, 38*, 230–236.
- Harlow, C. W. (2005). Hate crime reported by victims and police. *Bureau of Justice Statistics special report* Washington D.C.: U.S. Department of Justice.
- Human Relations Commission (2005). *Statewide hate crime laws*. Retrieved May 7, 2007 from [http://www.hrc.org/Template.cfm?Section=Your\\_Community&Template=/ContentManagement/ContentDisplay.cfm&ContentID=19445](http://www.hrc.org/Template.cfm?Section=Your_Community&Template=/ContentManagement/ContentDisplay.cfm&ContentID=19445)
- Kenagy, G. P. (2005). The health and social service needs of transgender people in Philadelphia. In Walter Bockting & Eric Avery (Eds.), *Transgender health and HIV prevention: Needs assessment studies from transgender communities across the United States* Binghamton, NY: Haworth Medical Press.
- Kenagy, G. P. (2005). Transgender health findings from two needs assessment studies in Philadelphia. *Health and Social Work, 30*(1), 19–26.
- Kenagy, G. P., & Bostwick, W. B. (2005). Health and social service needs of transgender people in Chicago. In Walter Bockting & Eric Avery (Eds.), *Transgender health and HIV prevention: Needs assessment studies from transgender communities across the United States* Binghamton, NY: Haworth Medical Press.
- Kuehnle, K., & Sullivan, A. (2003). Gay and lesbian victimization: Reporting factors in domestic violence and bias incidents. *Criminal Justice and Behavior, 30*, 85–96.
- Lombardi, E. L., Wilchins, R. A., Priessing, D., & Malouf, D. (2001). Gender violence: Transgender experiences with violence and discrimination. *Journal of Homosexuality, 42*(1), 89–101.
- McGowan, C. K. (1999). *Transgender needs assessment, December 1999*. New York, NY: The HIV Prevention Planning Unit of the New York City Department of Health.
- Moran, L., & Sharpe, A. N. (2002). Policing the transgender/violence relation. *Current Issues in Criminal Justice, 13*(3), 269–285.
- Moran, L., & Sharpe, A. N. (2004). Violence, identity and policing: The case of violence against transgender people. *Criminal Justice, 4*(4), 395–417.
- Moser, B. (2007). *Disposable people*. Southern Poverty Law Center. Retrieved on May 1, 2007 from <http://www.splcenter.org/intel/intelreport/article.jsp?aid=149>
- National Coalition of Anti-Violence Programs (1999). Anti-lesbian, gay, bisexual, and transgender violence in 1998. A report of the National Coalition of Anti-violence programs Retrieved on May 2, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2000). Anti-lesbian, gay, bisexual, and transgender violence in 1999. A report of the National Coalition of Anti-violence programs Retrieved on May 3, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2001). Anti-lesbian, gay, bisexual, and transgender violence in 2000. A report of the National Coalition of Anti-violence programs Retrieved on May 2, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2002). Anti-lesbian, gay, bisexual, and transgender violence in 2001. A report of the National Coalition of Anti-violence programs Retrieved on May 4, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2003). Anti-lesbian, gay, bisexual, and transgender violence in 2002. A report of the National Coalition of Anti-violence programs Retrieved on May 3, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2004). Anti-lesbian, gay, bisexual, and transgender violence in 2003. A report of the National Coalition of Anti-violence programs Retrieved on May 3, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2005). Anti-lesbian, gay, bisexual, and transgender violence in 2004. A report of the National Coalition of Anti-violence programs Retrieved on May 1, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2006). Anti-lesbian, gay, bisexual, and transgender violence in 2005. A report of the National Coalition of Anti-violence programs Retrieved on May 1, 2007 from <http://www.ncavp.com/>
- National Coalition of Anti-Violence Programs (2007). Anti-lesbian, gay, bisexual, and transgender violence in 2006. A report of the National Coalition of Anti-violence programs Retrieved May 3, 2007 from <http://www.ncavp.com/>
- Nemoto, T., Operario, D., Keatley, J., & Villegas, D. (2004). Social context of HIV risk behaviors among male-to-female transgenders of colour. *AIDS Care, 16*(6), 724–735.
- Reback, C. J., Simon, P. A., Bemis, C. C., & Gatson, B. (2001). *The Los Angeles Transgender Health Study: Community report*. Los Angeles: Authors.
- Risser, J. M. H., Shelton, A., McCurdy, S., Atkinson, J., Padgett, P., Useche, B., et al. (2005). Sex, drugs, violence, and HIV status among male-to-female transgender person in Houston, TX. In Walter Bockting & Eric Avery (Eds.), *Transgender health and HIV prevention: Needs assessment studies from transgender communities across the United States* Binghamton, NY: Haworth Medical Press.
- Stotzer, R. L. (2007). *Comparison of hate crime rates across protected and unprotected groups: The Williams Institute, UCLA School of Law* Retrieved May 1, 2008, from <http://www.law.ucla.edu/williamsinstitute/publications/Policy-HateCrimes-index.html>
- Stotzer, R. L. (2008). Gender identity and hate crimes: Violence against transgender people in Los Angeles County. *Sexuality Research and Social Policy, 5*(1), 43–52.
- Sugano, E., Nemoto, T., & Operario, D. (2006). The impact of exposure to transphobia on HIV risk behavior in a sample of transgendered women of color in San Francisco. *AIDS and Behavior, 10*(2), 217–225.
- Valera, R. J., Sawyer, R. G., & Schiraldi, G. R. (2000). Violence and post traumatic stress disorder in a sample of inner city street prostitutes. *American Journal of Health Studies, 16*(3), 149–155.
- Weinberg, M. S., Shaver, M. S., & Williams, C. J. (1999). Gendered sex work in the San Francisco Tenderloin. *Archives of Sexual Behavior, 28*(6), 503–521.
- Wilchins, R. A., & Taylor, T. (2006). *50 under 30: Masculinity and the war on America's youth — A human rights report*. Washington, D.C.: GenderPAC Retrieved May 1, 2007 from <http://www.gpac.org/50under30/>
- Witten, T. M. (2003). Life course analysis — The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *Journal of Human Behavior in the Social Environment, 8*(2/3), 189–224.
- Witten, T. M., & Eyler, A. E. (1999). Hate crimes and violence against the transgendered. *Peace Review, 11*(3), 461–468.
- Wyss, S. E. (2004). “This was my hell”: The violence experienced by gender non-conforming youth in US high schools. *International Journal of Qualitative Studies in Education, 17*(5), 709–730.

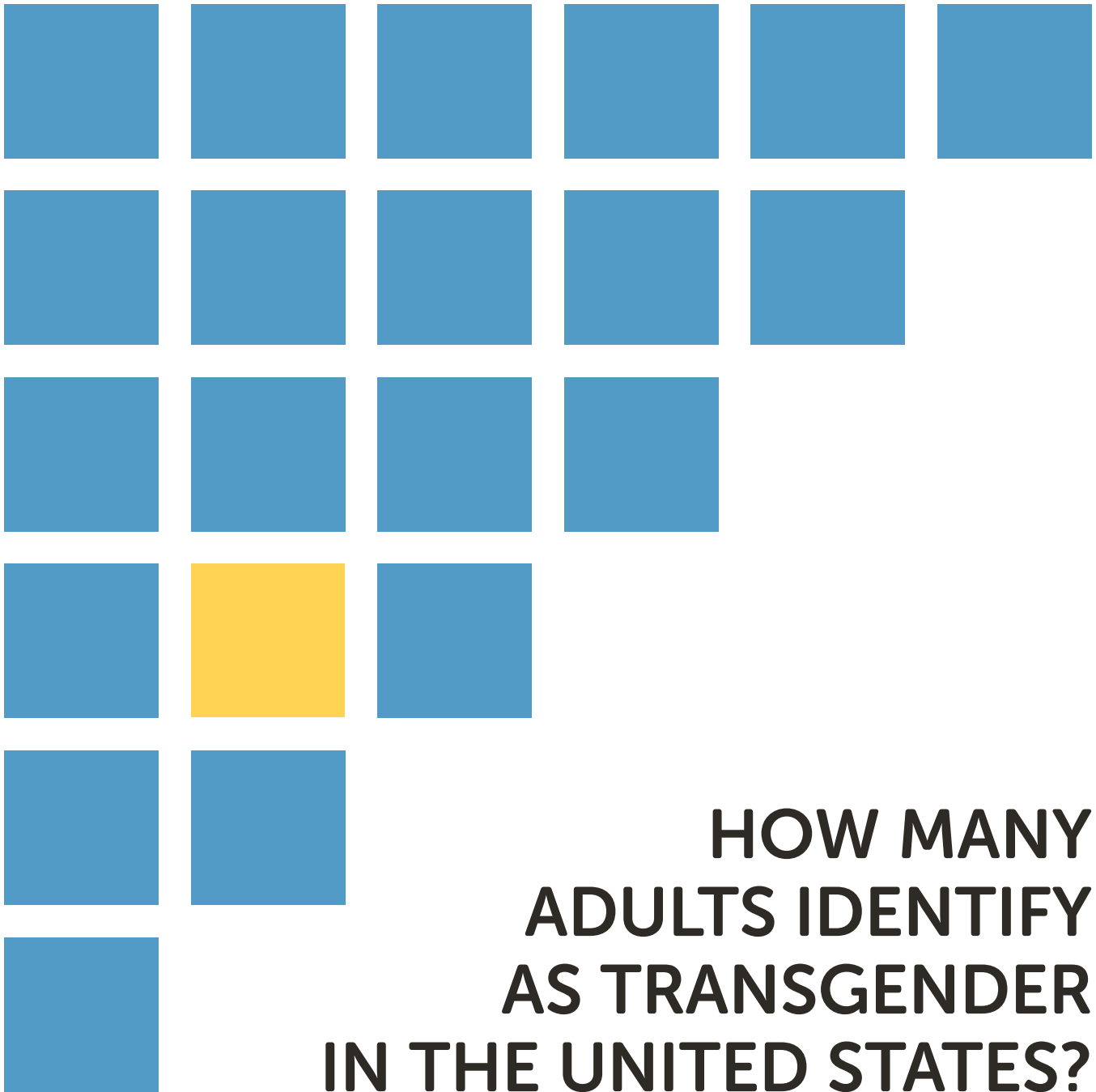
- Xavier, J. (2000). *The Washington, D. C. Transgender Needs Assessment Survey final report for phase two*. Washington D.C.: Administration for HIV/AIDS of the District of Columbia Retrieved on April 1, 2007 from <http://www.gender.org/resources/dge/gea01011.pdf>
- Xavier, J. (2003). *Fact sheet for anti-transgender violence in the District of Columbia*. Retrieved May 3, 2007 from <http://www.gllu.org/PDFs/TGFactSheet.pdf>
- Xavier, J., Bobbin, M., Singer, B., & Budd, E. (2005). A needs assessment of transgendered people of color living in Washington, D.C. *International Journal of Transgenderism*, 8 (2/3), 31–47.
- Xavier, J., Honnold, J. A., & Bradford, J. B. (2007). The Health, health-related needs, and lifecourse experiences of transgender Virginians. *Richmond: Division of Disease Prevention through the Centers of Disease Control and Prevention, Virginia Department of Health* Retrieved on May 1, 2007 from <http://www.vdh.virginia.gov/epidemiology/DiseasePrevention/documents/pdf/THISFINALREPORTVol1.pdf>

*Arroyo González v. Rosselló Nevares*

Civil No. 3:17-cv-01457-CCC

Declaration of Omar Gonzalez-Pagan

# Exhibit E



# HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES?

Andrew R. Flores, Jody L. Herman, Gary J. Gates, and Taylor N. T. Brown



*the*  
**Williams**  
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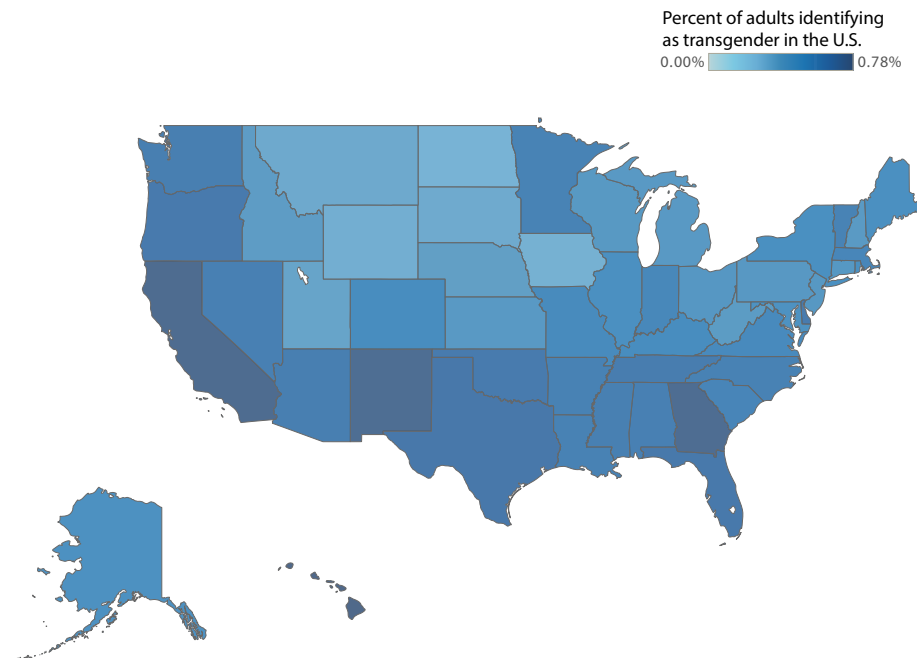
## INTRODUCTION AND SUMMARY

Population-based surveys, meaning those that are designed to allow researchers to generalize findings to the population, rarely ask questions to identify transgender people and, therefore, cannot be used to provide estimates of the size and characteristics of the transgender population. The federal government administers several large, national population-based surveys like the American Community Survey and the National Health Interview Survey that track the demographics, health and well-being of U.S. residents. Unfortunately, these surveys do not currently measure gender identity.<sup>1</sup> However, there are several state-level population-based surveys that identify transgender respondents and can be used to estimate the size and characteristics of the transgender population.

In 2011, Gary J. Gates utilized two state-level population-based surveys that collected data from 2003 in California and from 2007 and 2009 in Massachusetts to estimate that 0.3% of the U.S. adult population, roughly 700,000 adults, identified as transgender.<sup>2</sup> Since then, more state-level data sources have emerged that allow us to utilize an estimation procedure that would not have been possible with the limited data available in 2011. Compared to the data used in Gates' study, these new data sources provide more recent data (2014), larger sample sizes, and more detailed information about respondents. This allows for the development of more recent, detailed, and statistically robust estimates of the percentage and number of adults in the United States who identify as transgender.

This report utilizes data from the CDC's Behavioral Risk Factor Surveillance System (BRFSS) to estimate the percentage and number of adults who identify as transgender nationally and in all 50 states.<sup>3</sup> We find that 0.6% of U.S. adults identify as transgender. This figure is double the estimate that utilized data from roughly a decade ago and implies that an estimated 1.4 million adults in the U.S. identify as transgender.<sup>4</sup> State-level estimates of adults who identify as transgender range from 0.3% in North Dakota to 0.8% in Hawaii.<sup>5</sup> In addition, due to current state-level policy debates that specifically target and affect transgender students, we provide estimates of the number of adults who identify as transgender by age. The youngest age group, 18 to 24 year olds, is more likely than older age groups to identify as transgender.

Figure 1. Percent of Adults Who Identify as Transgender in the United States





### National and State-level Estimates of Transgender-Identified Adults

An estimated 0.6% of adults, about 1.4 million, identify as transgender in the United States. States vary in the percentage of residents who identify as transgender (See Table 1). Hawaii has the highest percentage of adults who identify as transgender, approximately 0.8% of adults, and North Dakota has the lowest percentage, at 0.3%. The District of Columbia is notable for its relatively high percentage of transgender-identified adults (2.8%).<sup>6</sup> Twenty states and the District of Columbia are estimated to have a higher percentage of transgender-identified adults than the national average.

Table 1. Estimated Population of Adults Who Identify as Transgender by State of Residence

STATE	POPULATION	PERCENT	RANK
United States of America	1,397,150	0.58%	-
Alabama	22,500	0.61%	15
Alaska	2,700	0.49%	33
Arizona	30,550	0.62%	12
Arkansas	13,400	0.60%	18
California	218,400	0.76%	2
Colorado	20,850	0.53%	27
Connecticut	12,400	0.44%	37
Delaware	4,550	0.64%	9
District of Columbia <sup>7</sup>	14,550	2.77%	-
Florida	100,300	0.66%	6
Georgia	55,650	0.75%	4
Hawaii	8,450	0.78%	1
Idaho	4,750	0.41%	43
Illinois	49,750	0.51%	30
Indiana	27,600	0.56%	23
Iowa	7,400	0.31%	49
Kansas	9,300	0.43%	41
Kentucky	17,700	0.53%	26
Louisiana	20,900	0.60%	17
Maine	5,350	0.50%	31
Maryland	22,300	0.49%	32
Massachusetts	29,900	0.57%	22
Michigan	32,900	0.43%	40
Minnesota	24,250	0.59%	20
Mississippi	13,650	0.61%	14
Missouri	25,050	0.54%	25
Montana	2,700	0.34%	47
Nebraska	5,400	0.39%	44
Nevada	12,700	0.61%	13

STATE	POPULATION	PERCENT	RANK
New Hampshire	4,500	0.43%	39
New Jersey	30,100	0.44%	36
New Mexico	11,750	0.75%	3
New York	78,600	0.51%	29
North Carolina	44,750	0.60%	16
North Dakota	1,650	0.30%	50
Ohio	39,950	0.45%	34
Oklahoma	18,350	0.64%	8
Oregon	19,750	0.65%	7
Pennsylvania	43,800	0.44%	35
Rhode Island	4,250	0.51%	28
South Carolina	21,000	0.58%	21
South Dakota	2,150	0.34%	46
Tennessee	31,200	0.63%	10
Texas	125,350	0.66%	5
Utah	7,200	0.36%	45
Vermont	3,000	0.59%	19
Virginia	34,500	0.55%	24
Washington	32,850	0.62%	11
West Virginia	6,100	0.42%	42
Wisconsin	19,150	0.43%	38
Wyoming	1,400	0.32%	48

### Estimates of Transgender-Identified Adults by Age

Prior research suggests that individuals who identify as transgender are younger, on average, than non-transgender individuals.<sup>8</sup> As expected, we find that younger adults are more likely than older adults to identify as transgender. An estimated 0.7% of adults between the ages of 18 and 24 identify as transgender. Lower percentages of older adults identify as transgender, with 0.6% of adults age 25 to 64 and 0.5% of adults age 65 or older identifying as transgender.

Table 2. Estimated Population of Adults Who Identify as Transgender by Age and State of Residence

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE
United States of America	205,850	0.66%	967,100	0.58%	217,050	0.50%
Alabama	3,250	0.67%	15,450	0.61%	3,700	0.53%
Alaska	500	0.60%	1,950	0.48%	250	0.42%
Arizona	4,700	0.72%	20,800	0.63%	4,850	0.50%
Arkansas	1,850	0.65%	9,150	0.61%	2,300	0.52%
California	33,450	0.84%	154,750	0.77%	29,050	0.63%
Colorado	3,200	0.63%	14,900	0.53%	2,750	0.45%
Connecticut	1,750	0.52%	8,450	0.44%	2,100	0.40%
Delaware	700	0.73%	3,050	0.64%	800	0.55%
District of Columbia	2,600	3.14%	9,900	2.66%	1,950	2.72%
Florida	13,450	0.75%	66,750	0.67%	19,350	0.55%
Georgia	8,700	0.86%	39,500	0.75%	7,450	0.66%
Hawaii	1,200	0.89%	5,700	0.77%	1,550	0.72%
Idaho	750	0.47%	3,250	0.41%	750	0.35%
Illinois	7,150	0.57%	34,500	0.50%	7,750	0.46%
Indiana	4,100	0.62%	18,950	0.56%	4,450	0.50%
Iowa	1,100	0.35%	4,900	0.31%	1,350	0.29%
Kansas	1,500	0.49%	6,300	0.43%	1,500	0.38%
Kentucky	2,400	0.57%	12,200	0.52%	3,000	0.49%
Louisiana	3,150	0.66%	14,550	0.60%	3,100	0.52%
Maine	650	0.56%	3,650	0.50%	1,050	0.45%
Maryland	3,200	0.57%	15,650	0.49%	3,300	0.43%
Massachusetts	4,550	0.66%	20,150	0.56%	5,050	0.53%
Michigan	4,800	0.48%	22,400	0.43%	5,600	0.39%
Minnesota	3,450	0.69%	16,750	0.58%	3,950	0.54%
Mississippi	2,100	0.66%	9,400	0.62%	2,150	0.53%
Missouri	3,600	0.60%	17,000	0.54%	4,400	0.50%
Montana	400	0.40%	1,800	0.34%	450	0.30%

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE
Nebraska	800	0.44%	3,650	0.39%	900	0.35%
Nevada	1,750	0.70%	9,100	0.61%	1,750	0.49%
New Hampshire	650	0.50%	3,100	0.43%	750	0.39%
New Jersey	3,950	0.51%	21,050	0.44%	5,050	0.41%
New Mexico	1,800	0.85%	8,000	0.75%	1,850	0.62%
New York	11,150	0.56%	54,150	0.51%	12,850	0.47%
North Carolina	6,600	0.68%	31,050	0.60%	7,150	0.53%
North Dakota	300	0.34%	1,050	0.30%	300	0.29%
Ohio	5,550	0.50%	27,150	0.45%	7,000	0.41%
Oklahoma	2,800	0.72%	12,600	0.64%	2,900	0.55%
Oregon	2,800	0.76%	13,700	0.65%	3,150	0.55%
Pennsylvania	6,100	0.48%	29,250	0.44%	8,250	0.40%
Rhode Island	650	0.56%	2,800	0.51%	750	0.46%
South Carolina	3,150	0.64%	14,250	0.58%	3,450	0.50%
South Dakota	350	0.39%	1,400	0.34%	350	0.30%
Tennessee	4,250	0.68%	21,550	0.63%	5,150	0.56%
Texas	19,600	0.73%	88,950	0.66%	15,700	0.55%
Utah	1,350	0.42%	4,950	0.36%	800	0.30%
Vermont	450	0.67%	2,000	0.59%	550	0.53%
Virginia	5,150	0.62%	24,000	0.54%	5,200	0.49%
Washington	4,850	0.73%	23,150	0.62%	4,700	0.52%
West Virginia	750	0.44%	4,150	0.42%	1,200	0.38%
Wisconsin	2,700	0.49%	13,150	0.43%	3,250	0.39%
Wyoming	200	0.37%	1,000	0.32%	200	0.29%

### Discussion

Our current best estimate of the percentage of adults who identify as transgender in the United States is double that of the estimate produced by Gary J. Gates in 2011. Several reasons may account for this difference. A perceived increase in visibility and social acceptance of transgender people may increase the number of individuals willing to identify as transgender on a government-administered survey. The Gates estimate was based on data from only two states with very small samples. The current study analyzes population-based data from 19 states that identify transgender individuals. This provides larger samples and a wealth of information about transgender-identified adults not previously available. As a result, more sophisticated estimation procedures are now possible that produce more detailed and robust estimates than were possible in 2011. As new data collection efforts emerge at the state and national levels, estimates can continue to be refined to improve our understanding of the size and characteristics of the transgender population.

## Appendix: Methodology and Credible Intervals of Population Estimates

### Methodology

The Behavioral Risk Factor Surveillance System (BRFSS) collects state-specific data on health-related factors across the 50 states, the District of Columbia, and the territories of the United States. The survey is designed to be representative within each state. The survey is conducted by an interviewer via landline and cellular telephone. The national response rate for the 2014 BRFSS was 48.7% for landline telephones and 40.5% for cellular telephones (American Association of Public Opinion Research, Response Rate calculation 4).

The BRFSS contains optional module questionnaires in addition to its standard questionnaire for each state.<sup>9</sup> The 2014 BRFSS had 19 optional modules that states were able to opt-into. One of the modules contained the following question:

Do you consider yourself to be transgender?

Yes

No

[If Yes] Do you consider yourself to be male-to-female, female-to-male, or gender non-conforming?

If the interviewer is asked for a definition of transgender, they respond:

Some people describe themselves as transgender when they experience a different gender identity from their sex at birth. For example, a person born into a male body, but who feels female or lives as a woman would be transgender. Some transgender people change their physical appearance so that it matches their internal gender identity. Some transgender people take hormones and some have surgery. A transgender person may be of any sexual orientation – straight, gay, lesbian, or bisexual.

Since this question is included in an optional module, some states did not ask this question while others did. The 19 states that did ask this question include: Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Montana, Nevada, New York, Ohio, Pennsylvania, Vermont, Virginia, Wisconsin, and Wyoming. In total, 0.52% of BRFSS respondents in these states identified as transgender, and 151,456 respondents answered this question.

To estimate the population by state, we relied on multilevel regression and post-stratification.<sup>10</sup> The method fits multilevel logistic regression to the data to predict the likelihood that an individual identifies as transgender relying on demographic attributes about the respondents (e.g., race and ethnicity; age cohorts; and educational attainment). State and regional characteristics were accounted for and state-level characteristics were included to add information about how states differ from one another (e.g., racial composition, median income, percentage of households that are of same-sex couples, and percentage of the population that identifies as Evangelical). This method has been applied to measure statewide political attitudes<sup>11</sup> and to measure Jewish populations.<sup>12</sup> Further, the estimation strategy has undergone rigorous evaluation by other scholars, and these evaluations often show the method produces reliable and valid estimates.<sup>13</sup> While the estimation approach is not without its criticisms,<sup>14</sup> the method remains the best available approach to perform this estimation procedure. A recent research grant was awarded by the National Science Foundation to further refine and build upon the method.<sup>15</sup>

We extend the application of the estimation technique by incorporating all of the states in the BRFSS, even though respondents in only 19 states received the gender identity question. By doing so, we impute the states that did not ask the gender identity question by modeling the probability that a respondent identifies as transgender. The hierarchical model still incorporates the statewide covariates to increase precision in the estimation.<sup>16</sup> All models were estimated using a Hamiltonian Monte Carlo as implemented by the Stan probabilistic programming language.<sup>17</sup> The model was evaluated for appropriate diagnostics before results were presented. In the tables below, 95% credible intervals are provided for both the population estimates and the population estimates by age. A credible interval is a Bayesian equivalent of a confidence interval. A 95% credible interval represents the upper and lower bounds where there is a 0.95 probability an estimate falls between them.

Table A1. Estimated Population of Adults Who Identify as Transgender by State of Residence, 95% Credible Intervals

STATE	POPULATION		PERCENT	
	LOWER BOUND	UPPER BOUND	LOWER BOUND	UPPER BOUND
United States of America	854,066	2,293,511	0.36%	0.95%
Alabama	11,487	46,858	0.31%	1.27%
Alaska	1,634	4,323	0.30%	0.80%
Arizona	17,137	53,889	0.35%	1.09%
Arkansas	6,898	25,072	0.31%	1.12%
California	120,074	378,513	0.42%	1.31%
Colorado	12,094	35,295	0.31%	0.89%
Connecticut	7,454	19,824	0.27%	0.71%
Delaware	3,195	6,176	0.45%	0.87%
District of Columbia	2,608	66,391	0.50%	12.63%
Florida	58,364	163,960	0.38%	1.07%
Georgia	31,243	97,981	0.42%	1.32%
Hawaii	6,310	11,215	0.58%	1.03%
Idaho	3,403	6,800	0.29%	0.58%
Illinois	30,519	77,228	0.31%	0.79%
Indiana	21,867	35,060	0.44%	0.71%
Iowa	4,558	10,398	0.19%	0.44%
Kansas	7,183	11,706	0.33%	0.54%
Kentucky	13,092	23,060	0.39%	0.69%
Louisiana	15,582	27,230	0.45%	0.78%
Maine	3,202	8,895	0.30%	0.84%
Maryland	17,177	28,088	0.38%	0.62%
Massachusetts	17,251	49,307	0.33%	0.94%
Michigan	19,132	52,059	0.25%	0.68%
Minnesota	19,368	30,211	0.47%	0.74%
Mississippi	6,731	27,122	0.30%	1.21%
Missouri	13,512	43,611	0.29%	0.94%
Montana	1,880	3,669	0.24%	0.47%
Nebraska	3,247	8,207	0.23%	0.59%
Nevada	8,570	18,018	0.41%	0.86%
New Hampshire	2,693	7,362	0.26%	0.70%
New Jersey	17,981	49,987	0.26%	0.73%
New Mexico	6,613	19,959	0.42%	1.27%
New York	57,043	103,813	0.37%	0.68%



STATE	POPULATION		PERCENT	
	LOWER BOUND	UPPER BOUND	LOWER BOUND	UPPER BOUND
North Carolina	26,299	76,786	0.35%	1.03%
North Dakota	961	2,785	0.18%	0.51%
Ohio	30,705	50,183	0.35%	0.56%
Oklahoma	9,049	37,798	0.31%	1.31%
Oregon	10,774	36,440	0.35%	1.20%
Pennsylvania	33,506	56,799	0.33%	0.57%
Rhode Island	2,493	6,979	0.30%	0.84%
South Carolina	12,139	38,343	0.33%	1.05%
South Dakota	1,279	3,592	0.20%	0.57%
Tennessee	16,601	60,319	0.33%	1.22%
Texas	71,791	212,200	0.38%	1.11%
Utah	3,338	16,157	0.17%	0.82%
Vermont	2,126	4,034	0.42%	0.80%
Virginia	26,945	44,697	0.43%	0.71%
Washington	18,574	57,196	0.35%	1.08%
West Virginia	3,518	10,477	0.24%	0.71%
Wisconsin	13,920	25,364	0.32%	0.58%
Wyoming	945	2,073	0.22%	0.47%

Table A2. Estimated Population of Adults Who Identify as Transgender by Age and State of Residence, 95% Credible Intervals

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]
United States of America	[121,074, 354,454]	[0.39%, 1.13%]	[569,753, 1,649,712]	[0.34%, 1.00%]	[132,175, 360,271]	[0.31%, 0.84%]
Alabama	[1,624, 7,089]	[0.33%, 1.46%]	[7,630, 32,564]	[0.30%, 1.29%]	[1,868, 7,887]	[0.27%, 1.13%]
Alaska	[282, 806]	[0.35%, 0.99%]	[1,132, 3,210]	[0.28%, 0.81%]	[157, 434]	[0.25%, 0.69%]
Arizona	[2,562, 8,556]	[0.39%, 1.31%]	[11,120, 37,886]	[0.34%, 1.14%]	[2,708, 8,560]	[0.28%, 0.88%]
Arkansas	[966, 3,550]	[0.34%, 1.23%]	[4,614, 17,456]	[0.31%, 1.16%]	[1,185, 4,384]	[0.27%, 0.99%]
California	[18,464, 60,029]	[0.46%, 1.50%]	[83,407, 274,478]	[0.41%, 1.36%]	[15,871, 51,075]	[0.35%, 1.11%]
Colorado	[1,796, 5,616]	[0.35%, 1.10%]	[8,404, 25,994]	[0.30%, 0.92%]	[1,595, 4,612]	[0.26%, 0.76%]
Connecticut	[1,024, 2,942]	[0.30%, 0.86%]	[4,988, 14,281]	[0.26%, 0.74%]	[1,253, 3,458]	[0.24%, 0.65%]
Delaware	[451, 974]	[0.49%, 1.05%]	[2,061, 4,417]	[0.43%, 0.92%]	[541, 1,074]	[0.38%, 0.76%]
District of Columbia	[470, 11,880]	[0.57%, 14.48%]	[1,786, 47,078]	[0.48%, 12.65%]	[361, 9,351]	[0.51%, 13.10%]
Florida	[7,554, 23,144]	[0.42%, 1.29%]	[37,404, 114,026]	[0.37%, 1.14%]	[11,453, 32,341]	[0.33%, 0.92%]
Georgia	[4,847, 16,177]	[0.48%, 1.59%]	[21,496, 71,304]	[0.41%, 1.35%]	[4,147, 13,309]	[0.37%, 1.17%]
Hawaii	[845, 1,662]	[0.62%, 1.23%]	[4,005, 7,975]	[0.54%, 1.08%]	[1,088, 2,098]	[0.51%, 0.99%]
Idaho	[500, 1,087]	[0.32%, 0.69%]	[2,224, 4,882]	[0.28%, 0.61%]	[525, 1,068]	[0.25%, 0.50%]
Illinois	[4,255, 11,778]	[0.34%, 0.94%]	[20,559, 55,749]	[0.30%, 0.81%]	[4,668, 12,533]	[0.28%, 0.74%]
Indiana	[3,045, 5,579]	[0.46%, 0.84%]	[14,012, 25,792]	[0.41%, 0.76%]	[3,457, 5,802]	[0.39%, 0.65%]
Iowa	[656, 1,617]	[0.21%, 0.52%]	[2,963, 7,376]	[0.19%, 0.47%]	[841, 1,939]	[0.18%, 0.41%]
Kansas	[1,065, 1,978]	[0.36%, 0.66%]	[4,565, 8,465]	[0.31%, 0.58%]	[1,130, 1,919]	[0.29%, 0.49%]
Kentucky	[1,665, 3,374]	[0.39%, 0.80%]	[8,649, 16,904]	[0.37%, 0.73%]	[2,190, 3,949]	[0.36%, 0.64%]
Louisiana	[2,204, 4,371]	[0.46%, 0.92%]	[10,310, 20,236]	[0.43%, 0.84%]	[2,260, 4,181]	[0.38%, 0.71%]
Maine	[378, 1,146]	[0.32%, 0.98%]	[2,120, 6,268]	[0.29%, 0.87%]	[607, 1,739]	[0.27%, 0.77%]
Maryland	[2,303, 4,398]	[0.41%, 0.78%]	[11,347, 21,316]	[0.35%, 0.66%]	[2,461, 4,307]	[0.32%, 0.57%]
Massachusetts	[2,568, 7,807]	[0.37%, 1.13%]	[11,326, 34,087]	[0.31%, 0.95%]	[2,832, 8,391]	[0.30%, 0.88%]
Michigan	[2,655, 7,870]	[0.27%, 0.79%]	[12,593, 37,168]	[0.24%, 0.72%]	[3,240, 8,999]	[0.23%, 0.63%]
Minnesota	[2,541, 4,552]	[0.51%, 0.91%]	[12,539, 22,498]	[0.44%, 0.78%]	[3,043, 5,080]	[0.42%, 0.70%]

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]
Mississippi	[1,009, 4,310]	[0.32%, 1.37%]	[4,490, 19,158]	[0.29%, 1.26%]	[1,036, 4,327]	[0.26%, 1.08%]
Missouri	[1,876, 6,423]	[0.32%, 1.08%]	[8,975, 30,421]	[0.29%, 0.97%]	[2,324, 7,535]	[0.26%, 0.85%]
Montana	[266, 572]	[0.27%, 0.58%]	[1,222, 2,592]	[0.23%, 0.49%]	[323, 650]	[0.21%, 0.41%]
Nebraska	[473, 1,264]	[0.25%, 0.68%]	[2,143, 5,820]	[0.23%, 0.61%]	[551, 1,389]	[0.21%, 0.54%]
Nevada	[1,135, 2,646]	[0.45%, 1.04%]	[5,889, 13,545]	[0.40%, 0.92%]	[1,150, 2,547]	[0.32%, 0.71%]
New Hampshire	[356, 1,067]	[0.28%, 0.85%]	[1,798, 5,237]	[0.25%, 0.72%]	[450, 1,244]	[0.23%, 0.64%]
New Jersey	[2,265, 6,732]	[0.29%, 0.86%]	[12,204, 36,508]	[0.25%, 0.76%]	[3,013, 8,517]	[0.24%, 0.68%]
New Mexico	[988, 3,255]	[0.46%, 1.53%]	[4,389, 14,044]	[0.41%, 1.32%]	[1,011, 3,160]	[0.34%, 1.07%]
New York	[7,732, 15,788]	[0.39%, 0.79%]	[37,363, 76,111]	[0.35%, 0.72%]	[9,137, 17,614]	[0.33%, 0.64%]
North Carolina	[3,765, 11,609]	[0.39%, 1.19%]	[17,757, 54,557]	[0.34%, 1.06%]	[4,194, 12,219]	[0.31%, 0.91%]
North Dakota	[170, 531]	[0.19%, 0.59%]	[593, 1,834]	[0.17%, 0.51%]	[170, 498]	[0.17%, 0.50%]
Ohio	[4,001, 7,561]	[0.36%, 0.68%]	[19,701, 36,836]	[0.32%, 0.61%]	[5,251, 9,125]	[0.31%, 0.54%]
Oklahoma	[1,351, 6,063]	[0.35%, 1.56%]	[6,026, 26,649]	[0.31%, 1.36%]	[1,438, 6,011]	[0.27%, 1.13%]
Oregon	[1,512, 5,190]	[0.41%, 1.42%]	[7,380, 25,644]	[0.35%, 1.22%]	[1,714, 5,934]	[0.30%, 1.02%]
Pennsylvania	[4,284, 8,404]	[0.34%, 0.67%]	[21,090, 40,686]	[0.31%, 0.60%]	[6,172, 10,959]	[0.30%, 0.54%]
Rhode Island	[389, 1,143]	[0.32%, 0.95%]	[1,608, 4,817]	[0.29%, 0.87%]	[424, 1,219]	[0.27%, 0.77%]
South Carolina	[1,784, 5,944]	[0.36%, 1.21%]	[7,977, 26,549]	[0.32%, 1.08%]	[1,963, 6,533]	[0.28%, 0.94%]
South Dakota	[188, 577]	[0.22%, 0.69%]	[827, 2,452]	[0.20%, 0.58%]	[217, 631]	[0.18%, 0.52%]
Tennessee	[2,220, 8,664]	[0.36%, 1.39%]	[11,036, 42,384]	[0.32%, 1.24%]	[2,740, 9,962]	[0.30%, 1.09%]
Texas	[10,763, 33,983]	[0.40%, 1.27%]	[49,965, 156,972]	[0.37%, 1.16%]	[8,906, 27,059]	[0.31%, 0.95%]
Utah	[617, 3,133]	[0.19%, 0.96%]	[2,244, 11,329]	[0.16%, 0.83%]	[385, 1,804]	[0.14%, 0.67%]
Vermont	[299, 629]	[0.46%, 0.96%]	[1,364, 2,844]	[0.40%, 0.84%]	[372, 745]	[0.38%, 0.75%]
Virginia	[3,798, 6,980]	[0.46%, 0.85%]	[17,590, 33,074]	[0.40%, 0.75%]	[3,987, 7,026]	[0.38%, 0.66%]
Washington	[2,662, 8,550]	[0.40%, 1.29%]	[12,748, 41,018]	[0.34%, 1.10%]	[2,655, 8,291]	[0.29%, 0.91%]
West Virginia	[427, 1,325]	[0.25%, 0.76%]	[2,347, 7,299]	[0.24%, 0.74%]	[687, 2,040]	[0.22%, 0.66%]
Wisconsin	[1,883, 3,799]	[0.34%, 0.69%]	[9,141, 18,414]	[0.30%, 0.61%]	[2,287, 4,434]	[0.28%, 0.54%]
Wyoming	[135, 328]	[0.23%, 0.57%]	[634, 1,509]	[0.21%, 0.49%]	[141, 308]	[0.19%, 0.41%]

\*Note: LB=95% Lower bound; UB=95% Upper bound

## ENDNOTES

<sup>1</sup> For a discussion of gender identity data collection in federal population-based surveys and recommended measures, see The GenIUSS Group. (2014). *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys*. J.L. Herman (Ed.). Los Angeles, CA: The Williams Institute, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/geniuss-report-sep-2014.pdf>.

<sup>2</sup> Gates, G.J. (2011). *How many people are lesbian, gay, bisexual, and transgender?* Los Angeles, CA: The Williams Institute, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>. A more recent report that was released in March 2016 provided estimates of the transgender population ages 13 and above in 15 states ("Estimates of Transgender Populations in States with Legislation Impacting Transgender People, available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/estimates-of-transgender-populations-in-states-with-legislation-impacting-transgender-people/>). These estimates were based on Gates' 2011 study and other estimates of the transgender youth population. We believe the current study provides more robust estimates of the percentage of transgender-identified adults in those 15 states.

<sup>3</sup> A detailed description of the methodology for this study is included in the Appendix and further details will be included in a separate document published alongside this report.

<sup>4</sup> For national and state estimates provided in this report, adult general population figures from the U.S. Census Bureau's American Community Survey, 2011-2013 3-year PUMS, were multiplied by the estimated percentage of transgender-identified adults to yield the estimated number of transgender-identified adults.

<sup>5</sup> The District of Columbia is not included in this range for states. DC had a notably high percentage of transgender-identified adults (2.8%) and is considered an outlier due to its unique geographic (urban) and demographic profile.

<sup>6</sup> See note #5.

<sup>7</sup> See note #5.

<sup>8</sup> See, for instance, Conron, K.J., Scott, G., Stowell, G.S., and Landers, S. J. (2012). Transgender Health in Massachusetts: Results from a Household Probability Sample of Adults. *American Journal of Public Health*, 102(1), 118-122.

<sup>9</sup> For more detailed information on gender identity data collection in the BRFSS, see Baker, K.E. & Hughes, M. (2016). *Sexual Orientation and Gender Identity Data Collection in the Behavioral Risk Factor Surveillance System*. Washington, DC: The Center for American Progress, available at <https://cdn.americanprogress.org/wp-content/uploads/2016/03/29090401/BRFSSdatacollect-brief-03.31.16.pdf>.

<sup>10</sup> Park, D.K., Gelman, A., & Bafumi, J. (2004). Bayesian multilevel estimation with poststratification: State-level estimates from national polls. *Political Analysis*, 12, 375-385.

<sup>11</sup> Flores, A.R., & Barclay, S. (2015). *Trends in public support for marriage for same-sex couples by state*. Los Angeles, CA: The Williams Institute, UCLA.

<sup>12</sup> Saxe, L., & Tighe, E. (2013). Estimating and understanding the Jewish population in the United States: A program of research. *Contemporary Jewry*, 33(1), 43-62; Tighe, E., Livert, D., Barnett, M., & Saxe, L. (2010). Cross-survey analysis to estimate low-incidence religious groups. *Sociological Methods & Research*, 39(1), 56-82.

<sup>13</sup> Lax, J.R., & Phillips, J.H. (2009). How should we estimate public opinion in the states? *American Journal of Political Science*, 53(1), 107-121; Warshaw, C., & Rodden, J. (2012). How should we measure district-level public opinion on individual issues? *Journal of Politics*, 74(1), 203-219.

<sup>14</sup> Buttice, M.K., Highton, B. (2013). How does multilevel regression and poststratification perform with conventional national surveys? *Political Analysis*, 21(4), 449-467; Toshokov, D. (2015). Exploring the performance of multilevel modeling and poststratification with Eurobarometer data. *Political Analysis*, 23(3), 455-460.

<sup>15</sup> NSF-1424962. (2014-2017). Using multilevel regress and post-stratification to measure and study dynamic public opinion.

<sup>16</sup> See Flores, A.R. (2016). *Estimating the adult population that identifies as transgender in the BRFSS*. Los Angeles, CA: The Williams Institute, UCLA.

<sup>17</sup> Stan Development Team. (2016) RStan: The R interface to Stan, version 2.9.0. <http://mc-stan.org>.

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*Arroyo González v. Rosselló Nevares*

Civil No. 3:17-cv-01457-CCC

Declaration of Omar Gonzalez-Pagan

# Exhibit F





HUMAN  
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# CORPORATE EQUALITY INDEX 2017

Rating Workplaces on Lesbian, Gay,  
Bisexual and Transgender Equality



# 887

of the Nation's Largest Businesses  
Demonstrated Their Commitment  
to LGBT Equality and Inclusion



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CEI 2017

# CORPORATE EQUALITY INDEX 2017



HUMAN  
RIGHTS  
CAMPAIGN  
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## Rating Workplaces on Lesbian, Gay, Bisexual and Transgender Equality

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**The nation's largest employers have demonstrated through their actions that LGBTQ people are not just tolerated, but welcomed in their workplaces and communities.**

**IN 2016, THE LGBTQ COMMUNITY WAS**

subjected to unprecedented attacks – from state lawmakers plotting to undermine our historic gains, to tragic, unimaginable experiences of violence, to those who pledged to roll back our rights from the highest offices in the land.

And yet, during it all, the unstoppable beat of progress towards greater equality in the places many LGBTQ Americans spend most of their daily lives – their workplaces – didn't just remain steady, it sped up.

In this 15th edition of the Corporate Equality Index we have seen the largest increase in top-rated businesses in the history of our survey with 515 employers earning perfect 100 percent scores. In addition, this year saw the CEI's largest jump ever in businesses offering transgender-inclusive healthcare coverage – from 511 last year to 647 this year.

These businesses know that LGBTQ equality isn't just the right thing to do, it makes them stronger in our global economy. Ensuring fairness in the workplace is a value and increasingly a policy norm, and not just in the U.S. Now, more than 90 percent of CEI-rated businesses have embraced both sexual orientation and gender identity employment protections for their U.S. and global operations.

This past year, as an unprecedented wave of anti-LGBTQ bills spread across the country, corporate champions state to state – from South Dakota and Mississippi, and North Carolina and Georgia – made their voices heard and stood firmly on the side of fairness and equality.

The story behind this groundswell of public support for equality began within each business's efforts to recognize their own LGBTQ employees and adopt inclusive policies, benefits and practices. With every policy change and discussion of transgender-inclusive benefits, for example, an employee saw a path to bringing their full self to work, an executive could put a human face to the need for full

equality and an ally could proudly display a show of support for their LGBTQ colleagues and friends.

The nation's largest employers have demonstrated through their actions that LGBTQ people are not just tolerated, but welcomed in their workplaces and communities. Even with all of this progress, we know that policies and benefits make up the crucial foundation, but not the totality, of what's needed to ensure that LGBTQ workers can thrive from the plant floor to the corner office.

Today, marriage equality and hate crimes protections are the law of the land. Barriers to LGBTQ service in the armed forces have been lifted. But the lack of consistent, explicit federal protections in employment, housing, credit, public services and other essential aspects of American life remain major barriers to full equality for the LGBTQ community.

While there is much to do and many key civil rights fights ahead, thanks to these private sector leaders, the march towards greater equality is not slowing down. The LGBTQ community and the 887 businesses in the CEI will keep moving forward every day.

Sincerely,



Chad Griffin, President  
Human Rights Campaign Foundation

CEI 2017 Corporate Equality Index

# Executive Summary



**The most significant progress in the CEI has been the wide-scale adoption of transgender-inclusive initiatives across businesses.**

## Corporate Equality Index 2017

### IN THIS 15TH EDITION OF THE HUMAN

Rights Campaign's Corporate Equality Index, a record 515 employers earned a top rating of 100 percent. This is the largest jump in top-rated businesses in a single year in the entire history of the CEI. The CEI catalyzes change by appealing to businesses' competitive nature: behind every top rated business in the 2016 report, numerous peers were spurred to catch up in the 2017 CEI.

The CEI criteria reflect leading policies, benefits and practices for the LGBT workforce and their families. The criteria are premised on the notion of parity rather than prescription. In other words, HRC promotes the adoption of LGBT-specific language into existing corporate practices (e.g. ensuring that existing health care coverage affords coverage for routine and chronic care of transgender individuals as well as transition-related medical coverage). By using the CEI as a guide, businesses can ensure that their existing policy and benefit infrastructure is inclusive of the LGBT workforce and their families, resulting in greater recruitment and retention of a talented, diverse workforce.

The most significant progress in the CEI has been the wide-scale adoption of transgender-inclusive initiatives across businesses.

- A full 82 percent of the Fortune 500 have gender identity protections enumerated in their non-discrimination policies and 96 percent of the entire CEI universe of businesses offer explicit gender identity non-discrimination protections in the U.S.
- Fifty percent of the Fortune 500 and nearly three-fourths (73 percent) of the CEI universe of businesses offer transgender-inclusive health care coverage, up from 0 in 2002 and over six times as many businesses as five years ago. With 136 new employers offering this coverage in the 2017 report, this represents the greatest increase

in a single year of employers offering transgender-inclusive health care benefits.

- A majority of CEI-rated businesses (86 percent) offer education and training programs that specifically include definitions and/ or scenarios on gender identity in the workplace; and,
- Nearly four-hundred (387) major businesses have adopted gender transition guidelines for employees and their teams to establish best practices in transgender inclusion.

These reflect low-cost, high yield investments in major businesses' talent as well as in their broader profile as forward-looking, responsible businesses. Top-rated CEI employers span nearly every industry and major geography of the United States. Of the employers in the CEI with global operations (57 percent), a strong majority (98 percent) has extended sexual orientation and gender identity-based workplace protections throughout their international operations.

In addition to the depth of investment the top-rated businesses have made in the name of equality, the 2017 CEI shows an unprecedented breadth of brand new businesses. This year's CEI contains an impressive 72 new businesses that opted into the survey. A grand total of 5,228 major brands fall under rated CEI businesses.

The following report is reflective of primarily verified data submitted to the HRC Foundation as well as independent research on non-responding businesses. Wherever credit can be verified, all ranked businesses will receive it, irrespective of their participation in the CEI survey.

The HRC Foundation has worked with hundreds of businesses to promote workplace equality for LGBT workers.



*Arroyo González v. Rosselló Nevares*  
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Declaration of Omar Gonzalez-Pagan

# Exhibit G

# Transgender Service Members Can Now Serve Openly, Carter Announces

By Terri Moon Cronk, DoD News, Defense Media Activity / Published June 30, 2016

Transgender service members in the U.S. military can now openly serve their country without fear of retribution, Defense Secretary Ash Carter announced today, [a policy decision that overturns the ban on transgender service](#) across all branches of service, effective immediately.



Defense Secretary Ash Carter announces a new transgender policy for the Defense Department during a Pentagon news conference, June 30, 2016. DoD photo by Navy Petty Officer 1st Class Tim D. Godbee

Following a study at his direction, the secretary said during a Pentagon news conference, three main reasons led to the decision to lift the transgender ban: the force of the future, the existing force and matters of principle.

## **Ban Lifted Immediately**

“As a result of the yearlong study, I’m announcing today that we are ending the ban on transgender Americans in the United States military. Effective immediately, transgender Americans may serve openly, and they can no longer be discharged or otherwise separated from the military just for being transgender,” Carter said.

Further, he said, he has directed that the gender identity of an otherwise qualified individual will not bar him or her from military service or from any accession program.

### **Force of the Future Needs Best Talent**

“[We in] the Defense Department and the military need to avail ourselves of all talent possible ... to remain what we are now – the finest fighting force the world has ever known,” Carter said.

“Our mission is to defend this country,” he added, “and we don’t want barriers unrelated to a person’s qualifications to serve preventing us from [recruiting or retaining the soldier, sailor, airman, or Marine](#) who can best accomplish the mission.”

The Defense Department must have access to 100 percent of America’s population for its all-volunteer force to be able to recruit from among the most highly qualified, and to retain them, the secretary told reporters.

Because an estimated 7,000 active and reserve transgender service members on the upper end now wear a military uniform, “I have a responsibility to them and their commanders to provide them both with clearer and more consistent guidance than is provided by current policies,” Carter emphasized.

### **Minimal Readiness Impact**

Based on the working group’s analysis of 18 allied militaries including those of the United Kingdom, Australia and Israel and the expected rate at which American transgender service members would require medical treatment that would affect their fitness for duty and deployability, a Rand Corp. analysis concluded that there would be minimal readiness impacts from allowing transgender service members to serve openly, the secretary said.

And while transgender numbers are small, they serve the country with honor and distinction, Carter said, noting that DoD invests hundreds of thousands of dollars to train and develop each individual. “And we want to take the opportunity to retain people whose talents we’ve invested in and who have proven themselves,” he added.

### **Medical Expenses**

Until today’s change in policy, transgender service members had to seek out-of-

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pocket medical care from private doctors who deemed whether certain procedures were necessary.

“This is inconsistent with our promise to all our troops that we will take care of them and pay for necessary medical treatment,” the secretary said, adding that Rand found health care costs would represent “an exceedingly small proportion” of DoD’s overall health care expenditures.

Civilian federal employees have access to a health insurance plan that provides comprehensive coverage for transgender-related care and medical treatment, he noted.

### **Matters of Principle**

The secretary said he and senior DoD leaders met in the past year with transgender service members who have deployed all over the world, serving on aircraft, submarines, forward operating bases and in the Pentagon.

The yearlong study was carefully examined for medical, legal and policy considerations that have been rapidly evolving in recent years and in light of DoD’s unique nature of military readiness “to make sure the department got it right,” Carter said.

After talking with doctors, employers and insurance companies, he said, it became clear that “transgender” is becoming common and normalized in public and private sectors, and he noted a “sea change” in the past decade.

### **Future Policy Phases**

The new policies related to lifting the transgender ban will take place over the next 12 months, beginning with immediate guidance for service members and commanders, the secretary said. Next will follow training the entire force, and DoD will then start accessing new military service members who are transgender.

In no more than 90 days, DoD will issue a commanders’ guidebook for leading existing transgender service members, and guidance will be issued to military doctors to provide transition-related care if required for existing transgender troops, the secretary said.

By ending the ban on transgender service members, “we’re eliminating policies that can result in transgender service members being treated differently from their peers based solely upon their gender identity, rather than their ability to serve,” Carter said. “And we’re confirming that going forward we will apply the same general principles, standards, and procedures to transgender service members as we do to all service members.”

Deliberate and thoughtful [implementation](#) will be key, he added, and DoD’s senior leaders will ensure all issues identified in the study are addressed in implementation.

“I’m 100 percent confident in the ability of our military leaders and all men and women in uniform to implement changes in a manner that both protects the readiness of the force and also upholds values cherished by the military -- honor, trust and judging every individual on their merits,” Carter said.

Good people are integral to the best military in the world, the secretary said, adding that he’s “we have reason to be proud today of what this will mean for our military -- because it is the right thing to do, and it’s another step in ensuring that we continue to recruit and retain the most qualified people.”

(Follow Terri Moon Cronk on Twitter: [@MoonCronkDoD](#))

## Related Biographies

[Ash Carter](#)

*Arroyo González v. Rosselló Nevares*

Civil No. 3:17-cv-01457-CCC

Declaration of Omar Gonzalez-Pagan

# Exhibit H





## ANTI-TRANSGENDER LEGISLATION SPREADS NATIONWIDE, BILLS TARGETING TRANSGENDER CHILDREN SURGE

**44 anti-transgender bills are filed in 16 states so far. Several pose serious threats of passage. 23 target children.**

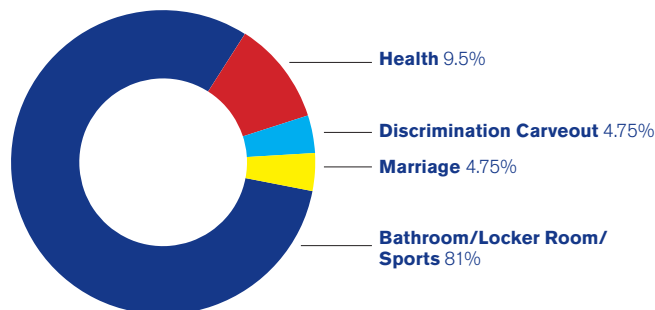
Winning over hearts and minds has always been crucial in winning the fight for equality for LGBT Americans, and the anti-transgender fear-mongering manifested by this wave of anti-transgender legislation is a stark reminder of how much work remains to be done in educating Americans about who transgender people are. The Human Rights Campaign will continue to work with our state and national partners to vigorously oppose and defeat anti-equality legislation and to advance critically needed protections at the state and federal level for all LGBT people.

In many ways, 2015 was a great year for transgender people — so great, in fact, that some dubbed it a “transgender tipping point,” due to the increased level of public awareness surrounding trans issues. Tragically, there was also an increased level of anti-transgender violence, particularly targeting transgender women of color. In 2015, at least 21 transgender people were victims of fatal violence in the United States — more killings of transgender people than any other year on record. Hard-fought losses at the ballot box emboldened opponents to export their transphobic smear campaign to other places. And state legislatures across the country unleashed a slew of anti-transgender bills trying to stem the tide of rising social and legal acceptance of transgender people. **While none of these measures passed in 2015, the 2016 state legislative season threatens far worse.**

### 2015

**125 TOTAL BILLS TRACKED, 21 OF WHICH WERE ANTI-TRANS:**

17 bathroom/locker room/sports,  
2 health (including prisoner healthcare),  
1 anti-trans marriage, and  
1 discrimination carveout.



DATA AS OF 2.19.16



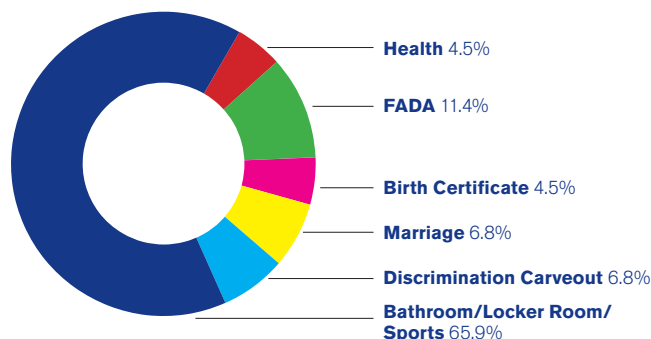
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The quantity and diversity of this year's legislative attempts to undermine the existing legal rights of transgender Americans, particularly transgender and gender nonconforming students, is unprecedented. **Until this year, 2015 had the largest quantity of anti-LGBT and specifically anti-transgender bills state legislatures had ever seen:** HRC tracked 125 anti-LGBT bills, 21 of which particularly targeted transgender people. These ranged from bills limiting transgender people's access to medically necessary gender-affirming care, to attempting to undo existing non-discrimination provisions related to transgender people, to placing a serious burden on transgender people's fundamental constitutional right to marry the person they love. Most of all, however, the bills — 17 of them, more than 80% — attempted to deny transgender people access to sex-segregated spaces consistent with their gender identity. None of these 21 bills passed, and only a few survived to be rolled over into the 2016 legislative session.

## 2016

### 175+ TOTAL BILLS TRACKED, 44 SO FAR ARE ANTI-TRANS:

29 bathroom/locker room/sports,  
2 health (including prisoner healthcare),  
3 anti-trans marriage,  
3 discrimination carveout,  
2 birth certificate, and  
5 FADAs.



As outrageous as the level of the 2015 legislative season's attacks on transgender people was, 2016 is already proving to be far worse. **A stunning 175+ anti-LGBT bills have been filed so far this year in 32 states.** These bills range from attempts to turn back the clock on marriage equality to bills creating a license to discriminate against same-sex couples with taxpayer dollars to protecting those who peddle the discredited, abusive practice of so-called "conversion therapy". These bills would harm transgender people as well as lesbian, gay and bisexual people, of course. But of the record 175+ anti-LGBT bills filed, 44 of those bills directly target transgender people. And this year, several of these bills present serious threats of becoming law.

44 anti-transgender bills is more than double the number of bills filed in last year's legislative session, and this year's attacks come in more varieties than they have before. In addition to the bills similar in kind to those we've seen previously — bills attempting to limit transgender people's access to medically necessary care, bills imposing serious, humiliating burdens on transgender people who seek to marry, bills trying to undo existing non-discrimination provisions related to transgender people, and the staggering 29 bills introduced to attempt to limit of transgender people from equal access of sex-segregated spaces — there are two new variations on the anti-transgender legislation theme. Legislation making it effectively impossible to correct the gender marker on one's birth certificate has surfaced in two states, and four states have expanded the scope of their so-called "First Amendment Defense Act" (FADA) bills to permit publicly funded programs to refuse service on the basis of "sincerely-held religious beliefs" that a person's gender is determined by their anatomy at the time of birth. **Unfortunately, these mean-spirited and truly harmful bills are advancing and have realistic chances of becoming law.**

The proliferation of these bills is deeply disturbing. They are popping up in states around the country, in the Northeast, Midwest, South and West; in states with gender-identity inclusive non-discrimination laws and those without;

44 anti-transgender bills is more than double the number of bills filed in last year's legislative session, and this year's attacks come in more varieties than they have before.

DATA AS OF 2.19.16



and in states led by Democrats and Republicans. While they are undoubtedly attempts to roll back the clock on equality, they are deeply misguided: some of these bills would, if passed, put states directly at odds with federal law. Many of them would also conflict with other important state laws on the books. And they do so in an effort to address a phantom problem born of fear and a lack of understanding about transgender people. One legislator justified his support of an anti-trans bill in his state by characterizing transgender people as “twisted” — so battling back these bills is really about continuing to tip the scales toward the true tipping point for transgender Americans. An encapsulation of the anti-transgender legislation we’ve seen so far this legislative season is as follows.

## SEX-SEGREGATED SPACES: TALKING ABOUT PRIVACY IN PUBLIC PLACES

Of the explicitly anti-transgender bills under consideration during this legislative session, the vast majority of them have to do with forbidding transgender people from having equal access to bathrooms, locker rooms, and other multi-user facilities in which people are likely to be in some state of undress. Over half of these anti-equal access “bathroom” bills expressly address bathrooms and locker rooms in primary and secondary schools, with several also addressing public institutions of higher learning. About a third of the bills apply to all multi-user bathrooms and similar facilities in the state. A few of the bills apply to buildings owned by the state government, and two bills relate exclusively to school sports. Each of these proposals attempt to restrict where transgender students and adults fit in spaces that are often designated by sex.

These bills are problematic in a number of ways, including that they put the physical and emotional safety of transgender people at risk. If a transgender person is forced to access the sex-segregated space that aligns with their assigned sex at birth, rather than the space that aligns with their authentic sense of self and likely their personal appearance, that person can become a target for attack and physical abuse.

Forcing transgender students to use sex-segregated facilities contrary to their identity can impose real harm on transgender students.

**SCHOOLS.** 23 of the 44 anti-transgender bills filed this year are leveled at transgender children in schools and playing school sports. Research has shown that allowing transgender students to access the space consistent with their gender identity — something compelled for years by laws in 17 states as well as adopted by hundreds of cities and school districts around the country — have not resulted in problems. On the other hand, forcing transgender students to use sex-segregated facilities contrary to their identity can impose real harm on transgender students. The only students at risk in this discussion are transgender students — not the other students who may also be accessing the sex-segregated space.

These state bills also put schools in a conundrum. Title IX, the federal civil rights law that prohibits discrimination in education, has been interpreted by the federal government to include discrimination protections on the basis of gender identity — and there’s explicit federal guidance to clarify that includes restrooms and locker rooms. That means these student-focused bathroom bills put schools in an untenable position: if they comply with state law, they will be running afoul of federal law and therefore risk losing their federal funding. Either way, these bills set states up for expensive litigation.

Several of these bills also offer what they characterize as a “reasonable accommodation” — that a transgender student be restricted to the use of a single-stall facility (which may or may not exist or be anywhere near where the classrooms are) or given limited access to a faculty facility (which also presents a host of logistical concerns). But even if these alternatives were convenient, forcing a transgender student to be isolated from their peers and sent to a separate facility is humiliating and degrading for the student. To be



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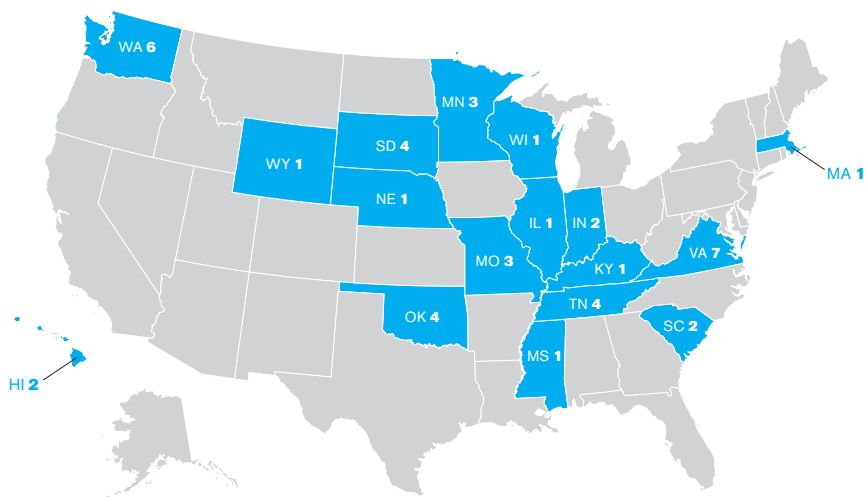
clear, compelling a student to use these separate facilities is neither reasonable nor an accommodation. It is simply thinly veiled, federally prohibited discrimination.

**SPORTS.** The principles outlined above also apply to sports — a person should not be forced to participate in a sex-segregated activity, such as many school sports, in a manner inconsistent with their authentic sense of self. The longstanding gender divide in sports sometimes prompts questions about where transgender students fit in, but major sporting associations — including the International Olympic Committee — have recognized those questions are easily resolved and have adopted gender-identity inclusive non-discrimination policies. Where state legislators attempt to override the decisions of local sporting entities who have determined they will move forward with a policy that respects transgender students, they are meddling contrary to the best interests of the students, the sport’s governing body and athletics as a whole.

**RESTROOMS IN PUBLIC PLACES — FROM THE COFFEE SHOP TO CITY HALL.** About a third of the anti-equal access “bathroom” bills under consideration in state legislatures would apply to all multi-user restrooms, locker rooms, and similar facilities within the state. Most people use public facilities on a daily basis at work and school, and at restaurants and other public places without a second thought. However, every day, too many transgender people are forced to choose between this most basic need and avoiding harassment or intimidation. Transgender people often go to great lengths to avoid using the bathroom or to seek out single-occupancy facilities rather than risk their safety by using facilities contrary to their identity and gender expression, and bills that force them to use such facilities are hugely damaging. Some of the bills proposed this session would, if passed, impose criminal penalties upon a transgender person who accessed a sex-segregated space consistent with their identity. Another would condition access to such a space based on whether or not they’ve had surgery — a deeply personal matter which a person should not need to discuss publicly and which, given that restrooms have stalls for privacy, is totally irrelevant. Occupants of a restroom have no right to know anything about the genitalia of the other occupants. Indecent exposure, sexual assault or any other illegal activity is criminal and should be punished accordingly — but those safety issues are wholly unrelated to equal access to bathrooms. The lawmakers behind these anti-equal access bills claim to be addressing safety concerns, but these are a red herring: rather, they are simply perpetuating fear and misunderstanding about transgender people.

DATA AS OF 2.19.16

#### 2016 ANTI-TRANS BILLS



#### FADA: SINCERELY HELD RELIGIOUS BELIEF THAT SEX IS BIOLOGICAL?

This legislative season has seen a new type of anti-transgender legislation emerge: it is a variation of a so-called “First Amendment Defense Act” (FADA) that protects a person or agency from the normal consequences of engaging in prohibited discrimination if the person or agency discriminating is doing so as a result of a sincerely held religious belief or moral conviction. In this context, the person or agency discriminating can be a public official, a person working at a public agency, or a private individual or agency who receives funds, licensing, or other recognition or benefits from the state — and who would stand to lose that recognition or benefits due to discriminatory behavior.



Generally, these FADA bills have been designed to defend those who have religious beliefs opposing same-sex marriage and whose failure to serve same-sex couples would put their ongoing benefit or recognition from the state in jeopardy. This year, some of these bills additionally include a new provision which would also exempt people from the consequences of discrimination if they have a belief or conviction that there are “distinct and immutable biological sexes that are determined by anatomy and genetics at the time of birth.”

The consequences of allowing recipients of public funds to discriminate with taxpayer dollars are simply unacceptable, as is interfering with a state's ability to rescind the license of a professional engaging in malpractice. These FADA bills are both radical and harmful to the LGBT community — and these new, explicitly anti-transgender provisions put a particularly fine point on the anti-LGBT animus motivating these bills.

### **PREEMPTION BILLS: IF WE SAY NO TO EQUALITY, YOU HAVE TO SAY NO, TOO**

Hundreds of cities, counties and school districts around the country have taken action to extend non-discrimination protections of their own volition where the state has been slow or refused to act. In some situations — like a school board working to comply with Title IX by adopting a policy of non-discrimination against lesbian, gay, bisexual or transgender students — the entities are responding to critically important external stakeholders. For cities and counties, the voices calling for these vital non-discrimination protections are businesses, chambers of commerce and community leaders who know that treating people fairly is a requirement for a city or county to be able to attract and retain top talent. But state legislatures who would rather turn the clock back on equality are increasingly turning to laws that usurp the abilities of these local jurisdictions to pass such laws. Several state legislatures this year are considering these bills in several permutations. While these can appear more benign than the flagrantly anti-transgender “bathroom” bills, they have the same effect — or are sometimes even worse. They also similarly put schools in a situation where they have to choose between abiding by state law or forfeiting their federal funding and risking a federal lawsuit. By meddling in local affairs they also take away local jurisdictions' ability to decide what is in their own best interest.

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### **THEY'RE CALLED “PRIVATE” PARTS FOR A REASON**

One of the most unfortunate themes in the slate of anti-transgender bills introduced across the country this legislative season has been an emphasis on euphemistically describing — and writing into state law — the current or former state of transgender people's genitals. Some bills try to chastely allude to “chromosomes” or “deoxyribonucleic acid” (DNA) — disregarding that few people have tested their own DNA to know for sure what chromosomes they have — while the more coarse bills use the colorful descriptors “anatomical sex” or “biological sex”. These bills insist that sex is as determined at birth and as recorded on a birth certificate. Others go even further, insisting that if a birth certificate is going to be accepted by a government

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agency for any reason (such as a school using a birth certificate to determine age), it must be accepted as the final word on all matters (such as mandating that transgender students must play sports based on their sex assigned at birth). Another bill would overturn existing state law to mandate that a sex designation on a birth certificate could only be changed in the case of a typographical error.



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These laws lead to an invasion of privacy for all people — in fact, one legislator revised his anatomy-based bill after outcry that it would require inspections by adults of all children’s bodies before they were allowed to use school restrooms and locker rooms. Further, most people would consider it to be outrageous and unacceptable to be asked to describe their genitals to a stranger — be that stranger a clerk issuing marriage licenses, a proprietor engaged in gender-policing their customers, or a middle-school classmate. And yet these offensive bills all require this kind of disclosure of transgender people in various ways.

Reducing any person to a description of their genitals is offensive and absurd. People are more complex than what can be determined in the first moments after birth, and imposing some unchangeable measure of who people are based on a description of their genitals is as foolish as it is reductive. Regulations like these have no place in state law.

## MEAN-SPIRITED AND OUTDATED: ANTI-TRANSGENDER MARRIAGE BILLS

In a year with an unprecedented number of anti-LGBT bills, perhaps it is no surprise that many of those proposals are in response to states being forced to grapple with marriage by same-sex couples. Unfortunately, some of these expressly target transgender people who seek to marry. One bill would require an applicant for a marriage license to disclose whether they’d ever undergone “a sex reassignment,” and then would print the answer on the marriage license when issued. Another would require a “husband” to be a “natural-born male as defined by the person’s original certificate of birth” and a wife to be a “natural-born” female, also according to her original birth certificate. The first bill would result in a humiliating and wholly unnecessary invasion of privacy; the second, which may be an ill-conceived attempt to circumvent marriage equality, would result in making marriage by transgender people difficult or even impossible. These legislatures are fighting a battle about marriage that they have already lost, and they are continuing to try to place burdens on people exercising their fundamental constitutional right to marry.

## STATE INTERFERING WITH MEDICALLY NECESSARY CARE

A smaller number of bills are targeting a critically important concern: they are limiting transgender people’s access to medically necessary healthcare. Whether it be through doubling down on existing exemptions around transition-related care that appear in state disability law, or in trying to avoid financial responsibility for medically necessary care for inmates of the state, states continue to defy medical best practices in excluding transgender people from access to healthcare services they need.

DATA AS OF 2.19.16

### 2015–2016 ANTI-TRANS BILLS

