

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JANE DOE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
Vincent T. Arrisi, in his official capacity	:	
as State Registrar, Office of Vital Statistics and Registry,	:	
Office of Vital Statistics and Registry,	:	CIVIL ACTION NO.
Cathleen D. Bennett, in her official capacity	:	3:16-cv-08640-MAS-DEA
as Comm’r, New Jersey Dept. of Health, and,	:	
New Jersey Dept. of Health,	:	
Defendants.	:	

AMENDED COMPLAINT

1. The New Jersey Office of Vital Statistics and Registry (“Vital Statistics”) is a division of the New Jersey Department of Health (“Health”). Vital Statistics operates and administers New Jersey’s birth certificate program and is required to do so in accordance with the laws of the United States.
2. Plaintiff Jane Doe was born in the State of New Jersey and was assigned a male sex on her birth certificate.
3. “Sex” means a classification of a person as male or female based on external male or female anatomical organs or structures or the surgical construction of external male or female anatomical structures of a person. Jane Doe was classified as male sex at birth because she had male genitals.
4. Jane Doe is a transgender (“trans”) person, however, and as she grew, she understood that she was born with a body whose male sex was different from her own concept of herself as female. In other words, Jane thought of herself as female, not male, despite her body’s sex. “Gender” means a person’s classification of themselves as male, female or other.

5. Both sex (a male or female body part classification as shown by male or female body organs and structures) and gender (a person's self-classification as male, female or other) are related in that they describe characteristics of the same person. "Sex" refers to that person's body characteristics, gender to that person's self-conception. With Jane Doe and other trans people, the body's sex is different than the mind's gender.

6. The split between the two in the same person -- a trans person -- is generally thought to occur in the womb during fetal development. Trans women such as Jane Doe have parts of their brain develop as a female while their body develops as a male; the mind and body are out of sync, which means their gender and body sex are different and distinct. Non trans people have the mind and body develop in tandem so they conceive of themselves as the same gender and sex; there is no reason to make a distinction between the two.

7. As noted by Dr. Robert Sapolsky, professor of neuroscience at Stanford University and one of the leading scholars of trans science: "[I]t's not the case that transgender individuals think they're a different gender than they actually are. It's more like they got stuck with bodies of a different sex from who they actually are." Sapolsky, R.M., Behave, 216 n. (Penguin 2017.)

8. A person's gender is immutable and fundamental to their identity. Plaintiff's gender is female and it is immutable and fundamental to her identity. She identifies as female and presents herself to the world as female. She has a Pennsylvania driver's license establishing her gender as female.

9. However, because she was born with a male body sex, yet she is female, she has to cope with that disparity, which is being trans, and for her has meant a life of discrimination and hate because she looks and thinks differently, with a self-image different than her body.

10. She attempts to live so as to minimize her appearance's disruptive effect on her and others, but she also wants to be recognized for who she is -- her legally protected gender.

11. The male “sex” classification on her birth certificate issued by the Defendants’ does not recognize her gender.

12. It is Jane Doe’s constitutional and statutory right to have her gender recognized on her birth certificate, as it is on other fundamental identification documents where the state takes an active interest in their use and maintenance.

13. That is, the state, in using a categorization of sex, identifies Jane Doe as someone whose gender contradicts their body sex (trans people.)

14. Defendants’ actions in issuing and maintaining Jane Doe’s birth certificate are gender discrimination. They cause Plaintiff to fear for her safety because of the Defendants’ outing of her as trans in her birth certificate, noting to the public that Jane was born with a male body, despite her gender and appearance now.

15. Defendants’ actions: (i) deny Plaintiff procedural and substantive due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, (ii) deny Plaintiff equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States, (iii) violate the Americans with Disabilities Act, 42 U.S.C. § 12101, et. seq. as amended (“ADA”), (iv) violate the Rehabilitation Act of 1973, 29 U.S.C. § 701, and are actionable pursuant to 42 U.S.C. § 1983.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the parties and the claims asserted herein pursuant to 28 U.S.C. § 1331.

17. Plaintiff’s claims for declaratory relief are brought pursuant to 28 U.S.C. §§ 2201 and 2202.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

19. Plaintiff Jane Doe was born in the State of New Jersey. Plaintiff Jane Doe is appearing here under a pseudonym. A motion for anonymity had been filed simultaneously with the Original Complaint (ECF No. 2) and has been granted by the Court (ECF No. 14.)

20. In his capacity as State Registrar, Defendant Arrisi is responsible for the supervision of Vital Statistics.

21. In her capacity as Commissioner of Health, Defendant Bennett is responsible for supervision of Health and Vital Statistics and Defendant Arrisi.

22. All Defendants are obligated to ensure that transgender people are treated in accordance with the Constitution and laws of the United States. Defendants Arrisi and Bennett have, at all relevant times hereinafter mentioned, acted under color of state law and are being sued in their official capacities.

PERTINENT CONSTITUTIONAL PROVISIONS

23. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that: “No State shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

24. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

PERTINENT FEDERAL STATUTES AND REGULATIONS

25. Congress enacted the ADA in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1).

26. Congress found that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against

individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2).

27. For those reasons, Congress prohibited discrimination against individuals with disabilities by public entities, in Title II of the ADA, at 42 U.S.C. § 12132:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

28. The Code of Federal Regulations prohibits discrimination against individuals with disabilities by public entities at 28 C.F.R. § 35.130:

General prohibitions against discrimination. (a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

29. An individual meets the ADA’s definition of having a disability if they:

(a) have a physical or mental impairment that substantially limits one or more major life activities of such individual;

(b) have a record of such an impairment; or

(c) are regarded as having such an impairment. 42 U.S.C. § 12102(1)(A).

30. The statute is to be read broadly. 42 U.S.C. § 12102(4)(A) states: “The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.”

31. At all times material herein, Vital Statistics and Health are public entities as defined under the ADA. 42 U.S.C. § 12132.

32. Congress enacted the Rehabilitation Act of 1973 finding that, inter alia, individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services. 29 U.S.C. § 701.

33. Congress further found the goals of the Nation include the goal of providing individuals with disabilities with the proper tools necessary to achieve equality of opportunity, full inclusion and integration in society. 29 U.S.C. § 701(a)(6).

34. Congress further found the policy of the United States is “that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of—

(1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

(2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;

(3) inclusion, integration, and full participation of the individuals;

(4) support for the involvement of an individual’s representative if an individual with a disability requests, desires, or needs such support... 29 U.S.C. § 701(c).

35. The Rehabilitation Act defines disability as (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 29 U.S.C. § 705(9)(B) (incorporating 42 U.S.C. § 12102(1).)

36. The Rehabilitation Act of 1973 provides:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) [“Individual with a Disability”] of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance... 29 U.S.C. § 794(a).

37. 34 C.F.R. § 104.4 is entitled “Discrimination prohibited” and provides as follows:

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal

financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

38. All persons covered by the Rehabilitation Act are protected from discrimination under the general nondiscrimination regulatory provisions implementing the statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment.

28 C.F.R. § 35 (“Nondiscrimination on the Basis of Disability in State and Local Government Services.”)

PERTINENT NEW JERSEY STATUTES REGULATIONS AND POLICIES

39. Health is authorized to prepare and retain birth certificates under the law of New Jersey.

N.J. Rev. Stat. § 26:8-23.

40. Health is authorized to create Vital Statistics, appoint a state registrar, and provide for a system for registering and recording births. N.J. Rev. Stat. § 26:8-1 et. seq.

41. The statute regarding sex identification on birth certificate provides that sex reassignment surgery is necessary to change a person's "sex":

The State registrar shall issue an amended certificate of birth to a person born in this State who undergoes sex reassignment surgery and requests an amended certificate of birth which shows the sex and name of the person as it has been changed.

a. The State registrar shall issue the amended certificate of birth upon receipt of (1) a certified copy of an order from a court of competent jurisdiction which indicates the name of the person has been changed and (2) a medical certificate from the person's licensed physician which indicates the sex of the person has been changed by surgical procedure.

b. The amended certificate of birth shall be of the same general type as the original certificate of birth.

c. When an amended certificate of birth is issued, the State registrar shall notify the appropriate local registrar of vital statistics who shall enter the amended certificate in his local record and place his copy of the original certificate under seal.

d. The State register shall place the original certificate of birth and all papers pertaining to the amended certificate of birth under seal. The seal shall not be broken except by order of a court of competent jurisdiction.

Thereafter, whenever a certified copy of the certificate of birth is prepared, it shall be made from the amended certificate of birth except when an order of a court of competent jurisdiction requires that a certified copy be made of the original certificate of birth.

e. The fee for issuing the amended certificate of birth is \$6.00.

N.J. Rev. Stat. § 26:8-40.12 (Sex Reassignment Surgery; Amendment Of Birth Certificate) (emphasis added.) (the "Statute")

42. The data gathered by Vital Statistics from birth certificates is used by New Jersey and the Federal Government to define, develop, and/or support government programs, including health and disability programs.

FACTS

Defining "Sex"

43. According to Defendants, “sex” means a classification of a person as male or female based on: 1) external male or female anatomical organs or structures; or, 2) the surgical construction of external male or female anatomical structures of a person through Sex Reassignment Surgery. *See, e.g.*, the Statute.

44. “Sex Reassignment Surgery” is undefined by the Defendants, but, according to generally recognized standards of care for trans people may include:

- 1) For the male-to-female trans person, one or more of:
 - a. Breast/chest surgery: augmentation mammoplasty (implants/lipofilling);
 - b. Genital surgery: penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty;
 - c. Non-genital, non-breast surgical interventions: facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation (implants/lipofilling), hair reconstruction, and various aesthetic procedures; or,
- 2) For the female-to-male patient, one or more of
 - a. Breast/chest surgery: subcutaneous mastectomy, creation of a male chest;
 - b. Genital surgery: hysterectomy/ovariectomy, reconstruction of the fixed part of the urethra, which can be combined with a metoidioplasty or with a phalloplasty (employing a pedicled or free vascularized flap), vaginectomy, scrotoplasty, and implantation of erection and/or testicular prostheses;
 - c. Non-genital, non-breast surgical interventions: voice surgery, liposuction, lipofilling, pectoral implants, and various aesthetic procedures.

World Professional Association for Transgender Health (“WPATH”), Standards of Care, pp. 57-58, (v.7 2011).

45. None of the surgical procedures change the respective anatomical structures to be “working” structures. That is, for example, working genitalia, in the sense of being useful for biological reproduction, are not created in Sex Reassignment Surgery. Rather, external genitalia structures may be created that appear to be similar to external “working” genitalia, so that a

vagina appearing structure may be created in a trans woman through vaginoplasty, involving reconstruction of her original male sex organs (the penile and scrotal areas.)

46. The Defendants' do not mandate any particular surgical procedure be used in Sex Reassignment Surgery, so any of them could be certified as appropriately meeting the Statute's requirements for a change of sex.

47. Some of the results achieved through Sex Reassignment Surgery may be obtained through non-surgical methods, for example, losing weight may provide a similar result to liposuction. Hormone therapy and other procedures may lead to changes too, for example, in a trans woman breasts will grow from hormone therapy. WPATH, Standards of Care, at 38. So the administration of hormones alone will augment breast size as will augmentation through Sex Reassignment Surgery.

48. Defendants do not consider non-surgical methods in their evaluation, under the Statute's mandated requirements, of whether a trans person may change their sex on a birth certificate.

The Defendants and The Statute Do Not Legally Recognize Gender

49. Defendants do not provide a birth certificate to Plaintiff that recognizes her gender.

50. Jane Doe's gender is legally protected. *See, e.g.,* Equal Protection, Title VII and Title IX cases re: gender discrimination.

51. By limiting her birth certificate to a male sex classification, based solely on their definition of sex as noted above, Defendants fail to recognize Jane Doe's legally protected gender.

52. Moreover, in the alternative, there are other, generally accepted definitions of "sex" aside from the Defendants and the Statute. In one of those definitions, broader than the one at issue here, sex is defined synonymously with gender, and the two are used synonymously. Under this definition of sex, a person's sex is immutable and fundamental to their identity and a person's

sex is legally protected. *See, e.g.*, Equal Protection, Title VII and Title IX cases re: sex discrimination.

Plaintiff Jane Doe is Trans

53. Jane Doe is trans. She was born with a body whose male sex is different from her female gender. Being trans is fundamental to Ms. Doe and an immutable characteristic of Ms. Doe.

54. Ms. Doe's birth certificate labels her "sex" as male because her external anatomy at birth was male. Exhibit A hereto, identifying info stricken.

55. However, she is female, her gender is female and she presents herself to the world as such. She has a Pennsylvania driver's license that accurately identifies her gender as female.

56. Since Jane's appearance may at time be startling, or people may disapprove of her mismatch between mind and body for religious, political, and other reasons, Jane takes care to live authentically as herself, but is cautious about revealing her trans status, as most of the population doesn't "get" trans.

57. Ms. Doe has achieved body sex modification, to make her appearance more female, though other procedures equivalent to the structures created by Sex Reassignment Surgery, for example, breast growth through hormones.

58. However, Jane has experienced numerous negative reactions from family and society because she is trans.

59. Jane fears additional discrimination and stigmatization.

60. As noted in this Court's Order granting her anonymity: "No one disputes that she has a legitimate fear of severe harm, should her identity and trans status be made public."

61. Ms. Doe has been placed in a situation by the Defendants where her trans status is revealed because of Defendants' failure to recognize her gender on her birth certificate and identify her by sex instead.

62. Defendants' actions are causing Ms. Doe to fear for her safety.

Jane Doe Has Gender Dysphoria

63. Jane Doe has been diagnosed with Gender Dysphoria (GD) because she is trans and has had clinically significant distress associated with being trans.

64. GD is a medical and therapeutic diagnosis "associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning." Diagnostic and Statistical Manual of Mental Disorders, 5th Edition ("DSM-V" at 302.85.)

65. Trans people are diagnosed as suffering from GD when they have "clinically significant distress" associated with being trans. *Id.*

66. GD is not the same as being trans but may result from being trans.

67. As Ms. Doe has noted in this case:

- Throughout my life I have been estranged from family and friends because I am trans.

- Throughout my life, I have been insulted, isolated, and assaulted for being trans.

- I fear that disclosure of my condition in the present matter, as well as details of my most personal health matters, will harm me even more in the future.

- Based on my life to date, I fear that disclosure of my personal identity in this matter will cause me severe harm because of society's discrimination against trans people.

- Based on my life to date, I fear disclosure of the relief I seek in a public manner, as such disclosure will cause me severe harm.

- Based on my life to date, I fear disclosure of my trans condition and the relief I seek will severely harm my prospects of employment.

68. Defendants' failure to recognize her gender on her birth certificate, and identify her by sex instead, with attendant consequences, has and will continue to exacerbate Ms. Doe's gender dysphoria.

Gender Dysphoria Is A Disability

69. GD is a disability within the meaning of the ADA and the Rehabilitation Act in that it substantially limits one or more major life activities, including, but not limited to, interacting with others, reproducing, and social and occupational functioning. *See, e.g.*, Dept. of Justice, Statement of Interest of the United States of America, ECF No. 49.

70. Jane Doe is a trans person who has been diagnosed with GD and is disabled within the definition of the ADA.

71. Defendants are aware that trans people with GD may be disabled as a result of their GD.

Treatment of Gender Dysphoria

72. Medical and therapeutic procedures for GD treatment may include name and gender changes on identity documents, hormone or other prescriptions, therapy, and Sex Reassignment Surgery. Procedures that treat GD in a particular individual are based on that person's specific needs, abilities and desires and the goal is to lessen the extreme distress of GD. Sex Reassignment Surgery, for example, is not medically necessary for all trans people, and may even be medically contraindicated for some. Moreover, not all trans people want, need or are able to undergo one or more of these procedures. For example, not all trans people want, need or are able to afford Sex Reassignment Surgery.

73. Jane Doe does not want to undergo Sex Reassignment Surgery.

The Defendants Are Violating Jane Doe's Fundamental Rights

74. The Statute and the Defendants' actions pursuant to the Statute discriminate against Ms. Doe because she is transgender. They fail to recognize her gender, set up irrational and harmful "procedures" for changing her "sex," and create harm since they publically identify her as trans.

75. The Defendants fail to recognize Ms. Doe's gender on her birth certificate, a document that exists, in part, to identify an individual through their life and death, as they are maintained by the Defendants and matched with a person's death certificate upon death.

76. Ms. Doe's birth certificate is a fundamental identification document, a foundation for other fundamental identification documents such as a marriage license, passport, driver's license, etc.:

77. Ms. Doe's birth certificate is the only common governmentally-conferred, uniformly recognized, readily-accepted record that establishes identity, parentage, and citizenship, and it is required in an array of legal contexts.

78. Moreover, the Statute mandates irrational and harmful procedures for changing Jane Doe's "Sex" classification as they focus on surgery to create facsimile sexual structures, and information about Ms. Doe's intimate and personal body parts that are not affordable or not available or simply not wanted by Ms. Doe. The "sex change" procedures of the Statute, directed at modifying body parts to change one's sex, are contraindicated by appropriate procedures for treatment of trans people and are irrational even within their limited functional environment as they equate a liposuction to one's changing one's sex and they fail to account entirely for non-surgical procedures.

79. Jane Doe's fundamental rights include the right to have her gender legally recognized, and the right to have governmental bodies who issue and maintain her unique fundamental identification documents recognize her gender, the right to have those bodies and to remove incorrect or hurtful information about her, such as her birth certificate's designation of her sex as

male, the right to undergo or not Sex Reassignment Surgery or any surgery or other procedure, the right to express her gender as she sees fit, the right to keep private intimate facts about herself including her gender and body parts, and the right to have her gender recognized on her birth certificate, either under a gender heading or under the broader definition of “sex,” (as well as in all documents relating to her birth certificate.)

80. Jane Doe is also entitled to a procedure that simply and confidentially provides her with that document upon her request.

81. Jane Doe’s rights include the right to be free from gender discrimination, especially from governmental bodies:

- a. The federal government does not require a trans person to undergo SRS to change gender classification for Social Security, immigration or passports, recognizing that that SRS is not a medically necessary part of gender transition for all trans people and that trans people may not want, need or be able to undergo SRS.
- b. Various states, e.g., Pennsylvania, New York, California, Iowa, Oregon, Vermont, and Washington, as well as the District of Columbia, have updated their birth certificate laws, recognizing that trans people may not want, need or are able to undergo SRS.
- c. New Jersey does not require SRS to change a gender marker on a driver’s license.

82. Jane Doe’s rights include freedom from state sanctioned compulsion, as embodied in the Statute and which violate her rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution:

- a. The Statute and the Defendants’ actions under the Statute compel Plaintiff to undergo unwanted surgery involving her reproductive capacity without any legal basis or justification;
- b. The Statute and the Defendants’ actions under the Statute deny Plaintiff her fundamental right to define her bodily integrity;
- c. The Statute and the Defendants’ actions under the Statute deny Plaintiff her fundamental right to define her personal autonomy;

- d. The Statute and the Defendants' actions under the Statute deny Plaintiff her fundamental right to define her gender autonomy;
- e. The Statute and the Defendants' actions under the Statute deny Plaintiff her fundamental right to privacy;
- and,
- f. The Statute and the Defendants' actions under the Statute deny Plaintiff her fundamental right to make certain private decisions without government intrusion.

The Defendants Are Discriminating Under the ADA

83. The Statute and Defendants' actions under the Statute discriminate against those trans people diagnosed with GD who have not undergone SRS as the Statute refuses an accurate identification document, a benefit provided to those individuals who are not trans people diagnosed with GD.

84. A birth certificate is a fundamental identification document and, without their gender being accurately stated on their birth certificates, trans people with GD who have not undergone SRS may undergo suffering, emotional and mental distress.

85. The Statute and Defendants' actions under the Statute discriminate against a subgroup, Plaintiff and those trans people diagnosed with GD who have not undergone SRS as the Statute permits a birth certificate gender change for the subgroup of those trans people diagnosed with GD who have undergone SRS.

86. The Statute and Defendants' actions under the Statute discriminate against Plaintiff and those trans people diagnosed with GD who have not undergone SRS as the Statute requires disclosure of intimate personal health details about a trans person's genitalia, status of that genitalia, and any related medical condition(s).

The Statute and Defendants' Actions are Intentionally Discriminatory

87. Defendants are aware of the State of New Jersey's established law regarding discrimination, the New Jersey Law Against Discrimination, which specifically bans

discrimination against trans people in employment, housing, places of public accommodation, credit and business contracts. N.J. Rev. Stat. § 10:5-12. [NJ Constitution, Art I Sec. I]

88. Defendants have discriminated against Plaintiff and trans people in that Defendants' actions under the Statute specifically harm trans people by requiring them to:

- (a) disclose their most personal and intimate medical details,
- (b) undergo unwanted, unneeded and/or unavailable surgery, and
- (c) forego their fundamental rights.

89. Defendants discriminated against Plaintiff and trans people by authorizing birth certificates with incorrect gender designations for trans people.

90. Defendants have discriminated against Plaintiff and trans people by:

- (a) violating the State of New Jersey's own anti-discrimination law that mandates trans people are not to be discriminated against; and,
- (b) by providing incorrect statistics on trans people to other state and Federal entities, thus continually harming trans people by deliberately underreporting trans birth and population data, thus minimizing the trans population and deliberately decreasing the need for health, disability, and other government programs for that population.

91. Defendants have acted willfully and in bad faith and with animus towards Plaintiff and trans people as shown by the Governor of the State of New Jersey's actions and comments.

Governor Christopher J. Christie declared on a radio show, shortly after vetoing a bill that would have provided birth certificate protections like those sought here for trans people, that people like Plaintiff, who do not desire to open their genitalia for the Governor's inspection in order to obtain an accurate birth certificate, are "beyond the pale." The Governor was then heard laughing at people like Plaintiff and others.

92. Plaintiff's rights to both substantive and procedural due process under the law have been and are being violated by Defendants.

93. Plaintiff's rights to equal protection under the law have been and are being violated by Defendants.

94. Plaintiff's rights under the ADA have been and are being violated by Defendants.

95. Plaintiff's rights have been and are being violated by Defendants knowingly, willingly, and in bad faith.

96. Plaintiff's rights have been and are and are being violated by the challenged governmental activity, the Statute in the present case, are not contingent, are not and will not evaporate or disappear, and, by the Statute and Defendants' continued promulgation and enforcement of the Statute, casts a substantial adverse effect on Plaintiff's rights.

**COUNT I – VIOLATION OF THE SUBSTANTIVE AND PROCEDURAL
DUE PROCESS PROTECTIONS
OF THE 14TH AMENDMENT**

97. Plaintiff incorporates by reference her allegations set forth in paragraphs 1 through 96 above.

98. Defendants' adoption, promulgation, and enforcement of the Statute violate the Substantive Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, U.S. Const. amend. XIV, §1, by arbitrarily, intentionally, and in bad faith depriving Jane Doe "of life, liberty, or property, without due process of law."

99. Defendants' adoption, promulgation, and enforcement of the Statute violate the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, U.S. Const. amend. XIV, §1, by arbitrarily, intentionally, and in bad faith depriving Jane Doe of her fundamental rights, including to refuse unwanted surgery without any legal basis or justification,

her right to define and express her identity, the right to have her gender legally recognized, and the right to have governmental bodies who issue and maintain her unique fundamental identification documents recognize her gender, the right to have those bodies and to remove incorrect or hurtful information about her, such as her birth certificate's designation of her sex as male, the right to undergo or not Sex Reassignment Surgery or any surgery or other procedure, the right to bodily integrity, the right to personal autonomy, the right to express her gender as she sees fit, the right to keep private intimate facts about herself including her gender and body parts, the right to make certain private decisions without government intrusion, and the right to have her gender recognized on her birth certificate, either under a gender heading or under the broader definition of "sex," (as well as in all documents relating to her birth certificate.)

100. Jane Doe is also entitled to a procedure that simply and confidentially provides her with that document upon her request.

101. There is no legitimate reason nor legal justification for Defendants' adoption, promulgation, and enforcement of the Statute, their intentional discrimination against Plaintiff and others like her, and their violation of Plaintiff's rights.

102. Plaintiff seeks redress for Defendants' violation of her rights under 42 U.S.C. § 1983.

**COUNT II – VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE 14TH AMENDMENT**

103. Plaintiff incorporates by reference her allegations set forth in paragraphs 1 through 96 above.

104. Defendants' adoption, promulgation, and enforcement of the Statute violate the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, U.S. Const. amend. XIV, §1, and is without any rational basis by arbitrarily, intentionally, and in bad

faith discriminating against a subgroup which includes Jane Doe, i.e., those trans people who want their gender legally recognized on birth certificates.

105. Defendants' adoption, promulgation, and enforcement of the Statute violate the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, U.S. Const. amend. XIV, §1, and is without any rational basis by arbitrarily, intentionally, and in bad faith providing gender inaccurate birth certificates without possibility of correction to trans individuals with GD, but who have not or will not undergo SRS, while at the same time providing gender accurate birth certificates to all other persons.

106. Defendants' adoption, promulgation, and enforcement of the Statute violate the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, U.S. Const. amend. XIV, §1, by arbitrarily, intentionally, and in bad faith discriminating on the basis of sex, gender, gender identity or expression, and/or disability.

107. Defendants' actions in adopting, promulgating, and enforcing the Statute are undertaken purposefully, intentionally, and in bad faith, violate Plaintiff's fundamental rights, and bear no substantial or rational relationship to any compelling, important, or legitimate government interest.

108. Plaintiff seeks redress for Defendants' violation of her rights under 42 U.S.C. § 1983.

COUNT III – VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

109. Plaintiff incorporates by reference her allegations set forth in paragraphs 1 through 96 above.

110. Defendants' adoption, promulgation, and enforcement of the Statute, personally and through their agents, servants, and employees, violate the ADA by discriminating against Jane Doe on the basis of her actual and/or perceived disabilities.

111. Defendants' adoption, promulgation, and enforcement of the Statute violate the ADA and is without any rational basis by arbitrarily, intentionally, and in bad faith discriminating against Jane Doe on the basis of her disability.

112. Defendants' adoption, promulgation, and enforcement of the Statute violate the ADA and is without any rational basis by arbitrarily, intentionally, and in bad faith discriminating against a subgroup and only providing gender inaccurate birth certificates without possibility of correction to trans individuals with GD, but who have not or will not undergo SRS, while at the same time providing gender accurate birth certificates to all other persons.

113. Defendants have also failed to accommodate Jane Doe with a simple and reasonable accommodation, such as changing the internal meaning of the word sex to be as broad as gender, and correcting any such birth certificates confidentially upon the request of Jane Doe (or others.)

114. As a direct result of the aforesaid unlawful discriminatory practices engaged in by Defendants in violation of the ADA, Plaintiff has sustained harm.

115. As a further direct result of the aforesaid unlawful discriminatory practices engaged in by Defendants in violation of the ADA, Plaintiff has suffered severe emotional distress, embarrassment, humiliation, and loss of self esteem.

116. Defendants' actions in adopting, promulgating and enforcing the Statute are undertaken purposefully, intentionally, and in bad faith, violate Plaintiff's fundamental rights, and bear no substantial or rational relationship to any compelling, important, or legitimate government interest.

117. Plaintiff seeks redress for Defendants' violation of her rights under 42 U.S.C. § 1983.

COUNT IV – VIOLATION OF THE REHABILITATION ACT

118. Plaintiff incorporates by reference her allegations set forth in paragraphs 1 through 96 above.

119. The Defendants accept federal financial assistance and have done so at all times relevant to this complaint, and therefore are a therefore a “program . . . receiving Federal financial assistance” for purposes of the Rehabilitation Act.

120. Defendants’ adoption, promulgation, and enforcement of the Statute, personally and through their agents, servants, and employees, violate the Rehabilitation Act by discriminating against Plaintiff on the basis of her actual and/or perceived disabilities.

121. Defendants’ adoption, promulgation, and enforcement of the Statute violate the Rehabilitation Act and is without any rational basis by arbitrarily, intentionally, and in bad faith discriminating on the basis of disability.

122. Defendants’ adoption, promulgation, and enforcement of the Statute violate the Rehabilitation Act and is without any rational basis by arbitrarily, intentionally, and in bad faith discriminating against a subgroup, by providing gender inaccurate birth certificates without possibility of correction to trans individuals with GD, but who have not or will not undergo SRS, while at the same time providing gender accurate birth certificates to all other persons.

123. Defendants have also failed to accommodate Jane Doe with a simple and reasonable
As a direct result of the aforesaid unlawful discriminatory practices engaged in by Defendants in violation of the Rehabilitation Act, Plaintiff has sustained harm.

124. As a further direct result of the aforesaid unlawful discriminatory practices engaged in by Defendants in violation of the Rehabilitation Act, Plaintiff has suffered severe emotional distress, embarrassment, humiliation, and loss of self esteem.

125. Defendants’ actions in adopting, promulgating and enforcing the Statute are undertaken purposefully, intentionally, and in bad faith, violate Plaintiff’s fundamental rights, and bear no substantial or rational relationship to any compelling, important, or legitimate government interest.

Plaintiff seeks redress for Defendants' violation of her rights under 42 U.S.C. § 1983.

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter a declaratory judgment that:

- the Statute and Defendants' actions in promulgating and enforcing the Statute and the definitions of sex and sex change violate the Due Process and Equal Protection Clauses of the 14th Amendment of the United States Constitution, the Americans with Disabilities Act, and the Rehabilitation Act,

- and that the Defendants shall recognize gender on birth certificates.

B. Issue a preliminary and permanent injunction Ordering Defendants to:

i. Immediately cease enforcing the Statute;

ii. Provide gender accurate birth certificates to trans people; and,

iii. Provide notice to any and all persons or entities Defendants may come into contact with in administering the Statute that the Statute will no longer be enforced and that the State of New Jersey will provide gender accurate birth certificates to trans people.

C. Award Plaintiff compensatory and punitive damages, costs, and disbursements, including reasonable attorneys' fees.

D. Award Plaintiff such other and further relief as the Court may deem just and proper.

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Date: 9-22-2017

s/ Paul R. Fitzmaurice

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Counsel for Plaintiff Jane Doe

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JANE DOE, :
:
Plaintiff, :
:
v. :
:
Vincent T. Arrisi, in his official capacity :
as State Registrar, Office of Vital Statistics and Registry, :
Office of Vital Statistics and Registry, :
Cathleen D. Bennett, in her official capacity :
as Comm’r, New Jersey Dept. of Health, and, :
New Jersey Dept. of Health, :
Defendants. :

CIVIL ACTION NO.
3:16-cv-08640-MAS-DEA

EXHIBIT A TO THE AMENDED COMPLAINT

BIRTH REGISTRATION CERTIFICATE

OFFICE OF REGISTRAR OF VITAL STATISTICS

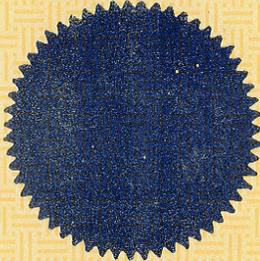


NAME	SEX	PLACE OF BIRTH	DATE OF BIRTH
[REDACTED]	Male	[REDACTED]	[REDACTED]

This is a true certification of name and birth facts as recorded in this office.

5

[REDACTED]	[REDACTED]
<small>REGISTRATION DATE</small>	<small>DATE ISSUED</small>



STATE OF NEW JERSEY

EXHIBIT A
DOE V. ARRISI

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JANE DOE,	:	Hon. Michael A. Shipp, U.S. D.J.
Plaintiff,	:	Hon. Douglas E. Arpert, U.S M.J.
	:	
v.	:	CIVIL ACTION NO. 3:16-cv-08640
	:	
ARRISI, et. al.,	:	CERTIFICATE OF SERVICE
	:	
Defendants.	:	
	:	

I certify that, on September 22, 2017, a true and correct copy of the foregoing Amended Complaint has been filed electronically and is available for viewing and downloading from the ECF system by the following who have consented to electronic service:

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Deputy Attorney General
Division of Law
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Date: September 22, 2017

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