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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

F.V. and DANI MARTIN,

Plaintiffs,

v.

RUSSELL BARRON, in his official capacity as Director of the Idaho Department of Health and Welfare; ELKE SHAW-TULLOCH, in her official capacity as Administrator of the Division of Public Health for the Idaho Department of Health and Welfare; and JAMES AYDELOTTE, in his official capacity as State Registrar and Chief of the Bureau of Vital Records and Health Statistics,

Defendants.

No. 1:17-cv-00170-CWD

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiffs F.V. and Dani Martin, by and through their undersigned counsel, move the Court for an order granting summary judgment and for entry of judgment in favor of Plaintiffs and against Defendants on Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief. This motion is based on the Memorandum in Support of Plaintiffs' Motion for Summary Judgment, the Statement of Material Facts in Support of Plaintiffs' Motion for Summary Judgment, the Declarations of F.V., Dani Martin, and Dr. Randi Ettner, all the pleadings and papers on file, and any argument the Court may consider.

DATED: September 29, 2017

By: /s/ Monica G. Cockerille

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Defendants.

No. 1:17-cv-00170-CWD

**PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF MOTION
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INTRODUCTION

This action is brought by transgender people who seek to correct their Idaho birth certificates to accurately reflect their sex, as determined by their gender identity. The government has conceded in this litigation that it lacks even a rational basis for refusing to provide such birth certificates. On that basis alone, Plaintiffs are entitled to summary judgment.

Accurate identity documents are essential to one's ability to navigate through life. A birth certificate is a trusted and ubiquitous identity document used for wide array of purposes, from the mundane to the indispensable. Access to employment, education, housing, health care, banking, travel, and government services often depend on having documentation that accurately reflects an individual's identity.

While others born in Idaho have access to an accurate birth certificate matching their gender identity—a fundamental component of human identity that everyone possesses—transgender people alone are barred from obtaining an accurate birth certificate matching their gender identity. Idaho's refusal to issue such birth certificates erects a barrier to the full recognition, participation, and inclusion of transgender people in society. The mismatch between one's gender identity and birth certificate can also disclose the fact that a person is transgender, unnecessarily exposing that person to discrimination, invasions of privacy, and even violence. The same is true for Idaho's policy with respect to name changes: although Idaho permits transgender people to update their birth certificate following a name change, it insists on also including their birth names, which can similarly reveal a person's transgender status.

Idaho's policy of refusing to allow the correction of gender markers on the birth certificates of transgender people makes it an outlier from nearly all other jurisdictions across the country, which have established processes by which transgender people can do so. It also is

inconsistent with Idaho's own policy of permitting transgender people to correct the gender markers on their driver's licenses to match their gender identity.

Idaho's birth certificate policy violates federal constitutional guarantees, including the rights to equal protection, due process, and freedom from compelled speech. A ruling on any one of these claims warrants granting summary judgment to Plaintiffs.

I. FACTS

A. Background Information Regarding Transgender People

Gender identity is a person's internal sense of belonging to a particular sex. Pls.' Statement of Material Facts ("SOF") ¶ 1. It is a deeply felt and core component of human identity that everyone possesses. *Id.* Although the majority of people possess a gender identity that matches their sex assigned at birth, that is not the case for transgender people, who are defined as transgender because their gender identity does not match their sex assigned at birth. *Id.* ¶ 3. An individual's sex is generally assigned at birth based on their external genitalia. *Id.* ¶ 4. However, other sex-related characteristics can include chromosomes, hormone levels, internal reproductive organs, and, of particular relevance here, gender identity. *Id.*

Where an individual's sex-related characteristics are not in typical alignment with each other, gender identity is the critical determinant of sex. *Id.* ¶ 5. Attempts to change an individual's gender identity in order to bring it into alignment with the individual's birth-assigned sex are not only ineffective but, as Defendants concede, can have negative effects. *Id.* ¶ 5. This includes extreme psychological harm. *Id.* All major associations of medical and mental health providers consider attempts to change an individual's gender identity to be unethical. *Id.*

The discordance between one's gender identity and birth-assigned sex can be associated with clinically significant distress, which is known as gender dysphoria. *Id.* ¶ 6. Gender

dysphoria is a serious medical condition that, if inadequately treated, can have serious health consequences. *Id.*

Gender transition is the process by which transgender individuals bring their appearance and lived experience into alignment with their gender identity, and it can be critical to treatment for gender dysphoria. *Id.* ¶ 7. Transition can involve both social and medical steps, such as hormone therapy or surgical treatment, although the precise needs for any particular person are individualized. *Id.* Living in a manner consistent with one's gender identity, also known as social transition, is essential to the health and well-being of transgender people. *Id.* ¶ 8. For a transgender woman, for example, social transition can include changing her first name to one commonly used by women, correcting identity documents to reflect her female gender, wearing typical female attire, and using female pronouns. Gender transition does not *change* a transgender person's sex; rather, it brings that person's appearance and lived experience into greater alignment with their existing gender identity, which determines their sex. *Id.* ¶ 7.

B. The Importance of Accurate Identity Documents for Transgender People

A birth certificate is more than a piece of paper. *Id.* ¶ 9. It reflects government recognition of one's gender—just as a marriage certificate reflects government recognition of one's relationship. A birth certificate is an essential government-issued document that people use to prove their identity and the range of information the certificate conveys. *Id.* ¶ 10. Birth certificates are used in a wide variety of contexts, including to obtain other identity documents (such as driver's licenses, social security cards, passports, and other state and federal identification documents), to prove age, and to satisfy other identity requirements. *Id.* ¶ 11.

Saddling transgender people with identity documents discordant with their gender identity creates myriad practical, social, and psychological consequences. First, all people need

access to accurate identity documents that they can use to prove their identity. For transgender people, however, the gender marker on their birth certificate can undermine that purpose. A woman born in Idaho who is transgender, for example, has a birth certificate designating her as male; that gender marker can visibly conflict with her gender identity and thereby arouse suspicion as to whether she is the same person reflected on her birth certificate. *Id.* ¶ 12.

Second, transgender people who use a birth certificate with information reflecting their birth-assigned sex risk disclosure of their transgender status, which is personal information that they may not wish to disclose for fear of retaliation. *Id.* ¶ 13. According to the 2015 U.S. Transgender Survey, nearly one in three transgender respondents who showed an identity document with a name or gender that did not match their perceived gender were verbally harassed, denied benefits or service, asked to leave, or assaulted. *Id.* ¶ 14.

Third, depriving transgender people of access to identity documents that accurately reflect their gender identity can cause psychological harm and exacerbate gender dysphoria. *Id.* ¶ 15. Inaccurate identity documents can cause a transgender individual to isolate, in order to avoid situations risking discrimination, ridicule, accusations of fraud, or even violence. *Id.* Being stripped of one's dignity, privacy, and the ability to move about freely in society can cause negative health consequences. *Id.*

C. Defendants' Birth Certificate Policy

Defendants Russell Barron, Elke Shaw Tulloch, and James Aydelotte (collectively, "Defendants") are state officials within the Idaho Department of Health and Welfare ("IDHW") who exercise responsibility for issuing and changing Idaho birth certificates. *Id.* ¶¶ 17-19. They enforce a policy and practice that categorically refuses to correct the gender marker on transgender people's birth certificates to match their gender identity (the "Birth Certificate

Policy”). *Id.* ¶ 20. The Birth Certificate Policy challenged here also includes a refusal to provide a birth certificate matching a transgender person’s gender identity without the inclusion of information that can disclose one’s transgender status—namely, the display of one’s birth name in addition to one’s legal name following a name change.¹

There is no statute requiring the Birth Certificate Policy. *See generally* Idaho Vital Statistics Act, Idaho Code §§ 39-240 to 39-278. To the contrary, the Idaho Vital Statistics Act provides that any certificate may be changed pursuant to promulgated rules. Idaho Code § 39-250. IDHW has exercised that authority to permit changes to birth certificates not specified by statute, such as to correct obvious errors, fix transposition of letters, and make “other amendments” based upon the objectives of the vital statistics statutes and the best interests of the public. Idaho Admin. Code r. 16.02.08.201. IDHW has not, however, exercised that authority to change the Birth Certificate Policy.

In contrast to its approach with respect to birth certificates, Idaho permits a transgender person to correct the sex indicated on his or her driver’s license. SOF ¶ 23.

Critically, Defendants admit that they “are aware of no rational basis justifying a prohibition against changing the sex designation on the birth certificate of a transgender person who has undergone clinically appropriate treatment to permanently change his or her sex.” *Id.* ¶ 21. Defendants also have not identified any justification for requiring the inclusion of information on a birth certificate that could disclose a person’s transgender status, whether through one’s birth-assigned sex or birth name.

¹ A sample birth certificate displaying both a person’s birth name and legal name following a name change is provided. Declaration of Monica Cockerille, Ex. B (birth certificate of a transgender woman disclosing a name change from “John” to “Emilie”).

D. Plaintiffs F.V. and Dani Martin

Plaintiff F.V. is a 28-year-old woman who was born in Boise, Idaho and currently resides in Hawai‘i. *Id.* ¶ 24. Her gender identity and expression is female, but she was assigned the sex of male at birth. *Id.* ¶ 25. F.V. began living openly as female when she was approximately 15 years old, and she has lived openly as a woman since that time. *Id.* ¶ 26.

Like other transgender people, F.V. has personally encountered violence on the basis of her transgender status, as well as hostility when presenting identity documents disclosing her transgender status. *Id.* ¶¶ 27-28. For example, when visiting a social security office, she presented her birth certificate identifying her as “male,” which prompted a staff member to exclaim, “wow, you’re a tranny.” *Id.* ¶ 29. Others in the waiting area heard this remark, and a man hurled an epithet at F.V., referring to her as a “faggot,” when she was leaving the office. *Id.* ¶ 30. F.V. also experienced hostility that caused her to fear for her personal safety when using other identity documents in the past that were discordant with her gender identity. *Id.* ¶ 31 (recounting experiences involving sexual harassment or the gratuitous disclosure of her transgender status to third parties). Although she has been able to correct her gender marker on other identity documents, she remains unable to do so for her birth certificate. *Id.* ¶ 34.

Plaintiff Dani Martin is a 31-year-old woman who was born at Mountain Home Air Force Base in Idaho and raised in Mountain Home. She currently resides in Meridian with her wife and children. *Id.* ¶ 35. She works as a food service correctional officer for the State of Idaho, which is a role that she has served for the last eight years, and she currently works at a facility that helps those nearing release prepare to re-enter society. *Id.* ¶ 36. Ms. Martin’s gender identity and expression is female, but she was assigned the sex of male at birth. *Id.* ¶ 37. She came out as transgender in 2014 and she began living openly as a woman at that time. *Id.* ¶ 38.

Like F.V., Ms. Martin has endured harassment on the basis of her transgender status that has caused her to fear for her personal safety. *Id.* ¶ 39.

Ms. Martin has also experienced harms from being deprived of a birth certificate matching her gender identity. For example, when she went to the Idaho Department of Motor Vehicles to correct the gender marker on her driver's license, the clerk wrongly insisted that she would need to present her birth certificate for inspection, and a supervisor had to intervene to resolve the dispute. *Id.* ¶ 40. It was humiliating for Ms. Martin to have to defend that she was a woman and entitled to be treated as such against a government official's insistence to the contrary, simply because she did not have a birth certificate reflecting that she was female. *Id.* Without the security that an accurate birth certificate provides, Ms. Martin remains vulnerable to indignities like this experience and to discriminatory treatment by third parties challenging that she is a woman.

II. STANDARD

Summary judgment is appropriate where “there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *see also* Fed. R. Civ. P. 56(c).

III. ARGUMENT

A. The Birth Certificate Policy Violates the Equal Protection Clause.

The Birth Certificate Policy violates Plaintiffs' right to equal protection under the law. It discriminates on the basis of a suspect classification, thus triggering strict scrutiny, by harming a minority group whose members have suffered a history of irrational discrimination. At a minimum, the Birth Certificate Policy discriminates on the basis of sex and thus requires

intermediate scrutiny. Regardless of the standard of review applied, however, the Birth Certificate Policy lacks even a rational basis, as Defendants concede.

i. The Birth Certificate Policy Triggers Strict Scrutiny Because It Discriminates on the Basis of a Suspect Classification.

The Equal Protection Clause of the Fourteenth Amendment “is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Certain government classifications are presumptively unconstitutional because they are particularly likely to reflect unjustified discrimination borne of historical animus. *Latta v. Otter*, 19 F. Supp. 3d 1054, 1073 (D. Idaho 2014), *aff’d*, 779 F.3d 902 (9th Cir. 2015). These classifications must survive strict scrutiny, which requires the government to show that the classification is narrowly tailored to a compelling governmental interest. *Id.*

The Birth Certificate Policy employs a suspect classification by denying transgender people—and them alone—a birth certificate matching their gender identity. For example, Idaho only permits non-transgender women to have birth certificates reflecting their female gender identity. That necessarily excludes transgender women, even though their gender identity is also female. Plaintiffs “are being distinguished . . . from those whose gender identities are congruent with their assigned sex.” *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 285 (W.D. Pa. 2017). That is, by definition, differential treatment “on the basis of their transgender status.”² *Id.*

² As the Supreme Court has explained, “[t]he proper focus of the constitutional inquiry is the group for whom the law is a restriction.” *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2451 (2015) (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 837-38 (1992)). That is also why laws that barred marriage to a person of the same sex, for example, “clearly discriminate[d] on the basis of sexual orientation.” *Latta*, 19 F. Supp. 3d at 1074. The availability of marriage to a person of a different sex was “no answer” for lesbian and gay people, who could not “switch off their sexual orientation and choose to be content with the universe of opposite-sex partners approved by the State.” *Id.* at 1072. The same is true for transgender people, who similarly cannot “switch off” their gender identity. SOF ¶¶ 2, 5.

Strict scrutiny is warranted where the government discriminates against a class that (1) has been “historically subjected to discrimination,” (2) has a defining characteristic bearing no “relation to ability to perform or contribute to society,” (3) has “obvious, immutable, or distinguishing characteristics,” and (4) is “a minority or politically powerless.” *Windsor v. United States*, 699 F.3d 169, 181 (2d Cir. 2012), *aff’d*, 133 S. Ct. 2675 (2013) (internal quotation marks omitted). The first two factors alone can be dispositive, and “[t]he presence of any of the factors is a signal” that the government classification at issue does not serve a legitimate objective. *Golinski v. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 983 (N.D. Cal. 2012).

Applying these criteria, courts have recognized that “discrimination based on transgender status independently qualifies as a suspect classification.” *See Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015); *see also Evancho*, 237 F. Supp. 3d at 288; *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015). As Defendants agree, “[t]ransgender people have suffered a long history of extreme discrimination and continue to suffer such discrimination to this day.” SOF ¶ 14. “There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity.” *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1051 (7th Cir. 2017); *see also Adkins*, 143 F. Supp. 3d at 139; *Evancho*, 237 F. Supp. 3d at 288.

Moreover, as Defendants also agree, this longstanding discrimination is unrelated to the ability of transgender people to contribute to society. SOF ¶ 14; *see Adkins*, 143 F. Supp. 3d at 139 (“The Court is not aware of any data or argument suggesting that a transgender person, simply by virtue of transgender status, is any less productive than any other member of society.”). For these reasons alone—a history of discrimination and the lack of any relation to

ability—discrimination against transgender people must be subjected to strict scrutiny.

The remaining two considerations militating in favor of strict judicial scrutiny are present here as well. Not only is gender identity an immutable and distinguishing characteristic, but transgender people are also politically vulnerable minority. SOF ¶¶ 2, 5; *see also Hernandez-Montiel, v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (“[s]exual orientation and sexual identity are immutable; they are so fundamental to one’s identity that a person should not be required to abandon them”); *Norsworthy*, 87 F. Supp. 3d at 1119 n.8 (gender identity “equally immutable” as sexual orientation); *Adkins*, 143 F. Supp. 3d at 140 (“[T]ransgender people lack the political strength to protect themselves.”); *Evancho*, 237 F. Supp. 3d at 288.

In sum, because discrimination against transgender people rings each and every alarm bell alerting courts to a suspect classification, the Birth Certificate Policy is subject to strict scrutiny. The Ninth Circuit has already confirmed that government discrimination based on sexual orientation requires heightened scrutiny. *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481-84 (9th Cir. 2014). The logic of that holding “applies with at least equal force to discrimination against transgender people, whose identity is equally immutable and irrelevant to their ability to contribute to society, and who have experienced even greater levels of societal discrimination and marginalization.” *Norsworthy*, 87 F. Supp. 3d at 1119 n.8.

ii. The Birth Certificate Policy Triggers At Least Intermediate Scrutiny Because It Discriminates on the Basis of Sex.

Independently, discrimination against transgender people is also a form of sex-based discrimination that must, at the very least, be supported by an “exceedingly persuasive justification” under intermediate scrutiny. *See United States v. Virginia*, 518 U.S. 515, 531 (1996); *Schwenk v. Hartford*, 204 F.3d 1187, 1200-02 (9th Cir. 2000) (holding that an attack motivated by transgender status was “committed because of gender”).

Discrimination against transgender people discriminates based on sex. First, an individual's transgender status inherently turns on "sex-based considerations." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989). An individual is defined as transgender because of the discordance between two sex-based considerations: gender identity and birth-assigned sex. A robust body of case law has recognized that discrimination because of gender identity is necessarily discrimination because of sex.³ See, e.g., *Schwenk*, 204 F.3d at 1201-02 (holding that conduct motivated by an individual's "gender or sexual identity" is because of "gender," which is interchangeable with "sex"); *Roberts v. Clark Cty Sch. Dist.*, 215 F. Supp. 3d 1001, 1011 (D. Nev. 2016); *Fabian*, 172 F. Supp. 3d at 526-27; *Norsworthy*, 87 F. Supp. 3d at 1119; *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 WL 1197415, at *2 (D. Minn. Mar. 16, 2015). Here, in particular, the sex that the government lists on a person's birth certificate is literally a government classification of that person's sex, and the way in which Idaho classifies the sex of transgender people on their birth certificates causes them harm.

Second, discrimination against transgender people penalizes them for their perceived nonconformity to sex stereotypes. As the Ninth Circuit has explained, by definition, a transgender person's "inward identity [does] not meet social definitions of masculinity [or femininity]" associated with one's birth-assigned sex. *Schwenk*, 204 F.3d at 1201. In that sense, "[a] person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes." *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011); see also *Whitaker*, 858 F.3d at 1049 (collecting cases).

³ Discrimination against a transgender individual also constitutes sex discrimination in the same way that firing an employee because she converts from Christianity to Judaism "would be a clear case of discrimination 'because of religion,'" and "[n]o court would take seriously the notion that 'converts' are not covered." *Schroer v. Billington*, 577 F. Supp. 2d 293, 306 (D.D.C. 2008); *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 526 (D. Conn. 2016).

iii. The Birth Certificate Policy Cannot Satisfy Any Level of Review, as Defendants Concede.

The Birth Certificate Policy cannot survive any level of scrutiny, much less the exacting inquiry required by heightened scrutiny. “[E]ven in the ordinary equal protection case calling for the most deferential of standards, [courts] insist on knowing the relation between the classification adopted and the object to be obtained.” *Romer v. Evans*, 517 U.S. 620, 632 (1996).

Here, there is no rational basis for depriving transgender people like Plaintiffs of birth certificates that match their gender identity, without the inclusion of information that discloses their transgender status. Defendants concede that they “are aware no rational basis” for categorically refusing to correct gender markers on the birth certificates of transgender people. SOF ¶ 21. That is sufficient to end the matter.

The undisputed facts here also confirm and illustrate the absence of any rational basis for the Birth Certificate Policy. For transgender people born in Idaho, the Birth Certificate Policy does not further—and in fact undermines—any conceivable goal of aiding the verification of one’s identity. SOF ¶ 12. A conflict between one’s gender identity and one’s birth certificate casts doubt upon whether one is the same person reflected on the birth certificate. *Id.*

Courts in Michigan and Alaska have recognized that the refusal to correct the gender markers of transgender people on identity documents fails to serve a legitimate government interest. In Michigan, the court held that the state’s refusal to correct the gender markers on the driver’s licenses of transgender plaintiffs “[bore] little, if any, connection to Defendant’s purported interests” in maintaining accurate identity documents. *Love v. Johnson*, 146 F. Supp. 3d 848, 856 (E.D. Mich. 2015). In Alaska, the court held that a similar refusal to correct the gender marker on the driver’s license of a transgender woman not only lacked “a close and substantial relationship to the furtherance of the state’s interest in accurate document and

identification” but, in fact, created a risk of “inaccurate and inconsistent identification documents.” *K.L. v. Alaska Dep’t of Admin., Div. of Motor Vehicles*, No. 3AN-11-05431, 2012 WL 2685183, at *7 (Alaska Super. Ct. Mar. 12, 2012). Just as a license bearing a transgender person’s birth-assigned sex can “inaccurately describe the discernable appearance of the license holder by not reflecting the holder’s lived gender expression of identity,” *id.*, and thereby cast doubt on whether the person at issue is the same the person reflected on the license, the same is true for birth certificates.

Furthermore, the Birth Certificate Policy creates inconsistencies with other identity documents that *do* accurately reflect a transgender person’s gender identity, such as a driver’s license or a passport, further undermining any government interest in identity verification. *See id.* (noting the “discrepancies and inaccuracies between Alaska driver’s licenses [and] other forms of government issued identification”). No government interest is served by this patchwork of identity documents, with only some accurately conveying a person’s identity.

Indeed, the fact that forty-six states and the District of Columbia all have processes by which transgender people can correct the gender markers on their birth certificates confirms the absence of any government justification adequate to sustain Idaho’s Birth Certificate Policy.⁴ *See Love*, 146 F. Supp. 3d at 857 (finding that Michigan’s driver’s license policy was not adequately tailored to purported state interests where numerous other states did not impose similar obstacles to correcting the gender markers on their driver’s licenses). Idaho’s own policy of permitting transgender people to correct the gender markers on their Idaho driver’s licenses

⁴ *See generally* National Center for Transgender Equality, *ID Documents Center*, available at <https://www.transequality.org/documents> (providing comprehensive state-by-state information); *see also* Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 Mich. J. Gender & L. 373, 381 (2013).

reinforces that conclusion.

In sum, if a transgender person seeks to correct the gender marker on his or her Idaho birth certificate in order to accurately reflect his or her gender identity, then there is no rational basis for the government’s refusal to provide such a birth certificate. Defendants appear to add a caveat—that such a person would need to undertake “clinically appropriate treatment” to correct their birth certificate, SOF ¶ 21—but that is already inherent in the nature of the request: correcting identity documents to match one’s gender identity is sought as part of gender transition, the entire purpose of which is to serve one’s health and well-being. *Id.* ¶ 8. Defendants also seem to imply that a transgender person should demonstrate to the satisfaction of a government official that he or she has “permanently change[d] his or her sex.” *Id.* ¶ 21. Given that gender identity is an immutable characteristic, *id.* ¶ 5, this additional requirement is wholly gratuitous. It also risks inviting an inquiry of what constitutes a sufficiently “permanent” transition in the eyes of government. That inquiry is rife for mischief and, more importantly, the permanence of any particular step taken to transition has no bearing on the legitimacy of a transgender person’s need for a birth certificate matching his or her gender identity. *Id.* ¶ 16.

B. The Birth Certificate Policy Violates the Due Process Clause.

i. The Birth Certificate Policy Infringes Upon the Right to Informational Privacy.

The Supreme Court has recognized a constitutionally protected zone of privacy sheltered by the Fourteenth Amendment’s Due Process Clause. *See Whalen v. Roe*, 429 U.S. 589, 598 n.23 (1977). This zone of privacy protects against “disclosure of personal matters.” *Tucson Woman’s Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004) (internal quotation mark omitted). Some of the considerations relevant to whether the government has encroached upon a person’s right to privacy include the type of information at issue; the potential for harm in disclosure; the

adequacy of safeguards to prevent disclosure; the degree of need for access; and whether public policy militates towards access. *Id.*

The government violates a person's right to keep his or her transgender status private when it deprives that person of identity documents consistent with his or her gender identity. *See Love*, 146 F. Supp. 3d at 856 (“[R]equiring Plaintiffs to disclose their transgender status . . . directly implicates their fundamental right of privacy.”); *K.L.*, 2012 WL 2685183, at *6 (holding that the refusal to correct the gender marker on the driver's license of a transgender woman violated her right to privacy). One's transgender status is deeply private and sensitive information. *See Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999) (“The excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate.”). The Birth Certificate Policy causes the disclosure of such information by the display of a gender marker discordant with one's gender identity and by the inclusion of one's birth name even after a name change, both of which act as red flags that the birth certificate holder is transgender. SOF ¶ 22.

The disclosure of one's transgender status, particularly in circumstances where one would otherwise keep that information private, can provoke intense “hostility and intolerance from others.” *Powell*, 175 F.3d at 111. “A mismatch between the gender indicated on the document and the gender of the holder calls down discrimination.” *Adkins*, 143 F. Supp. 3d at 139-40. There remains “a great deal of animosity” towards transgender people, as confirmed by a “plethora” of evidence—including disturbing hate crimes statistics. *Love*, 146 F. Supp. 3d at 855-56. Plaintiffs' own life experiences confirm that these threats are all too real. *See, e.g.*, SOF ¶¶ 27, 39. Moreover, after one's transgender status is disclosed to a third party through an identity document discordant with one's gender identity, there are no safeguards to prevent that

third party from disclosing that information to others. *See, e.g.*, SOF ¶¶ 30, 32-33 (describing experiences where third parties further disclosed F.V.’s transgender status to others). The Birth Certificate Policy thus not only reveals private information, but it also deprives a person of control over the circumstances in which personal matters are disseminated, which is an essential aspect of privacy. *See Ostergren v. Cuccinelli*, 615 F.3d 263, 283 (4th Cir. 2010).

Defendants admit that “they are aware of no legitimate government interest in forcing a person’s disclosure of transgender status.” SOF ¶ 22. There is accordingly no public policy or need served by the unwanted disclosure of one’s transgender status. And there are simple ways to prevent that unwanted disclosure here. In addition to allowing transgender people to correct the gender markers on their birth certificates to match their gender identity, Idaho can also easily issue copies of birth certificates without displaying their birth names—as it already does for others in contexts where privacy interests are implicated. *See, e.g.*, Idaho Code § 39-250(2)-(3) (permitting birth certificates that change a child’s name after an acknowledgement of paternity without requiring display of child’s former name); Idaho Code § 39-258(a) (same for adoption); *cf. In re A.L.*, 81 N.E.3d 283, 289-91 (Ind. Ct. App. 2017) (holding that transgender petitioner was entitled to waive the publication requirement ordinarily required for a name change because of the risk of harm from disclosing one’s transgender status). There is no justification for the privacy violations that the Birth Certificate Policy gratuitously inflicts.

ii. The Birth Certificate Policy Impermissibly Burdens the Right to Individual Liberty, Autonomy, and Dignity.

The Birth Certificate Policy also tramples over Plaintiffs’ substantive due process rights. “[T]he liberty guaranteed by the Fourteenth Amendment extends beyond the Bill of Rights to ‘the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood

were they formed under the compulsion of the State.” *Latta*, 19 F. Supp. 3d at 1068 (*quoting Casey*, 505 U.S. at 851).

Few decisions are as deeply personal and important as the decision by transgender people to live in a manner consistent with their gender identity. For F.V., for example, living openly as a woman has sometimes come at great personal cost—but it has also allowed her to live an authentic life, which she cherishes. SOF ¶ 26. The right to liberty secured by the Constitution safeguards that exercise of individual autonomy. “The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons . . . to define and express their identity.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593 (2015). Constitutionally protected liberty interests are those that implicate “individual dignity and autonomy”—i.e., decisions or actions that “shape an individual’s destiny.” *Id.* at 2597, 2599. A person’s core internal sense of their own gender, and what that means for their everyday life, is profoundly central to their personal identity in ways the Constitution protects.

Transgender people possess this liberty in equal measure with all others. As the Supreme Court has cautioned, “rights” cannot be “defined by who exercised them in the past”; otherwise, “new groups could not invoke rights once denied.” *Id.* at 2602. Our founders “did not presume to know the extent of freedom in all its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning.” *Id.* at 2598.

A woman’s liberty interest to live as a woman is severely burdened where the government insists on treating her as a man, rather than a woman. Just as requiring a non-transgender woman to identify herself as a man on government-issued identity documents would intrude upon individual liberty, the Birth Certificate Policy intrudes upon Plaintiffs’ right to live as the gender that they are. The Due Process Clause protects self-expression as an “intimate

choice[] that define[s] personal identity and beliefs.” *Id.* at 2597. In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court held that states could not criminalize intimate same-sex conduct; ten years later in *United States v. Windsor*, 133 S. Ct. at 2689, it recognized that the government’s refusal to extend legal recognition to the marriages of same-sex couples was a deprivation of liberty, because it restricted those individuals’ ability to “define themselves by their commitment to each other.” Here, as well, Plaintiffs’ “only real path” to full recognition of their personhood is through full recognition of their gender. *Obergefell*, 135 S. Ct. at 2594.

iii. As Under the Equal Protection Clause, No Rational Basis for the Policy Exists Under the Due Process Clause.

Defendants’ concession that the Birth Certificate Policy lacks a rational basis under the Equal Protection Clause also compels the same conclusion under the Due Process Clause as a matter of law. *See Munoz v. Sullivan*, 930 F.2d 1400, 1404 (9th Cir. 1991) (holding that “the rational basis test is identical under the two rubrics” for equal protection and due process). Accordingly, all the reasons for why the Birth Certificate Policy violates the Equal Protection Clause, *supra* Section III(A)(iii), also doom its constitutionality under the Due Process Clause.

C. The Birth Certificate Policy Impermissibly Compels Speech in Violation of the First Amendment.

The Birth Certificate Policy violates Plaintiffs’ First Amendment rights by impermissibly compelling speech: whenever F.V. and Ms. Martin use their birth certificates, they must falsely identify themselves as “male” and also reveal private information about their transgender status.

The First Amendment protects not only the right to speak but also “the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). The Supreme Court has consistently “prohibit[ed] the government from telling people what they must say.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 133 S. Ct. 2321, 2327 (2013) (internal quotation marks omitted). For example, the government may not require license plates with the state motto

“Live Free or Die,” *Wooley*, 430 U.S. at 707, require students to salute the American flag, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), or require students to wear uniforms with the motto, “Tomorrow’s Leaders,” *Frudden v. Pilling*, 742 F.3d 1199 (9th Cir. 2014), without satisfying the strictures of strict scrutiny. This protection against compelled speech is not limited to speech that sends an ideological message. *Frudden*, 742 F.3d at 1206.

The Birth Certificate Policy invades a transgender person’s right not to disseminate an inaccurate message with which they fundamentally disagree—that they are male or female, when that does not match their gender identity. People present identity documents to answer a fundamental question: “Who are you?” Yet the government here foreordains how Plaintiffs must answer that question—with a response that is false and discordant with their identity. “At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.” *Agency for Int’l Dev.*, 133 S. Ct. at 2327 (internal quotation marks omitted).

Just as courts have recognized that the expression of one’s gender identity is entitled to First Amendment protection, compelling expression contrary to one’s gender identity also runs afoul of the First Amendment. *Cf. Doe ex rel. Doe v. Yunits*, No. 001060A, 2000 WL 33162199, *3 (Mass. Super. Oct. 11, 2000) (holding that a school likely violated transgender girl’s right to freedom of expression by prohibiting her from wearing typical girls’ clothing and otherwise expressing her female gender identity), *aff’d sub nom, Doe v. Brockton Sch. Comm.*, 2000-J-638, 2000 WL 33342399 (Mass. App. Ct. Nov. 30, 2000).

It makes no constitutional difference whether Plaintiffs may resort to “alternative means to disclaim” the speech compelled by their birth certificates, such as by explaining that they are women who are transgender. *See Frudden*, 742 F.3d at 1205-06. Indeed, such speech would

come at the price of disclosing their transgender status—which itself is speech that they have a right to keep private against coerced disclosure. And, as a practical matter, the government’s message that Plaintiffs are “male” substantially frustrates Plaintiffs’ ability to communicate the message they are female. For example, Ms. Martin encountered significance resistance from a Department of Motor Vehicle clerk who did not believe that Ms. Martin was entitled to a driver’s license with a female gender marker (even though that refusal was contrary to state policy), given that she could not produce a birth certificate reflecting that she was female. SOF ¶ 40.

Because the Birth Certificate Policy impermissibly compels speech, it is subject to strict scrutiny under the First Amendment, but as noted above, it fails even rational basis review.

CONCLUSION

As this Court has previously recognized, “[i]t is precisely because the issue raised by this case touches the heart of what makes individuals what they are that we should be especially sensitive to the rights of those whose choices upset the majority.” *Latta*, 19 F. Supp. 3d at 1059 (internal quotation marks omitted). Plaintiffs respectfully request that this Court grant their motion in full and issue (i) declaratory relief holding the Birth Certificate Policy unconstitutional and (ii) injunctive relief enjoining Defendants and others subject to the injunction from enforcing the Birth Certificate Policy, including by refusing to provide birth certificates to transgender people that accurately reflect their sex, consistent with their gender identity, without the inclusion of information that would disclose their transgender status.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

F.V. and DANI MARTIN,

Plaintiffs,

v.

RUSSELL BARRON, in his official capacity as Director of the Idaho Department of Health and Welfare; ELKE SHAW-TULLOCH, in her official capacity as Administrator of the Division of Public Health for the Idaho Department of Health and Welfare; and JAMES AYDELOTTE, in his official capacity as State Registrar and Chief of the Bureau of Vital Records and Health Statistics,

Defendants.

No. 1:17-cv-00170-CWD

**PLAINTIFFS' STATEMENT OF
MATERIAL FACTS IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Local Civil Rule 7.1(b)(1), Plaintiffs submit the following separate statement of material facts in support of their motion for summary judgment.

Background Information Regarding Transgender People

1. Gender identity is a person's internal sense of belonging to a particular sex. Declaration of Dr. Randi Ettner ("Ettner Decl.") ¶ 16; Answer, Dkt. No. 23, ¶ 15. It is a deeply felt and core component of human identity that everyone possesses. Ettner Decl. ¶¶ 16, 18.
2. Gender identity is an innate and immutable characteristic with biological roots, as confirmed by a growing body of research. Ettner Decl. ¶¶ 21-24, 36.
3. Although the majority of people possess a gender identity that matches their sex assigned at birth, that is not the case for transgender people, who are defined as transgender because their gender identity does not match their sex assigned at birth. Ettner Decl. ¶ 13; Answer ¶ 16.
4. An individual's sex is generally assigned at birth based on their external genitalia. Ettner Decl. ¶ 13; Answer ¶ 17. However, other sex-related characteristics can include chromosomes, hormone levels, internal reproductive organs, and gender identity. Ettner Decl. ¶ 15; Answer ¶ 17.
5. In situations where an individual's sex-related characteristics are not in typical alignment with each other, gender identity is the critical determinant of sex. Ettner Decl. ¶ 17. Attempts to change an individual's gender identity in order to bring it into alignment with the individual's birth-assigned sex are not only ineffective but can include extreme psychological harm. *Id.* ¶ 24, 32. All major associations of medical and mental health providers, such as the American Medical Association, the American Psychiatric Association, the American Psychological Association, and the World Professional Association for Transgender Health,

consider such attempts unethical. *Id.* ¶ 24.

6. The discordance between one's gender identity and birth-assigned sex can be associated with clinically significant distress, which is known as gender dysphoria. *Id.* ¶ 25. Gender dysphoria is a serious medical condition that, if inadequately treated, can have serious health consequences, such as anxiety, depression, and suicidality. *Id.* ¶¶ 25, 28; Answer ¶ 19.

7. Treatment for gender dysphoria is governed by internationally recognized standards of care. Ettner Decl. ¶¶ 29, 30. The process by which transgender individuals bring their appearance and lived experience into alignment with their gender identity is known as gender transition. *Id.* ¶ 33. Transition can involve both social and medical steps, such as hormone therapy or surgical treatment, although the precise needs for any particular person are individualized. *Id.* ¶ 31; Answer ¶ 22. Gender transition does not *change* a transgender person's sex; rather, it brings that person's appearance and lived experience into greater alignment with their existing gender identity, which determines their sex. Ettner Decl. ¶ 32.

8. Living in a manner consistent with one's gender identity, also known as social transition, is essential to the health and well-being of transgender people and is a key aspect of treatment for gender dysphoria. *Id.* ¶¶ 31, 33-34. Indeed, social transition can be the most important—and is sometimes the only—aspect of transition that transgender people undertake. *Id.* ¶ 33. Correcting one's gender marker on identity documents is an element of social transition. *Id.*; Answer ¶ 22. Gender transition is undertaken in order to maximize health and well-being. Ettner Decl. ¶ 34.

The Importance of Accurate Identity Documents for Transgender People

9. A birth certificate is more than a piece of paper. Answer ¶ 27.

10. A birth certificate is an essential government-issued document that individuals use

to prove their identity and the range of information the certificate conveys. Answer ¶ 28.

11. Birth certificates are used in a wide variety of contexts, including to obtain other identity documents (such as driver's licenses, social security cards, passports, and other state and federal identification documents), to prove age, and to satisfy other identity requirements.

Answer ¶ 29; Ettner Decl. ¶ 43.

12. All people need access to an accurate birth certificate that they can use to prove their identity. For transgender people, however, the gender marker on their birth certificate can undermine that purpose. A transgender person whose outward appearance conflicts with the gender marker on his or her birth certificate may be questioned by person to whom the transgender person submits the certificate. Answer ¶ 35.

13. Transgender people who use a birth certificate with information reflecting their birth-assigned sex may thereby disclose their transgender status, which is personal information that they may not wish to disclose for fear of retaliation. Answer ¶ 32.

14. According to the 2015 U.S. Transgender Survey, nearly one in three transgender respondents who showed an identity document with a name or gender that did not match their perceived gender were verbally harassed, denied benefits or service, asked to leave, or assaulted. Declaration of Monica Cockerille ("Cockerille Decl."), Ex. A. Defendants admit that "[t]ransgender people have suffered a long history of extreme discrimination and continue to suffer such discrimination to this day." Answer ¶ 74. This discrimination is irrational: a person's gender identity or transgender status bears no relation to a person's ability to contribute to society. Answer ¶ 74.

15. Depriving transgender people of access identity documents that accurately reflect their gender identity is harmful and can exacerbate gender dysphoria. Ettner Decl. ¶ 41.

Inaccurate identity documents can cause a transgender individual to isolate, in order to avoid situations that might lead to discrimination, ridicule, fraud accusations, or even violence. *Id.* Being stripped of one’s dignity, privacy, and the ability to move about freely in society can cause negative health consequences. *Id.*

16. From a medical and scientific perspective, there is no basis for refusing to acknowledge a transgender person’s sex, as determined by their gender identity, based on whether that person has undergone surgery, hormone treatment, or any other particular medical treatment. *Id.* ¶¶ 46-49. Not all individuals with gender dysphoria require hormone or surgical treatment, for example. *Id.* ¶ 47. There is no medical basis for requiring that transgender people obtain a particular medical treatment as a condition for obtaining identity documents, including birth certificates, matching who they are. *Id.* ¶¶ 46-49.

Defendants’ Birth Certificate Policy

17. Defendant Russell Barron (“Mr. Barron”) is the Director of the Idaho Department of Health and Welfare (“IDHW”). Answer ¶ 8. Mr. Barron supervises the activities of the Department and enforces Idaho’s vital statistics laws. *Id.*

18. Defendant Elke Shaw-Tulloch (“Ms. Shaw-Tulloch”) is the Administrator of IDHW’s Division of Public Health (the “Division of Public Health”), which includes the Bureau of Vital Records and Health Statistics. *Id.* ¶ 9. Ms. Shaw-Tulloch supervises the activities of the Division of Public Health, which includes enforcement of Idaho’s vital statistics laws. *Id.*

19. Defendant James Aydelotte (“Mr. Aydelotte”) is the State Registrar and Bureau Chief of the Bureau of Vital Records and Health Statistics (“State Registrar”) within IDHW. *Id.* ¶ 10. In his role as the State Registrar, Mr. Aydelotte is the official custodian of the vital records of the state, and he also enforces Idaho’s vital statistics laws. *Id.* Mr. Aydelotte exercises

authority over the issuance and alteration of Idaho birth certificates. *Id.*

20. Mr. Barron, Ms. Shaw-Tulloch, and Mr. Aydelotte (collectively, “Defendants”) enforce a policy that does not allow transgender people to correct the sex designation on their birth certificates, also known as a gender marker, and that requires the inclusion of their birth names on such certificates even after a name change (hereafter, “Birth Certificate Policy”). *Id.* ¶ 36; Declaration of F.V. (“F.V. Decl.”) ¶ 11; Cockerille Decl., Ex. B.

21. Defendants admit they “are aware of no rational basis justifying a prohibition against changing the sex designation on the birth certificate of a transgender person who has undergone clinically appropriate treatment to permanently change his or her sex.” Answer ¶ 5.

22. Defendants admit that they “are aware of no legitimate interest in forcing a person’s disclosure of transgender status.” *Id.* ¶ 83. They also admit that “a transgender person who uses a birth certificate that contains a sex designation other than his or her gender identity may disclose transgender status.” *Id.* ¶ 32.

23. The Idaho Department of Transportation permits a transgender person to correct the sex indicated on his or her driver’s license. *Id.* ¶ 4.

Plaintiff F.V.

24. Plaintiff F.V. is a 28-year-old woman who was born in Boise, Idaho and who currently resides in Hawai‘i. F.V. Decl. ¶ 2.

25. F.V. is transgender. *Id.* ¶ 3. Her gender identity and expression is female, but she was assigned the sex of male at birth. *Id.*

26. F.V. began living openly as female when she was approximately 15 years old, and she has lived openly as a woman since that time. *Id.* ¶ 4. Being able to live openly as a woman is essential to F.V.’s sense of self and her ability to live authentically, as who she is. *Id.* ¶ 5.

27. Like other transgender people, F.V. has personally encountered violence on the basis of her transgender status. *Id.* ¶¶ 7-8.

28. She has also faced hostility when presenting identity documents disclosing her transgender status. *Id.* ¶¶ 15-20.

29. For example, when visiting a social security office, she presented her birth certificate identifying her as “male,” which prompted a staff member to exclaim, “wow, you’re a tranny.” *Id.* ¶ 15.

30. Others in the waiting area heard this remark, and a man hurled an epithet at F.V., referring to her as a “faggot,” when she was leaving the office. *Id.* ¶ 16.

31. F.V. also experienced hostility that caused her to fear for her personal safety when using other identity documents in the past that were discordant with her gender identity. *Id.* ¶¶ 18-20.

32. For example, before F.V. corrected the gender marker on her driver’s license, she presented her driver’s license to a cashier at a store, which disclosed that she was transgender to the cashier. *Id.* ¶ 19. There was a homeless man nearby who witnessed the cashier’s reaction. *Id.* He then stalked F.V. and made sexual comments to her as she was leaving the parking lot of the store at night, making her fearful for my personal safety. *Id.*

33. Similarly, there was an instance when F.V. needed to present her driver’s license before the gender marker was corrected while checking out at Wal-Mart. *Id.* ¶ 20. The employee did a double take and swore loudly, “holy fucking shit man, you’re a transvestite?” *Id.* He then called over another employee from another checkout stand and said, “dude, this chick’s a tranny, can you believe that shit?” *Id.* The experience embarrassed F.V. and made her feel like a spectacle to be gawked at by third parties. *Id.*

34. On March 21, 2017, F.V. contacted Idaho's Bureau of Vital Records and Health Statistics to inquire if she could correct the gender marker on her birth certificate. *Id.* ¶ 11. She was informed by staff that she could not do so. *Id.*

Plaintiff Dani Martin

35. Plaintiff Dani Martin is a 31-year-old woman who was born at Mountain Home Air Force Base in Idaho and raised in Mountain Home. She currently resides in Meridian with her wife and children. Declaration of Dani Martin ("Martin Decl.") ¶ 2.

36. She works as a food service correctional officer for the State of Idaho, which is a role that she has served for the last eight years, and she currently works at a facility that helps those nearing release prepare to re-enter society. *Id.* ¶ 3.

37. Ms. Martin's gender identity and expression is female, but she was assigned the sex of male at birth. *Id.* ¶ 4.

38. She came out as transgender in 2014 and she began living openly as a woman at that time. *Id.* ¶ 7.

39. Ms. Martin has endured harassment on the basis of her transgender status, including harassment that has caused her to fear for her personal safety. *Id.* ¶ 17.

40. When Ms. Martin went to the Idaho Department of Motor Vehicles to correct the gender marker on her driver's license, the clerk wrongly insisted that she would need to present her birth certificate for inspection, and a supervisor had to intervene to resolve the dispute. *Id.* ¶ 14. It was humiliating for Ms. Martin to have to defend that she was a woman and entitled to be treated as such against a government official's insistence to the contrary, simply because she did not have a birth certificate reflecting that she was female. *Id.* ¶ 15.

41. For both Ms. Martin and F.V., having a birth certificate that matches their female

gender identity, without disclosing the fact that they are transgender, would help them go about their lives as the women that they are and to be recognized as such. *Id.* ¶ 19; F.V. Decl. ¶ 21.

DATED: September 29, 2017

By: /s/ Monica G. Cockerille

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Attorneys for Plaintiffs F.V. and Dani Martin

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

F.V. and DANI MARTIN,

Plaintiffs,

v.

RUSSELL BARRON, in his official capacity as Director of the Idaho Department of Health and Welfare; ELKE SHAW-TULLOCH, in her official capacity as Administrator of the Division of Public Health for the Idaho Department of Health and Welfare; and JAMES AYDELOTTE, in his official capacity as State Registrar and Chief of the Bureau of Vital Records and Health Statistics,

Defendants.

No. 1:17-cv-00170-CWD

DECLARATION OF F.V.

DECLARATION OF F.V.

I, F.V., declare as follows:

1. I am a plaintiff in the above-captioned matter. I have actual knowledge of the matters stated in this declaration.

2. I am a 28-year-old woman. I was born in Boise, Idaho. I was raised in eastern Washington by my adoptive grandparents. I currently reside in Hawai'i with my boyfriend of four years. I have a bachelor's degree in computer science and communications. I create and design websites for a living, and I also work part-time as a desk clerk at a women's hostel.

3. I am transgender. I was assigned the sex of male at birth. However, I knew from early on, at approximately 6 years old, that I was female.

4. I began living openly as female when I was approximately 15 years old, and I have lived openly as a woman since then. It was not easy for me to come out to my family, or for them to understand who I am. With the passage of time, most of my family has been able to accept who I am, but my grandfather still has difficulty doing so, creating a painful separation between us. I am fortunate to have also found support in the family I have created for myself in Hawai'i. I am actively involved in my church, where I have served in a leadership role, and I regard my fellow churchgoers as my extended family.

5. Being able to live openly as a woman is essential to my sense of self. It is woven into the fiber of who I am. I cannot imagine living life as a man, because I am not a man, and I would be living a lie if I were to try to do that. I think everyone hopes to lead an authentic life in which they can wake up each morning and face the world as who they truly are. Living openly as a woman is the only way for me to lead an authentic life and to stay true to who I am.

6. Since beginning my transition to live openly as female, I have taken steps to bring

my body and my gender expression into better alignment with my female gender identity. In my adolescence, that included wearing clothes more typical of girls, using make-up, and adopting a more feminine hairstyle. In adulthood, working with healthcare professionals, I have undertaken clinically appropriate treatment to bring my body in greater alignment with my female gender identity as part of my gender transition.

7. My gender identity has made me a target for harassment at various points in my life. When I began transitioning in high school and adopting a more feminine appearance, a boy who was on the varsity track team got a hold of my cell phone number and starting texting and bullying me, making transphobic and sexual remarks. This escalated to the point of him coming up to me one day out-of-the-blue and punching me in the face.

8. On another occasion in high school, I was riding the bus home. A boy on the bus bragged to other students and even the bus driver that he was going to beat me up, telling everyone, "I'm going to beat up this faggot." When I got off the bus, I felt like I had been left to the wolves. I ran away as fast as I could, terrified for my safety.

9. In adulthood, I legally changed my name from a traditionally male one to a traditionally female one. I started going by this traditionally female name when I was a teenager. I have also changed my name on my driver's license and passport and in my social security records.

10. I have also corrected the gender marker on my driver's license with the Hawai'i Department of Transportation and in my records with my state health insurance provider and the Social Security Administration.

11. I have been unable to correct my Idaho birth certificate, however, to reflect my female gender identity. On March 21, 2017, I contacted Idaho's Bureau of Vital Records and

Health Statistics to inquire if I could correct the gender marker on my birth certificate. I was informed by staff that I could not do so.

12. The fact that I must go about life with a birth certificate declaring that I am male is a permanent, embarrassing, and painful reminder that the state of my birth does not recognize me as female. Idaho's refusal to correct the gender maker on my birth certificate to female feels archaic and senseless. Giving me that tiny piece of dignity is what I view as a harmless civil right: it hurts no one, and it would make a meaningful, positive difference in my life.

13. Idaho's refusal also negatively affects my ability to function successfully as the woman that I am in all aspects of my life, including any time when I present my birth certificate to others. Presenting an identity document indicating that I was assigned male at birth (whether through the gender marker or my birth name) is not only humiliating but also dangerous, putting me at risk of violence, because it discloses that I am transgender.

14. I am aware of the high incidence of harassment, discrimination, and violence directed at transgender people. I have experienced a taste of that in my own life, as noted above, and I know transgender people who have experienced far worse than me. Possessing a birth certificate that is incongruent with my gender identity and expression increases my risk of exposure to harassment, discrimination, and violence.

15. The incorrect gender on my birth certificate has exposed me to hostility when I visited the social security office, for example. When I presented my birth certificate to the employee working there, his face dropped, and he wrinkled his nose like he had just smelled something foul. His first words back to me were, "wow, you're a tranny," which is a derogatory term to refer to transgender people. He was hostile to me during the rest of my interaction with him.

16. A man in the waiting area of the social security office overheard that the worker had called me a “tranny.” That man then took it upon himself to call me a “faggot” as I was leaving the office. The entire experience was very upsetting. It made me feel like an outcast in my own community when I was just trying to go about my everyday life like everyone else.

17. I have also had to present my birth certificate in other contexts, and I will continue to need do so, such as when applying for and periodically renewing my state health insurance.

18. Whenever I have had to present an identity document with the wrong gender marker, I hear things like, “wow, you were born a very different person; I never would have guessed!” It puts my whole private life out there on display for everyone to see, leaving me totally exposed. To be clear, I am not ashamed of who I am—in fact, I am proud of who I am, and what it has taken for me to get to this place of self-acceptance—but I also want to control the circumstances under which someone finds out that I am transgender.

19. On another occasion before I corrected the gender marker on my driver’s license, I presented my driver’s license to a cashier at a store, which disclosed that I was transgender to the cashier. There was a homeless man nearby who witnessed the cashier’s reaction. He then stalked me and made sexual comments to me as I was leaving the parking lot of the store at night. That made me fear for my personal safety.

20. Similarly, I had to present my driver’s license before the gender marker was corrected when I was checking out at Wal-Mart one time. The employee did a double take and swore loudly, “holy fucking shit man, you’re a transvestite?” I responded that that was an archaic term. He then called over another employee from another checkout stand and said, “dude, this chick’s a tranny, can you believe that shit?” It was embarrassing to be treated like

that—as if I was some sort of freak show to be gawked at by the whole town.

21. Having a birth certificate that matches my female gender identity, without disclosing the fact that I am transgender, would help me go about my life as the woman that I am and to be recognized as such.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: September 28, 2017

F.V.

F.V.

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Plaintiffs,

v.

RUSSELL BARRON, in his official capacity as Director of the Idaho Department of Health and Welfare; ELKE SHAW-TULLOCH, in her official capacity as Administrator of the Division of Public Health for the Idaho Department of Health and Welfare; and JAMES AYDELOTTE, in his official capacity as State Registrar and Chief of the Bureau of Vital Records and Health Statistics,

Defendants.

No. 1:17-cv-00170-CWD

DECLARATION OF DANI MARTIN

DECLARATION OF DANI MARTIN

I, Dani Martin, declare as follows:

1. I am a plaintiff in the above-captioned matter. I have actual knowledge of the matters stated in this declaration.

2. I am a 31-year-old woman. I was born at Mountain Home Air Force Base in Idaho, and I was raised in Mountain Home. I currently reside in Meridian, Idaho with my wife and two children.

3. I work as a food service correctional officer for the State of Idaho, which is a role I have served for the last eight years. Currently, I work at the Nampa Community Reentry Center. The people housed at this facility have generally committed lower-level crimes and are preparing to re-enter society as they near release. The center allows them to work while becoming reunited with their families and the community.

4. I am transgender. I was assigned the sex of male at birth. However, I knew from a young age that I was female.

5. I grew up in a Catholic household, and I did not feel comfortable coming out about who I was when I was younger. When I was a senior in high school, I tried to take a small step towards expressing my gender identity through clothing, but my friends turned their back on me, and some even started to bully me. They assumed that I was gay, called me a “fag,” and excluded me from social activities. After this experience, I tried to bury my gender deep down inside of myself so that I would not have acknowledge it.

6. I continued to remain in denial about my gender in much of my adulthood. I married a woman that I love and we started a family. But I continued to struggle with the distress that I felt from trying to deny my gender. Things got bad enough that I reached the point

where I felt like I had no hope left in my life. At that point, I broke down and came out to my wife as transgender. This was in early 2014. My wife also works as a counselor, and we found a counselor for me to see who had experience with transgender patients. My wife stayed with me after I came out, and we remain married today.

7. I began my transition that year, in 2014, after seeing a mental health professional. I have lived openly as a woman since that time.

8. Coming out to my family was very difficult. My parents did not take it well. My father called me at work and told me that I needed to come over and explain my gender identity to him. My mother and father still do not acknowledge my female gender identity to this day, and they refuse to call me by my name, Dani. I also wrote a letter coming out to my five siblings. My sisters called me to respond, but my brothers did not, and in general my siblings often misgender me, referring to me by male pronouns. All of this has also put a strain on the relationship between my parents and siblings, on the one hand, and my children, on the other.

9. Since beginning my transition to live openly as female, I have taken steps to bring my body and my gender expression into better alignment with my female gender identity, including through clinically appropriate treatment that I have undertaken working with health care professionals.

10. I have changed my name from a traditionally male one to a traditionally female one. I have also changed my name on my Idaho driver's license and in my social security records, and I am in the process of changing it on my passport.

11. I have corrected the gender marker on my driver's license with the Idaho Department of Transportation. There was no requirement for me to have undergone any specific medical treatment associated with my gender transition in order for me to do so. I have also

corrected my gender marker in records kept by the Social Security Administration.

12. I have been unable to correct the gender marker on my birth certificate, however, to reflect that I am female. Walking around life with a birth certificate that says I am male is a constant, painful reminder that the state that I call home does not recognize me as a woman on equal terms as other women. Whenever I have to present my birth certificate to others, it invites them to second-guess whether I am a “real” woman. It is important to me to have a birth certificate that accurately reflects who I am.

13. I have experienced first-hand the hostility that transgender people often experience when presenting identification that conflicts with their lived gender.

14. The incorrect gender on my birth certificate has exposed me to hostility when I visited the Idaho Department of Motor Vehicles. When I asked to correct the gender marker on my driver’s license, which I knew that state policy allowed, the clerk insisted that I needed to present my birth certificate for inspection. She told me, incorrectly, that the gender marker on my driver’s license would need to match the gender marker on my birth certificate. I could not produce such a birth certificate, however, because of Idaho’s birth certificate policy.

15. The clerk’s refusal to process my driver’s license request ultimately required the intervention of a supervisor to resolve, and it resulted in a discussion of my transgender status that could be heard by others waiting in line. Although the supervisor ultimately instructed the clerk to process my request, it was humiliating for me to have to defend that I was a woman, and entitled to be treated as such, against a government official’s insistence to the contrary, simply because my birth certificate did not reflect that I was female. Other women, who are not transgender, do not have to go through the indignity of experiences like that.

16. On another occasion, I attempted to change information regarding my name and

gender with my credit card company, so that my account information would properly reflect my female gender. The company refused to process my request unless I could produce a birth certificate reflecting my female gender and current name. As a result, my credit card information has not been updated.

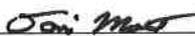
17. I am aware of the high incidence of harassment, discrimination, and violence directed at transgender people. Possessing a birth certificate that is incongruent with my gender identity and expression increases my risk of exposure to those harms. Indeed, I have personally encountered harassment based on my transgender status. For example, in the past, I have had coworkers refer to me as “tranny,” “she-male,” and “gay-fucker” and intentionally use incorrect male gender pronouns to refer to me. Hearing things like that just wears you down. That harassment was particularly concerning to me because my coworkers are supposed to have my back, and I rely on them for my personal safety as a correctional officer. I am now part of the diversity council at my work, and I try to do my part to improve the workplace environment so that everyone can feel safe and supported.

18. I have needed to present my birth certificate in the past, including in employment contexts, and I will continue to need to do so in the future.

19. Having a birth certificate that matches my female gender identity, without disclosing the fact that I am transgender, would help me go about my life as the woman that I am and to be recognized as such.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: September 28, 2017



Dani Martin

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official capacity as State Registrar and Chief of the
Bureau of Vital Records and Health Statistics,

No. 1:17-cv-00170-CWD

**DECLARATION OF
DR. RANDI C. ETTNER**

Defendants.

DECLARATION OF DR. RANDI C. ETTNER, Ph.D.

I, Dr. Randi C. Ettner, declare as follows:

1. I submit this expert declaration based on my personal knowledge.
2. If called to testify in this matter, I would testify truthfully and based on my expert opinion.

Qualifications and Basis of Opinion

3. I am a licensed clinical and forensic psychologist with expertise concerning the diagnosis and treatment of gender dysphoria. I received my doctorate in psychology from Northwestern University in 1979. I have been the chief psychologist at the Chicago Gender Center since 2005, which specializes in the treatment of individuals with gender dysphoria. I have been involved in the treatment of patients with gender dysphoria since 1977, when I was an intern at Cook County Hospital in Chicago.

4. During the course of my career, I have evaluated and/or treated between 2,500 and 3,000 individuals with gender dysphoria and mental health issues related to gender variance.

5. I have published four books related to the treatment of individuals with gender dysphoria, including the medical text entitled *Principles of Transgender Medicine and Surgery* (Ettner, Monstrey & Eyler, 2007) and the second edition (Ettner, Monstrey & Coleman, 2016). In addition, I have authored numerous articles in peer-reviewed journals regarding the provision of care to this population. I serve as a member of the editorial boards for the *International Journal of Transgenderism* and *Transgender Health*.

6. I am the Secretary and member of the Executive Board of Directors of the World Professional Association for Transgender Health (“WPATH”) (formerly the Harry Benjamin

Gender Dysphoria Association) and an author of the *WPATH Standards of Care for the Health of Transsexual, Transgender and Gender-nonconforming People*, 7th version, published in 2012.

The WPATH promulgated Standards of Care (“Standards of Care”) are the internationally recognized guidelines for the treatment of persons with gender dysphoria and serve to inform medical treatment in the United States and throughout the world.

7. I have lectured throughout North America, Europe, and Asia on topics related to gender dysphoria, and on numerous occasions I have presented grand rounds on gender dysphoria at medical hospitals. I am an honoree of the *Randi and Fred Ettner Fellowship in Transgender Health at the University of Minnesota*, and have been an invited guest at the National Institutes of Health to participate in developing a strategic research plan to advance the health of sexual and gender minorities.

8. I have been retained as an expert regarding gender dysphoria and its treatment in multiple federal court proceedings, and have repeatedly qualified as an expert.

9. My clinical consulting fee in this case is \$300 USD per hour.

10. In preparing this declaration, I have relied on my extensive professional experience and my review of the medical literature, including my own, related to gender dysphoria over the past three decades.

11. A true and accurate copy of my Curriculum Vitae is attached hereto as Exhibit A, which documents my education, training, research, and years of experience in this field. A bibliography of the materials reviewed in connection with this declaration is attached hereto as Exhibit B. The sources cited therein are authoritative, scientific peer-reviewed publications. I generally rely on these materials when I provide expert testimony, and they include the documents specifically cited as supportive examples in particular sections of this declaration.

The materials I have relied on in preparing this declaration are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

12. I have not met or spoken with the Plaintiffs for purposes of this declaration. My opinions are based solely on the information I have been provided by Plaintiffs' attorneys as well as my extensive experience studying gender dysphoria and in treating transgender patients.

Sex and Gender Identity

13. At birth, infants are assigned a sex, typically male or female, based solely on the appearance of their external genitalia. For most people, that assignment turns out to be accurate, and their birth-assigned sex matches that person's actual sex. However, for transgender people, the sex assigned at birth does not align with the individual's genuine, experienced sex, resulting in the distressing condition of gender dysphoria.

14. External genitalia alone—the critical criterion for assigning sex at birth—is not an accurate proxy for a person's sex.

15. A person's sex is comprised of a number of components including, *inter alia*: chromosomal composition (detectable through karyotyping); gonads and internal reproductive organs (detectable by ultrasound, and occasionally by a physical pelvic exam); external genitalia (which are visible at birth); sexual differentiations in brain development and structure (detectable by functional magnetic resonance imaging studies and autopsy); and gender identity.

16. Gender identity is a person's inner sense of belonging to a particular sex, such as male or female. It is a deeply felt and core component of human identity. It is detectable by self-disclosure in adolescents and adults. In children under age 4, it is detectable by behaviors that are persistent and discordant with the sex assigned at birth (meaning the sex recorded on a person's birth certificate at the time of birth).

17. When there is divergence between anatomy and identity, one's gender identity is paramount and the primary determinant of an individual's sex designation. Developmentally, it is the overarching determinant of the self-system, influencing personality, a sense of mastery, relatedness, and emotional reactivity, across the life span. It is also the foremost predictor of satisfaction and quality of life. Psychologist Eric Erickson defined identity as "the single motivating force in life."

18. Like non-transgender people (also known as cisgender people), transgender people do not simply have a "preference" to act or behave consistently with their gender identities. Every person has a gender identity. It is a firmly established elemental component of the self-system of every human being.

19. The only difference between transgender people and cisgender people is that the latter have gender identities that are consistent with their birth-assigned sex whereas the former do not. A transgender man cannot simply turn off his gender identity like a switch, any more than anyone else could.

20. In other words, transgender men are men and transgender women are women.

21. A growing assemblage of research documents that gender identity is immutable and biologically based. Efforts to change an individual's gender identity are therefore both futile and unethical.

22. For example, with the advent of sophisticated brain imagery techniques, researchers are now able to study large numbers of brains in living people, rather than via autopsy. These studies show that the cortex of the brain is the seat of the most consistently documented differences between transgender and non-transgender people. Brain bundles that connect the regions of the brain, white and gray matter, and intracranial volume are implicated

before and immediately after birth (perinatally) in the architecture of the cortex. Differences in intracranial volume, cortical thickness, the putamen, and other areas in the right hemisphere of the brain, are sexually dimorphic. These neurodevelopmental differences in the brain cannot be changed.

23. Additionally, as early as 2000, researchers found that the probability of a sibling of a transgender person also being transgender was almost five times higher than the general public, and that twins have a 33.3% concordance rate for transgenderism, even when raised apart. This also suggests a genetic component, and some researchers are looking at specific genes that may help explain the origins of gender incongruity.

24. The evidence demonstrating that gender identity cannot be altered, either for transgender or for non-transgender individuals, further underscores the innate and immutable nature of gender identity. Past attempts to “cure” transgender individuals by means of psychotherapy, aversion treatments or electroshock therapy, in order to change their gender identity to match their birth-assigned sex, have proven ineffective and caused extreme psychological damage. All major associations of medical and mental health providers, such as the American Medical Association, the American Psychiatric Association, the American Psychological Association, and WPATH’s Standards of Care, consider such efforts unethical.

Gender Dysphoria and Its Treatment

25. Gender Dysphoria is the clinically significant distress or impairment of functioning that can result from the incongruence between a person’s gender identity and the sex assigned to them at birth. Gender dysphoria is a serious medical condition associated with severe and unremitting emotional pain from the incongruity between various aspects of one’s sex. It is codified in the *International Classification of Diseases* (10th revision: World Health

Organization), the diagnostic and coding compendia for mental health and medical professionals, and the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* Fifth Edition (DSM-5). People diagnosed with gender dysphoria have an intense and persistent discomfort with their assigned sex.

26. Gender dysphoria was previously referred to as gender identity disorder. In 2013, the American Psychiatric Association changed the name and diagnostic criteria to be "more descriptive than the previous DSM-IV term gender identity disorder and focus[] on dysphoria as the clinical problem, not identity per se." DSM-5 at 451.

27. The diagnostic criteria for Gender Dysphoria in Adolescents and Adults are as follows:

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least six months' duration, as manifested by at least two of the following:
 1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
 2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated sex characteristics).
 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.

4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
 5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
 6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- B. The condition is associated with clinically significant distress or impairment in social, occupational or other important areas of functioning.
28. Once a diagnosis of gender dysphoria is established, individualized treatment should be initiated. Without treatment, individuals with gender dysphoria experience anxiety, depression, suicidality and other attendant mental health issues and are often unable to adequately function in occupational, social, or other areas of life.
29. The medically accepted standards of care for treatment of gender dysphoria are set forth in the *WPATH Standards of Care* (7th version, 2011), first published in 1979. The WPATH-promulgated Standards of Care are the internationally recognized guidelines for the treatment of persons with gender dysphoria, and inform medical treatment throughout the world.
30. The *American Medical Association*, the *Endocrine Society*, the *American Psychological Association*, the *American Psychiatric Association*, the *World Health Organization*, the *American Academy of Family Physicians*, the *National Commission of Correctional Health Care*, the *American Public Health Association*, the *National Association of Social Workers*, the *American College of Obstetrics and Gynecology*, the *American Society of Plastic Surgeons*, and *The American Society of Gender Surgeons* all endorse protocols in accordance with the WPATH standards. (See, e.g., American Medical Association (2008))

Resolution 122 (A-08); Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline (2009); American Psychological Association Policy Statement on Transgender, Gender Identity and Gender Expression Nondiscrimination (2009).)

31. The Standards of Care identify the following treatment protocols for treating individuals with gender dysphoria, which should be tailored to the patient's individual medical needs:

- Changes in gender expression and role, also known as social transition (which involves living in the gender role consistent with one's gender identity);
- Hormone therapy to feminize or masculinize the body in order to reduce the distress caused by the discordance between one's gender identity and sex assigned at birth;
- Surgery to change primary and/or secondary sex characteristics; and
- Psychotherapy (individual, couple, family, or group) for purposes such as exploring gender identity, role, and expression; addressing the negative impact of gender dysphoria and stigma on mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; and promoting resilience.

32. These treatments do not change a transgender person's sex, which is already determined by their gender identity. Attempts to change a person's gender identity to bring it into alignment with their birth-assigned sex are not only futile, but also dangerous and unethical.

The Process of Gender Transition

33. Gender transition is the process through which a person begins bringing their outer appearance and lived experience into alignment with their core gender. Transition may or

may not include medical treatment (or interventions) such as taking hormones or having surgeries. Social transition—which often includes correcting one’s identity documents to accurately reflect one’s sex—is the most important, and sometimes the only, aspect of transition that transgender people undertake. Changes often associated with a social transition include changes in clothing, name, pronouns, and hairstyle.

34. A complete transition is one in which a person attains a sense of lasting personal comfort with their gendered self, thus maximizing overall health, well-being, and personal safety. Social role transition has an enormous impact in the treatment of gender dysphoria. An early seminal study emphasizes the importance of aligning presentation and identity. Greenberg and Laurence (1981) compared the psychiatric status of individuals with gender dysphoria who had socially transitioned with those who had not. Those who had implemented a social transition showed “a notable absence of psychopathology” compared to those who were living in their birth-assigned sex.

35. Hormones are often medically indicated for patients with gender dysphoria, and are extremely therapeutic. In addition to inducing a sense of wellbeing, owing to the influence of sex steroids on the brain, hormones induce physical changes which attenuate the dysphoria. One or more surgical procedures are medically indicated for some, but by no means all, transgender individuals.

36. A person’s gender identity is an innate, immutable characteristic; it is not determined by a particular medical treatment or procedure. The medical treatments provided to transgender people (including social transition), do not “change a woman into a man” or vice versa. Instead, they affirm the authentic gender that an individual person *is*.

37. The goal of proper treatment is to align the person's body and lived experience with the person's fixed identity as male or female, which already exists. Treatment creates more alignment between the person's identity and the person's appearance, attenuating the dysphoria, and allowing the person's actual sex to be seen and recognized by others. Treatments fall below the accepted Standards of Care if they fail to recognize that a person's affirmed gender identity is not how they feel, but rather essentially who they are.

The Importance of Accurate Identity Documents, Including Birth Certificates, for Transgender People

38. Being unable to correct the gender marker on one's identity documents, including one's birth certificate, means that transgender people are forced to display documents that indicate their birth-assigned sex (typically assumed based only by the appearance of genitalia at birth), rather than their actual sex as determined by their gender identity and their lived experience. This discordance creates a myriad of deleterious social and psychological consequences.

39. Identity documents consistent with one's lived experience affirm and consolidate one's gender identity, mitigating distress and functional consequences. Changes in gender presentation and role, to feminize or masculinize appearance, and social and legal recognition, are crucial components of treatment for gender dysphoria. Social transition involves dressing, grooming, and otherwise outwardly presenting oneself through social signifiers of a person's true sex as determined by their affirmed gender identity.

40. Through this process, the shame of growing up living as a "false self" and the grief of being born into the "wrong body" are ameliorated. Being socially and legally recognized with correct identification is essential to successful treatment. The WPATH Standards of Care explicitly state that changing the gender marker on identity documents greatly assists in

alleviating gender dysphoria. Uncorrected identity documents serve as constant reminders that one's identity is perceived by society and government as "illegitimate." Individuals who desire and require surgery must, as a prerequisite, undergo social role transition, which can be thwarted or upended by inaccurate identification documents.

41. An inability to access identity documents that accurately reflect one's true sex is harmful and exacerbates gender dysphoria, kindling shame and amplifying fear of exposure. Inaccurate documents can cause an individual to isolate, in order to avoid situations that might evoke discrimination, ridicule, accusations of fraud, harassment, or even violence—experiences that are all too common among transgender people. Ultimately, this leads to feelings of hopelessness, lack of agency, and despair. Being stripped of one's dignity, privacy, and the ability to move freely in society can lead to a degradation of coping strategies and cause major psychiatric disorders, including generalized anxiety disorder, major depressive disorder, posttraumatic stress disorder, emotional decompensation, and suicidality. Research has demonstrated that transgender women who fear disclosure are at 100% increased risk for hypertension, owing to the intersection of stress and cardiac reactivity.

42. An abundance of research establishes that transgender people suffer from stigma and discrimination. The "minority stress model" explains that the negative impact of the stress attached to being stigmatized is socially based. This stress can be both *external*, i.e., actual experiences of rejection or discrimination (enacted stigma), and, as a result of such experiences, *internal*, i.e., perceived rejection or the expectation of being humiliated or discriminated against (felt stigma). Both are corrosive to physical and mental health.

43. Until recently, it wasn't understood that these experiences of humiliation and discrimination have serious and enduring consequences. It is now well documented that

stigmatization and victimization are the most powerful predictors of current and future mental health problems. The presentation of a birth certificate is required in numerous situations. For the transgender individual, an inaccurate birth certificate can transform a mundane interaction into a traumatic experience. Repeated negative experiences inevitably erode resilience, creating an ingravescient course of gender dysphoria and attendant psychiatric disorders.

44. Many people who suffer from gender dysphoria go to great lengths to align their physical characteristics, voice, mannerisms and appearance to match their gender identity. Since gender identity is immutable, these changes are the appropriate, and indeed the only treatment for the condition. Understandably, the desire to make an authentic appearance is of great concern for transgender individuals, as the *sine qua non* of the gender dysphoria diagnosis is the desire to be regarded in accordance with one's true sex as determined by one's gender identity. Privacy, and the ability to control whether, when, how, and to whom to disclose one's transgender status, is essential to accomplishing this therapeutic aim.

45. Thus, when an individual implements a social role transition, legal recognition of that transition is vital and an accurate birth certificate is a crucial aspect of that recognition, in large part because congruent identity documentation confers privacy—the right to maintain stewardship of personal and medical information—allowing an individual to live a safe and healthy life.

**Surgical or Hormonal Therapies Should Not be Required to Correct the Gender Marker
On a Person's Identity Documents**

46. From a medical and scientific perspective, there is no basis for refusing to acknowledge a transgender person's sex, as determined by their gender identity, based on whether that person has undergone surgery or any other medical treatment, or based on the permanence of any particular transition-related treatment. The appearance of genitalia and/or the

ratio of circulating sex steroids are not relevant to a person's innate and immutable gender identity.

47. Moreover, not all individuals with gender dysphoria require hormonal or surgical therapy. For some, social role transition may be the essential and sufficient therapeutic intervention to alleviate distress. Indeed, for many transgender individuals, surgery is not medically necessary or may be safely delayed for some time as their dysphoria is alleviated through social role transition and other medical treatments. It is estimated that only 33% of transgender individuals undergo some form of gender-related surgery. Not all individuals for whom surgical intervention is medically indicated are able to access these options due to financial and other systemic barriers to necessary medical treatments.

48. Many insurance companies have policies that specifically exclude coverage of hormonal and surgical treatments for gender dysphoria. Additionally, there are some medical complications that preclude surgical treatment. These include brittle diabetes, morbid obesity, recent history of stroke, or other uncontrolled disease or organ damage.

49. Thus, transgender people should not be required to undergo hormonal or surgical treatment in order to have identity documents (including birth certificates) that accurately reflect who they are.

Conclusion

50. Medical management of gender dysphoria includes the alignment of appearance, presentation, expression, and often, the body, to reflect a person's true sex as determined by their gender identity. Correcting the gender marker on identification documents confers social and legal recognition of identity and is crucial to this process. The necessity and importance of privacy is universal, and exists even in animals. A wide range of species avoid predators by

managing information about internal states and future intentions, for purposes of survival.

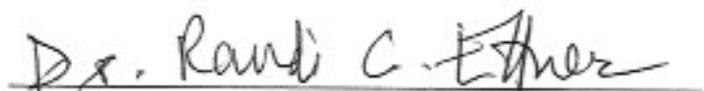
Privacy enables normal psychological functioning, the ability to have experiences that promote healthy personal growth and interpersonal relationships, and allows for measured self-disclosure.

It is the basis for the development of individuality and autonomy.

51. For a transgender person, a birth certificate bearing an incorrect gender marker or revealing one's birth name risks disclosing the fact that the person is transgender. This disclosure invades privacy, releases confidential medical information, and places the individual at risk for grave psychological and physical harm.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: September 25, 2017

A handwritten signature in black ink that reads "Dr. Randi C. Ettner". The signature is written in a cursive style and is positioned above a horizontal line.

Dr. Randi C. Ettner

Exhibit A

RANDI ETTNER, PHD
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Evanston, Illinois 60201
847-328-3433

POSITIONS HELD

Clinical Psychologist
Forensic Psychologist
Fellow and Diplomate in Clinical Evaluation, American Board of
Psychological Specialties
Fellow and Diplomate in Trauma/PTSD
President, New Health Foundation Worldwide
Secretary, World Professional Association of Transgender Healthcare
(WPATH)
Chair, Committee for Incarcerated Persons, WPATH
Global Education Initiative Committee
University of Minnesota Medical Foundation: Leadership
Council
Psychologist, Center for Gender Confirmation Surgery, Weiss Memorial
Hospital
Adjunct Faculty, Prescott College
Editorial Board, *International Journal of Transgenderism*
Editorial Board, *Transgender Health*
Television and radio guest (more than 100 national and international
appearances)
Internationally syndicated columnist
Private practitioner
Medical staff Weiss Memorial Hospital, Chicago IL

EDUCATION

PhD, 1979	Northwestern University (with honors) Evanston, Illinois
MA, 1976	Roosevelt University (with honors) Chicago, Illinois
BA, 1969-73	Indiana University Bloomington, Indiana Cum Laude Major: Clinical Psychology; Minor: Sociology
1972	Moray College of Education Edinburgh, Scotland International Education Program
1970	Harvard University Cambridge, Massachusetts Social Relations Undergraduate Summer Study Program in Group Dynamics and Processes

CLINICAL AND PROFESSIONAL EXPERIENCE

- 2016-present Psychologist: Chicago Gender Center
Consultant: Walgreens; Tawani Enterprises
Private practitioner
- 2011 Instructor, Prescott College: Gender-A multidimensional approach
- 2000 Instructor, Illinois Professional School of Psychology
- 1995-present Supervision of clinicians in counseling gender non-conforming clients
- 1993 Post-doctoral continuing education with Dr. James Butcher in MMPI-2 Interpretation, University of Minnesota
- 1992 Continuing advanced tutorial with Dr. Leah Schaefer in psychotherapy
- 1983-1984 Staff psychologist, Women's Health Center, St. Francis Hospital, Evanston, Illinois
- 1981-1984 Instructor, Roosevelt University, Department of Psychology: Psychology of Women, Tests and Measurements, Clinical Psychology, Personal Growth, Personality Theories, Abnormal Psychology
- 1976-1978 Research Associate, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
- 1975-1977 Clinical Internship, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
- 1971 Research Associate, Department of Psychology, Indiana University
- 1970-1972 Teaching Assistant in Experimental and Introductory Psychology
Department of Psychology, Indiana University
- 1969-1971 Experimental Psychology Laboratory Assistant, Department of Psychology, Indiana University

LECTURES AND HOSPITAL GRAND ROUNDS PRESENTATIONS

Psychiatric and Legal Issues for Transgender Inmates, USPATH, Los Angeles, 2017

Transgender 101 for Surgeons, American Society of Plastic Surgeons, 2017.

Healthcare for transgender inmates in the US, Erasmus Medical Center, Rotterdam, Netherlands, 2016.

Tomboys Revisited: Replication and Implication; Models of Care; Orange Isn't the New Black Yet- WPATH symposium, Amsterdam, Netherlands, 2016.

Foundations in mental health; role of the mental health professional in legal and policy issues, healthcare for transgender inmates; children of transgender parents; transfeminine genital surgery assessment: WPATH global education initiative, Chicago, 2015; Atlanta, 2016; Ft. Lauderdale, 2016; Washington, D.C., 2016, Los Angeles, 2017, Minneapolis, 2017, Chicago, 2017

*Pre-operative evaluation in gender-affirming surgery-*American Society of Plastic Surgeons, 2015

*Gender affirming psychotherapy; Assessment and referrals for surgery-Standards of Care-*Fenway Health Clinic, Boston, 2015

Gender reassignment surgery- Midwestern Association of Plastic Surgeons, 2015

Adult development and quality of life in transgender healthcare- Eunice Kennedy Shriver National Institute of Child Health and Human Development, 2015

Healthcare for transgender inmates- American Academy of Psychiatry and the Law, 2014

Supporting transgender students: best school practices for success- American Civil Liberties Union of Illinois and Illinois Safe School Alliance, 2014

Addressing the needs of transgender students on campus- Prescott College, 2014

The role of the behavioral psychologist in transgender healthcare – Gay and Lesbian Medical Association, 2013

Understanding transgender- Nielsen Corporation, Chicago, Illinois, 2013;

Role of the forensic psychologist in transgender care; Care of the aging transgender patient- University of California San Francisco, Center for Excellence, 2013

Evidence-based care of transgendered patients- North Shore University Health Systems, University of Chicago, Illinois, 2011; Roosevelt-St. Vincent Hospital, New York; Columbia Presbyterian Hospital, Columbia University, New York, 2011

*Children of Transsexuals-*International Association of Sex Researchers, Ottawa, Canada, 2005; Chicago School of Professional Psychology, 2005

Gender and the Law- DePaul University College of Law, Chicago, Illinois, 2003; American Bar Association annual meeting, New York, 2000

Gender Identity and Clinical Issues –WPATH Symposium, Bangkok, Thailand, 2014; Argosy College, Chicago, Illinois, 2010; Cultural Impact Conference, Chicago, Illinois, 2005; Weiss Hospital, Department of Surgery, Chicago, Illinois, 2005; Resurrection Hospital Ethics Committee, Evanston, Illinois, 2005; Wisconsin Public Schools, Sheboygan, Wisconsin, 2004, 2006, 2009; Rush North Shore Hospital, Skokie, Illinois, 2004; Nine Circles Community Health Centre, University of Winnipeg, Winnipeg, Canada, 2003; James H. Quillen VA Medical Center, East Tennessee State University, Johnson City, Tennessee, 2002; Sixth European Federation of Sexology, Cyprus, 2002; Fifteenth World Congress of Sexology, Paris, France, 2001; Illinois School of Professional Psychology, Chicago, Illinois 2001; Lesbian Community Cancer Project, Chicago, Illinois 2000; Emory University Student Residence Hall, Atlanta, Georgia, 1999; Parents, Families and Friends of Lesbians and Gays National Convention, Chicago, Illinois, 1998; In the Family Psychotherapy Network National Convention, San Francisco, California, 1998; Evanston City Council, Evanston, Illinois 1997; Howard Brown Community Center, Chicago, Illinois, 1995; YWCA Women's Shelter, Evanston, Illinois, 1995; Center for Addictive Problems, Chicago, 1994

Psychosocial Assessment of Risk and Intervention Strategies in Prenatal Patients- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984; Purdue University School of Nursing, West Layette, Indiana, 1980

Psychoneuroimmunology and Cancer Treatment- St. Francis Hospital, Evanston, Illinois, 1984

Psychosexual Factors in Women's Health- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984

Sexual Dysfunction in Medical Practice- St. Francis Hospital, Dept. of OB/GYN, Evanston, Illinois, 1980

Sleep Apnea - St. Francis Hospital, Evanston, Illinois, 1996; Lincolnwood Public Library, Lincolnwood, Illinois, 1996

The Role of Denial in Dialysis Patients - Cook County Hospital, Department of Psychiatry, Chicago, Illinois, 1977

PUBLICATIONS

Ettner, R. Mental health evaluation. Clinics in Plastic Surgery. Elsevier, in press.

Ettner, R. Etiology of gender dysphoria in Schechter (Ed.) Gender Confirmation Surgery: Principles and Techniques for an Emerging Field. Springer, in press.

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“The Role of Psychological Tests in Forensic Settings,” *Chicago Daily Law Bulletin*, 1997.

Confessions of a Gender Defender: A Psychologist’s Reflections on Life amongst the Transgendered. Chicago Spectrum Press. 1996.

“Post-traumatic Stress Disorder,” *Chicago Daily Law Bulletin*, 1995.

“Compensation for Mental Injury,” *Chicago Daily Law Bulletin*, 1994.

“Workshop Model for the Inclusion and Treatment of the Families of Transsexuals,” Proceedings of the Harry Benjamin International Gender Dysphoria Symposium; Bavaria, Germany, 1995.

“Transsexualism- The Phenotypic Variable,” Proceedings of the XV Harry Benjamin International Gender Dysphoria Association Symposium; Vancouver, Canada, 1997.

“The Work of Worrying: Emotional Preparation for Labor,” Pregnancy as Healing. A Holistic Philosophy for Prenatal Care, Peterson, G. and Mehl, L. Vol. II. Chapter 13, Mindbody Press, 1985.

PROFESSIONAL AFFILIATIONS

University of Minnesota Medical School–Leadership Council
American College of Forensic Psychologists
World Professional Association for Transgender Health
World Health Organization (WHO) Global Access Practice Network
TransNet national network for transgender research
American Psychological Association
American College of Forensic Examiners
Society for the Scientific Study of Sexuality
Screenwriters and Actors Guild
Phi Beta Kappa

AWARDS AND HONORS

The Randi and Fred Ettner Transgender Health Fellowship-Program in Human Sexuality,
University of Minnesota, 2016

Phi Beta Kappa, 1971

Indiana University Women's Honor Society, 1969-1972

Indiana University Honors Program, 9-1972

Merit Scholarship Recipient, 1970-1972

Indiana University Department of Psychology Outstanding Undergraduate Award
Recipient, 1970-1972

Representative, Student Governing Commission, Indiana University, 1970

LICENSE

Clinical Psychologist, State of Illinois, 1980

Exhibit B

REFERENCES

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Attorneys for Plaintiffs F.V. and Dani Martin

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

F.V. and DANI MARTIN,

Plaintiffs,

v.

RUSSELL BARRON, in his official capacity as Director of the Idaho Department of Health and Welfare; ELKE SHAW-TULLOCH, in her official capacity as Administrator of the Division of Public Health for the Idaho Department of Health and Welfare; and JAMES AYDELOTTE, in his official capacity as State Registrar and Chief of the Bureau of Vital Records and Health Statistics,

Defendants.

No. 1:17-cv-00170-CWD

**DECLARATION OF MONICA
COCKERILLE**

DECLARATION OF MONICA COCKERILLE

I, Monica Cockerille, declare as follows:

1. I am an attorney for Plaintiffs in the above-captioned matter. I have actual knowledge of the matters stated in this declaration.
2. Attached as Exhibit A is a true and correct copy of excerpts from “The Report of the 2015 U.S. Transgender Survey,” *available at* <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.
3. Attached as Exhibit B is a true and correct copy of a sample Idaho birth certificate disclosing a name change from “John” to “Emilie,” which has been partially redacted for date of birth information per Local Rule 5.5.

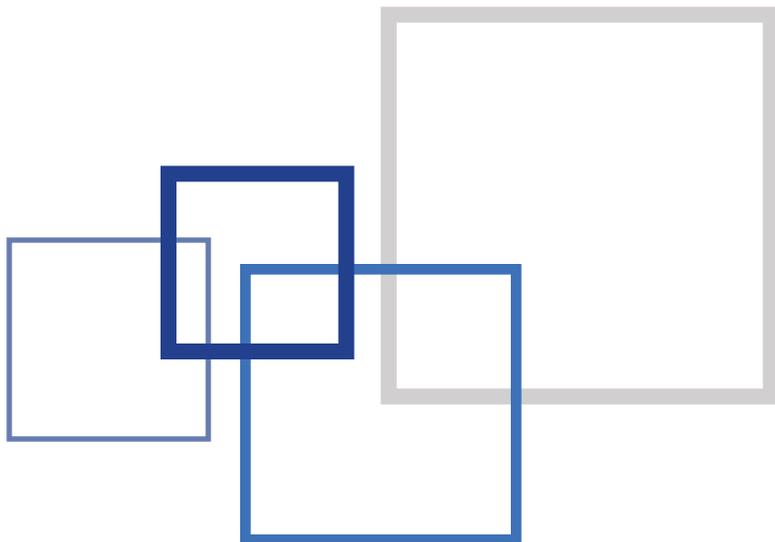
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: September 29, 2017

/s/ Monica Cockerille

Monica Cockerille

Exhibit A



THE REPORT OF THE

2015

U.S.

TRANSGENDER

SURVEY

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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RECOMMENDED CITATION

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The Report of the **2015 U.S. Transgender Survey**

by:

Sandy E. James

Jody L. Herman

Susan Rankin

Mara Keisling

Lisa Mottet

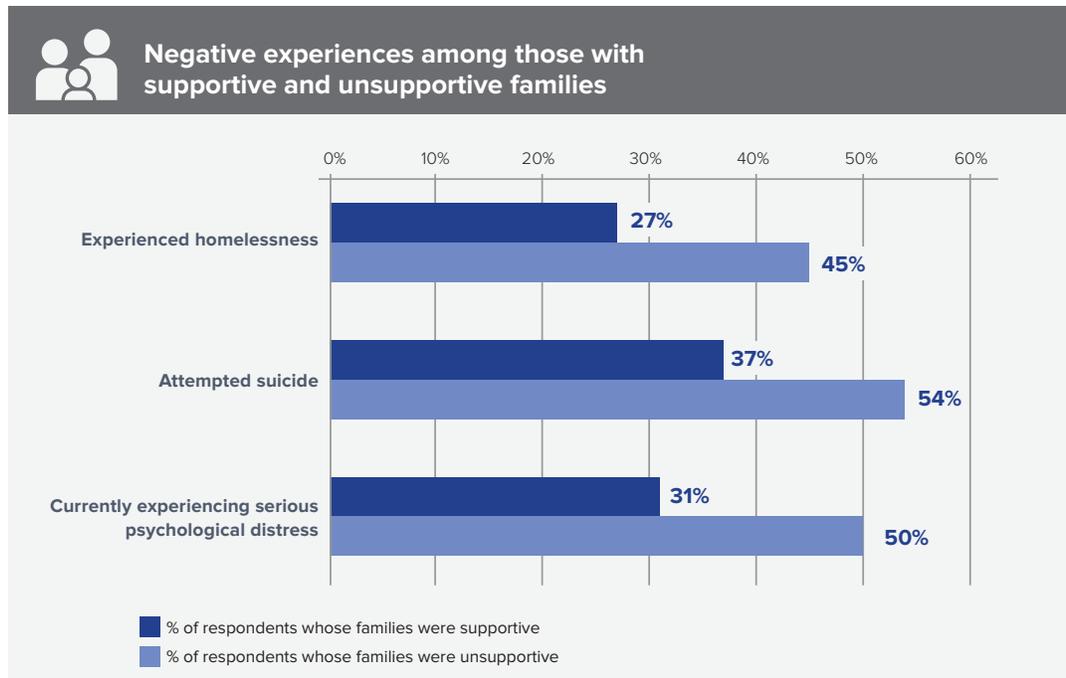
Ma'ayan Anafi

December 2016

Overview of Key Findings

Family Life and Faith Communities

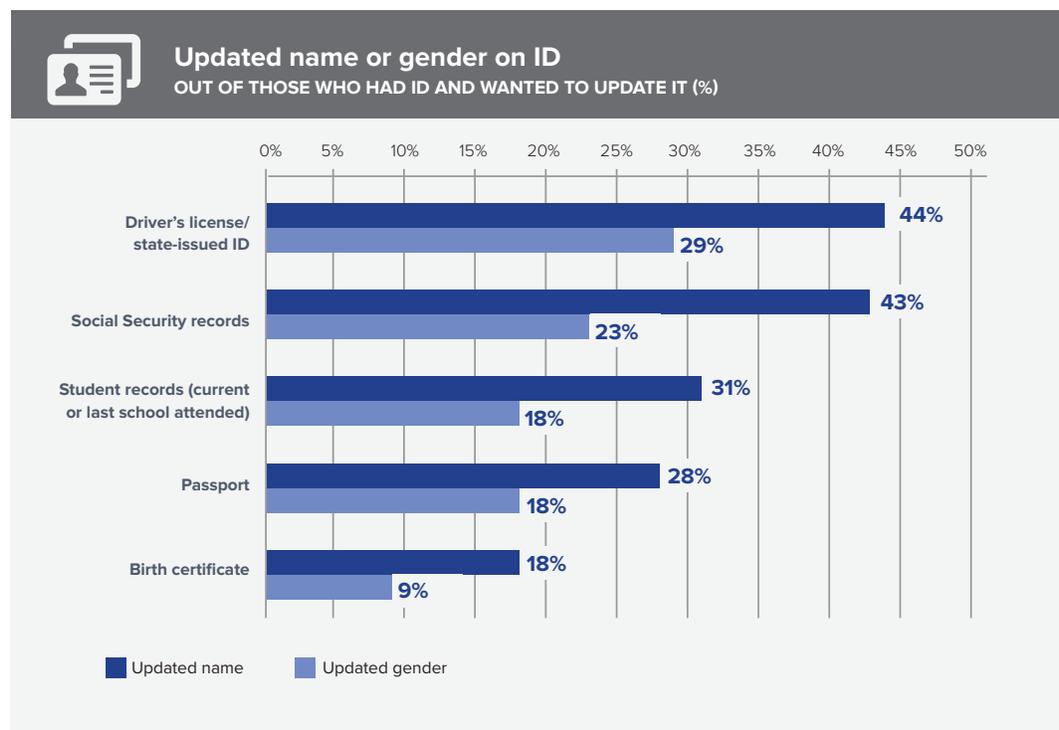
- **A majority of respondents (60%) who were out to the immediate family they grew up with said that their family was generally supportive of their transgender identity,** while 18% said that their family was unsupportive, and 22% said that their family was neither supportive nor unsupportive.
- **Those 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.**

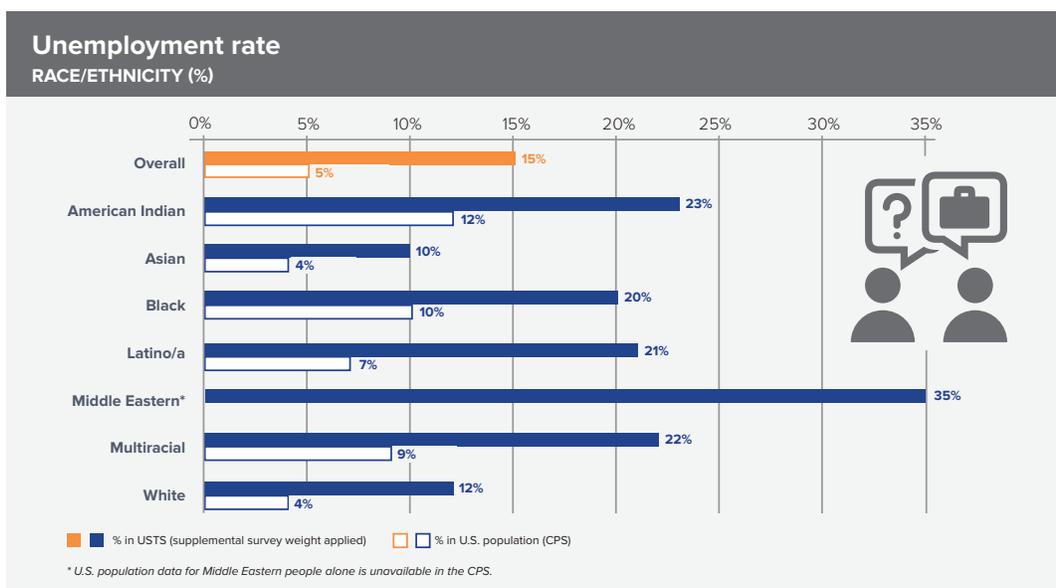


Experiences of people who were out as transgender in K–12 or believed classmates, teachers, or school staff thought they were transgender

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%
One or more experiences listed	77%

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,

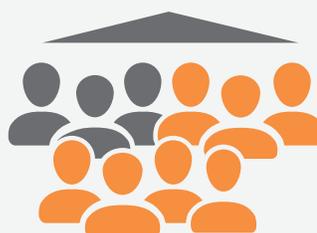
such as being forced to use a restroom that did not match their gender identity, being told to present in the wrong gender in order to keep their job, or having a boss or coworker share private information about their transgender status without their permission.

- **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.



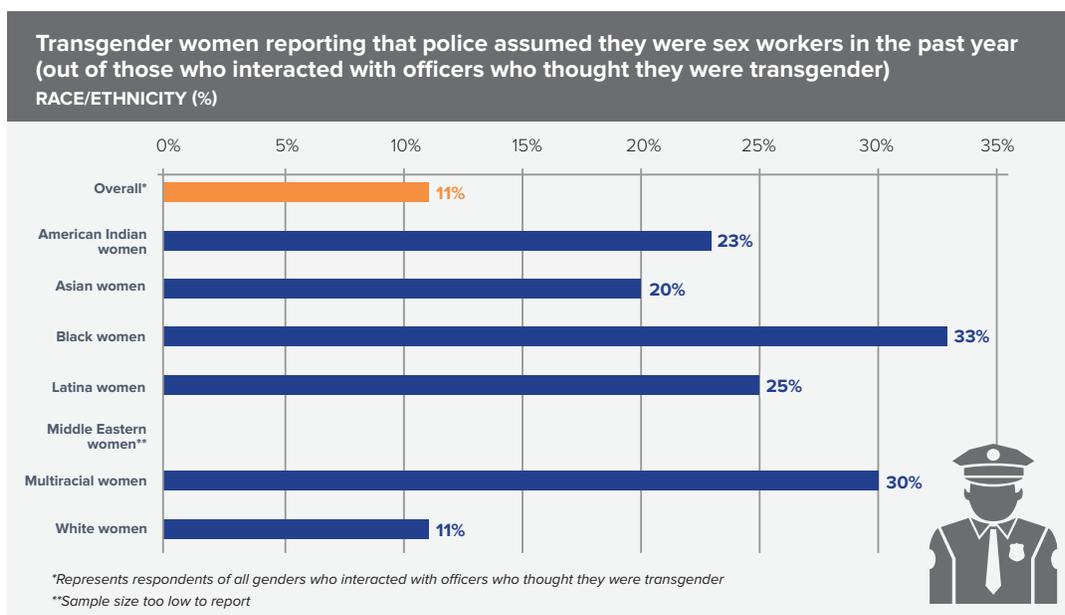
- Respondents were nearly **four times less likely to own a home (16%) compared to the U.S. population (63%).**

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%



Exhibit B

CERTIFICATION OF VITAL RECORD

STATE OF IDAHO
 IDAHO DEPARTMENT OF HEALTH AND WELFARE
 BUREAU OF HEALTH POLICY AND VITAL STATISTICS

CERTIFICATE OF LIVE BIRTH

Date Filed SEPTEMBER 18, 1948

State File No. 111 1948-10714

CHILD'S NAME			SEX
EMILIE MARGARETTE JACKSON-EDNEY			MALE
DATE OF BIRTH	TIME OF BIRTH	CITY, TOWN, OR LOCATION OF BIRTH	COUNTY OF BIRTH
██████████, 1948	3:32 A.M.	NAMPA	CANYON
MOTHER			
MAIDEN NAME			
VIRGINIA MARGARETE JACKSON			
AGE	BIRTH-PLACE		
29	OKLAHOMA		
FATHER			
NAME			
IVAN LEE EDNEY			
AGE	BIRTH-PLACE		
35	NEBRASKA		

NAME CHANGED PURSUANT TO COURT-ORDERED CHANGE OF NAME: 08-19-2005
 ORIGINAL NAME: JOHN LAURENCE EDNEY

This is a true and correct reproduction of the document officially registered and placed on file with the IDAHO BUREAU OF HEALTH POLICY AND VITAL STATISTICS.

DATE ISSUED: AUGUST 19, 2005

This copy not valid unless prepared on engraved border enclosing state seal and signature of the Registrar.

Jane S. Smith
 JANE S. SMITH
 STATE REGISTRAR

