

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JANE DOE,

Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF  
CORRECTION; THOMAS A. TURCO III;  
SEAN MEDEIROS; JAMES M. O’GARA JR.;  
and STEPHANIE COLLINS,

Defendants.

Civil Action No. 1:17-CV-12255-RGS

**PLAINTIFF’S NOTICE OF  
CONSTITUTIONAL QUESTION**

Complaint Filed: November 15, 2017

Discovery Cut-Off: None Set

Motion Cut-Off: None Set

Trial Date: None Set

**PLAINTIFF’S NOTICE OF CONSTITUTIONAL QUESTION**

Jennifer Levi (BBO# 562298)  
Bennett Klein (BBO# 550702)  
GLBTQ Legal Advocates & Defenders  
30 Winter Street, STE 800  
Boston, Massachusetts 02108  
Tel.: +1 617 426 1350  
Email: jlevi@glad.org

Elizabeth Matos (BBO# 671505)  
Joel Thompson (BBO# 662164)  
Prisoners’ Legal Services  
10 Winthrop Square, 3rd Floor  
Boston, MA 02110  
Tel.: +1 617 482 6383  
lmatos@plsma.org  
jthompson@plsma.org

J. Anthony Downs (BBO# 552839)  
Tiffiney F. Carney (*pro hac vice* pending)  
Louis L. Lobel (BBO# 693292)  
Ashley E. Moore (BBO# 694731)  
Goodwin Procter LLP  
100 Northern Avenue  
Boston, Massachusetts 02210  
Tel.: +1 617 570 1000  
jdowns@goodwinlaw.com  
tcarney@goodwinlaw.com  
llobel@goodwinlaw.com  
amoore@goodwinlaw.com

*Attorneys for Plaintiff*

TO THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA:

Please take notice that, pursuant to Fed. R. Civ. P. 5.1, Plaintiff Jane Doe submits this Notice of Constitutional Question.

Plaintiff asserts, *inter alia*, that she was discriminated against based on her Gender Dysphoria in violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12191, *et seq.* Defendants have moved to dismiss the claim, arguing that Gender Dysphoria is not protected by the ADA. In her Opposition to Defendants’ Motion to Dismiss and Memorandum of Law in Support of her Motion for Preliminary Injunction, Plaintiff asserts, as a matter of statutory interpretation, that Gender Dysphoria is not excluded from coverage under the ADA. To the extent 42 U.S.C. § 12211(b)(1) of the ADA is read to exclude Gender Dysphoria, Plaintiff challenges the constitutionality of the provision. As drafted, § 12211(b)(1) excludes, *inter alia*, “transsexualism . . . [and] gender identity disorders not resulting from physical impairments.” If the provision is read to exclude Gender Dysphoria, Plaintiff asserts that § 12211(b)(1) violates the United States Constitution because it discriminates on the basis of gender identity, sex, and/or disability in violation of the Fourteenth Amendment.

A copy of Jane Doe’s Opposition to Defendants’ Motion to Dismiss is attached hereto as “Exhibit A” and a copy of the Memorandum of Law in Support of Plaintiff Jane Doe’s Motion for Preliminary Injunction is attached hereto as “Exhibit B.”

Respectfully submitted,

/s/ J. Anthony Downs

J. Anthony Downs (BBO# 552839)

Tiffiney F. Carney (*pro hac vice*  
pending)

Louis L. Lobel (BBO# 693292)

Ashley E. Moore (BBO# 694731)

GOODWIN PROCTER LLP

100 Northern Avenue

Boston, Massachusetts 02210

Tel.: +1 617 570 1000

E-mail: [jdowns@goodwinlaw.com](mailto:jdowns@goodwinlaw.com)

[tcarney@goodwinlaw.com](mailto:tcarney@goodwinlaw.com)

[llobel@goodwinlaw.com](mailto:llobel@goodwinlaw.com)

[amoore@goodwinlaw.com](mailto:amoore@goodwinlaw.com)

Jennifer Levi (BBO# 562298)

Bennett Klein (BBO# 550702)

GLBTQ Legal Advocates & Defenders

30 Winter Street, STE 800

Boston, Massachusetts 02108

Tel.: +1 617 426 1350

Email: [jlevi@glad.org](mailto:jlevi@glad.org)

[bklein@glad.org](mailto:bklein@glad.org)

Elizabeth Matos (BBO# 671505)

Joel Thompson (BBO# 662164)

Prisoners' Legal Services

10 Winthrop Square, 3rd Floor

Boston, MA 02110

Tel.: +1 617 482 6383

E-mail: [lmatos@plsma.org](mailto:lmatos@plsma.org)

[jthompson@plsma.org](mailto:jthompson@plsma.org)

Dated: February 2, 2018

**CERTIFICATE OF SERVICE**

I, J. Anthony Downs, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on February 2, 2018.

I further certify that, in compliance with Fed. R. Civ. P. 5.1(a)(2), on February 2, 2018 I caused a true and correct copy of the Notice of Constitutional Question and attached Exhibits A and B to be served, via certified mail, upon the following:

United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
*Certified Mail Article No. 7005 0390 0001 4592 6719*

Lee J. Lofthus  
United States Assistant Attorney General for Administration  
U.S. Department of Justice, Justice Management Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
*Certified Mail Article No. 7005 0390 0001 4592 6702*

/s/ J. Anthony Downs