

DISTRICT COURT, COUNTY OF DENVER	
Court Address: 1437 Bannock Street Denver, CO 80203	
Plaintiffs: B.D., a minor, by and through his parent Jane Doe; and Jane Doe v. Defendants: The State of Colorado; the Colorado Department of Public Health and Environment; and the Office of the State Registrar and Records	▲ COURT USE ONLY ▲ Case No. Division/Courtroom:
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COMPLAINT FOR DECLARATORY RELIEF, PERMANENT INJUNCTION, AND REQUEST FOR SPEEDY HEARING PURSUANT TO C.R.C.P. 57(m)	

Plaintiffs, B.D., a minor, by and through Jane Doe, as his mother and legal guardian and Jane Doe for herself, state and allege as follows:

INTRODUCTION

1. Accurate identity documents are essential to one’s ability to navigate through life. Access to education, employment, housing, health care, banking, travel, and government services often depend on having accurate documentation that reflects an individual’s true identity. A birth certificate is a critical and ubiquitous identity document routinely used for many purposes, including to obtain other essential identity documents.

2. This action is brought by a minor boy who is transgender and wishes to correct his Colorado birth certificate to accurately reflect his correct sex. Although B.D.'s Colorado birth certificate designates him as "female," that designated sex does not match his correct sex, which is male.

3. Transgender persons seek to live in accordance with the sex that takes proper account of the sex of their brain – an immutable, intrinsic sense of being physically male or female – rather than the sex incorrectly ascribed to them at birth. This may involve socially transitioning from one sex to the other or physically changing their primary or secondary sex characteristics.

4. While others born in Colorado have access to an accurate birth certificate matching their correct sex, transgender individuals alone are barred from obtaining an accurate birth certificate matching their sex unless they undergo sex reassignment surgery. Minors, like B.D., may not be able to receive the surgery irrationally mandated by Colorado. Similarly, adult transgender individuals may not be able to comply with the surgery requirement due to health, finances, or personal choice. Colorado's refusal to issue accurate birth certificates without undergoing unnecessary sex reassignment surgery erects a barrier to the full recognition, participation, and inclusion of transgender people in society and subjects them to discrimination, privacy invasions, harassment, humiliation, stigma, and even violence.

5. The State of Colorado refuses to change the sex markers on transgender individuals' birth certificates to match their correct sex unless such individuals are old enough, healthy enough, and wealthy enough to undergo, and do choose to undergo, complicated and intensive sex reassignment surgeries. This bar is inconsistent with Colorado's own practice of permitting transgender individuals to change their sex markers on their driver's license or other state-issued identification to match their correct sex without surgery, as well as the federal government's practice of permitting transgender individuals to change their sex markers on their passports to match their correct sex without surgery.

6. Colorado's policy, which the Defendants enforce, violates transgender individuals' state constitutional guarantees including their rights to equal protection, due process rights and freedom from compelled speech. As confirmed by Colorado's own practice of allowing changes to sex markers on driver's licenses issued to transgender individuals and the federal government's policy of allowing changes to sex markers on passports, neither requiring surgery, there is no government justification to support Colorado's refusal to provide transgender individuals with accurate birth certificates to match their correct sex without complicated and potentially unnecessary sex reassignment surgery.

PARTIES

7. Plaintiff B.D. is a transgender male, who was born and currently resides in Colorado. B.D. wishes to correct his Colorado birth certificate, which currently indicates that his sex is female, to accurately reflect his sex as male, consistent with his male identity and medical certification of his correct sex. As a minor, B.D. is not able to independently consent to sex reassignment surgery until he is at least 18 years old and then only if he (a) can afford it, (b) his

medical history indicates he is able to undergo such a complex and intensive procedure, and perhaps most importantly (c) he feels the need for sex reassignment surgery.

8. Jane Doe is over 18 years old and resides in Colorado. She is the natural parent and legal guardian of B.D. She brings this action on behalf of B.D. and on her own behalf to vindicate her right to make medical decisions for B.D. without impermissible interference by the State.

9. Defendant the State of Colorado is a state with its capital in Denver, Colorado. The State of Colorado, relying on the Birth Certificate Policy, does not allow transgender individuals to update the gender marker on their birth certificates unless their “sex ... has been changed by surgical procedure[.]”

10. Defendant the Colorado Department of Public Health and Environment (“CDPHE”) is an official government department of the State of Colorado with its main offices in the City and County of Denver, Colorado. CDPHE enforces Colorado’s vital statistic laws including C.R.S. § 25-2-115(4) (the “Birth Certificate Policy”) governing changing the gender marker on Colorado birth certificates.

11. Defendant the Office of the State Registrar and Records (“State Registrar”) is an office created within CDPHE to “direct and supervise the operation of the vital statistics system[.]” C.R.S § 25-2-103. Under regulations promulgated by CDPHE, the State Registrar is responsible for “evaluat[ing] the evidence submitted in support of any amendment [to a birth certificate], and when he finds reason to doubt its validity or adequacy” is empowered to reject the requested amendment. 5 CCR 1006-1 § 9.3.

12. Defendants State of Colorado, CDPHE, and the State Registrar, through their respective duties and obligations, are responsible for enforcing the Birth Certificate Policy. The defendants, and those subject to their supervision and control, caused the harms alleged, and will continue to injure B.D. and Jane Doe if not enjoined. Accordingly, the relief requested is sought against the defendants, as well as all persons under their supervision and control, including their officers, employees and agents.

JURISDICTION AND VENUE

13. Plaintiffs bring this action under C.R.S. §§ 13-51-105 and 13-51-106, and Colo. R. Civ. P. 57 to redress the deprivation of rights secured by the Constitution of the State of Colorado.

14. This Court has subject matter jurisdiction under C.R.S. §§ 13-51-105 and 13-51-106.

15. This Court has personal jurisdiction over Defendants because they are residents of the City and County of Denver, Colorado.

16. Venue is proper in this district under Colo. R. Civ. P. 98.

17. This Court has authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Colorado Rules of Civil Procedure and C.R.S. §§ 13-51-105 and 13-51-106.

GENERAL ALLEGATIONS

Background Information Regarding Transgender Individuals

18. Gender identity is a well-established medical and psychological term that refers to a person's fundamental, internal sense of belonging to a particular gender. It is a core characteristic of human identity that everyone possesses. Gender identity is innate, biologically rooted, and fixed at an early age.

19. An individual's sex is generally assigned at birth based on external genitalia. However, other sex-related characteristics can include chromosomes, hormone levels, internal reproductive organs, and gender identity.

20. Although the majority of people possess a gender identity that matches their sex assigned at birth, that is not the case for transgender people because their correct sex as determined by their gender identity does not match their sex assigned at birth.

21. Where an individual's sex-related characteristics are not in typical alignment with each other, gender identity is the critical determinant of sex. 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 unsuccessful but also dangerous, risking psychological harm and even suicide.

22. The discordance between one's gender identity and birth-assigned sex can be associated with clinically significant distress, known as gender dysphoria. Gender dysphoria is a serious medical condition that, if improperly treated, can cause severe health consequences. Treatment for gender dysphoria is governed by internationally recognized standards of care.

23. It is imperative that transgender persons be able to correct their original birth certificates so that the sex designation matches their lived sex. In recognition of this, the relevant state agencies have issued corrected birth certificates to transgender persons since at least 1984.

24. In the thirty-four years since Colorado law specifically granted transgender individuals the ability to correct their birth certificate to their correct sex, the medical, scientific, legal, and psychological understandings of transgender persons progressed substantially. The mainstream view of these communities no longer equates sex with chromosomes or genitalia alone. Rather, it is now accepted that a person's sex is determined by a host of factors, including chromosomes, gonads (ovaries or testes), hormonal secretions, internal reproductive organs, external genitalia, secondary sexual characteristics, and the brain sex or one's self-identified sex.

25. Despite these advances in the scientific understanding of sex classification, the burden of proof a transgender person must satisfy in order to obtain a corrected birth certificate has not changed. The three-decade-old standard still in effect requires a transgender person to undergo a surgical procedure in which all traces of the person's external birth genitalia are removed and constructed into the genitalia associated with that person's lived sex. This extensive

surgical procedure is undertaken by only a small percentage of transgender persons. Doctors, scientists, and psychologists recognize that this surgical procedure is not necessary or appropriate for all transgender persons. Nor is it necessary that a person undergo such a procedure to properly be considered the sex other than the one they were assigned at birth.

26. Recognizing that these requirements were out of date, the State Registrar’s office conducted extensive research on the potential implementation of updated procedures, including communicating with approximately nine other state registrars regarding their birth certificate update policies which do not involve a surgical requirement. Additionally, CDPHE officials previously testified approximately eight times in support of removing the surgical requirement through legislation.

27. It is widely recognized that living in a manner consistent with one’s correct sex is critical to the health and well-being of all transgender people and is a key aspect of treatment for gender dysphoria. The process by which transgender individuals come to live in a manner consistent with their lived sex, rather than their birth-assigned sex, is known as transition. The refusal to treat an individual in a manner consistent with their correct sex is harmful to that individual’s transition and overall health.

28. Colorado’s policy on driver’s licenses and the U.S. Government’s policies are consistent with mainstream medical organizations, which oppose requiring surgery in order for transgender individuals to change their identity documents. These organizations recognize that surgery is not necessary or appropriate for all transgender persons and that surgery should not be required for the issuance of corrected identification documents such as birth certificates. The World Professional Association for Transgender Health, Inc. (“WPATH”), recognized by the American Medical Association as an authority in the field of transgender health issues, issued the following statement:

Medical and other barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents.¹

29. WPATH further explained that “that appropriate gender recognition should be available to transgender youth, including those who are under the age of majority....”

30. The American Psychological Association (the “APA”) issued a policy statement almost a decade ago noting that “gender variant and transgender people may be denied basic civil rights and protections . . . including: . . . the right to obtain appropriate identity documents that are consistent with a post-transition identity.” The APA resolved that it “encourages legal and social recognition of transgender individuals consistent with their gender identity and expression, including access to identity documents consistent with their gender identity and

¹ WPATH, Identity Recognition Statement, Nov 15, 2017, *available at* <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>. (last accessed 20 April 2018).

expression which do not involuntarily disclose their status as transgender for transgender people who permanently socially transition to another gender role.”²

31. The National Association of Social Workers (“NASW”) also stated that it “supports the legal recognition of transgender individuals as members of the gender with which they identify, regardless of assigned sex at birth or subsequent surgical or other medical interventions.”³

32. The steps that transgender individuals take to transition are not identical, but they generally include one or more of the following components: (1) social transition, (2) legal transition, (3) hormone therapy, and/or (4) sex reassignment surgery.

33. None of these components, however, are necessary for an individual to live in a manner consistent with their lived sex. Many transgender Coloradans, for example, because of age, health, finance or a myriad of personal decisions do not undergo sex reassignment surgery.

34. Social transition entails the adoption of a gender role matching one’s lived sex. This includes, but is not limited to, changing attire, mannerisms, hair styles, use of a different name before legally changing it, and otherwise living as the correct sex in all aspects of life

35. Legal transition, for example, for a man who is transgender, can include legally changing one’s first name to one typically used by men and changing identity documents to indicate a male gender.

36. Hormone therapy involves taking hormones typically associated with one’s lived sex, such as testosterone or estrogen. Hormone replacement therapy can have significant masculinizing or feminizing effects on one’s physical appearance and perceived sex. For minors, hormone blockers are often prescribed which delay the onset of puberty and unwanted masculinization or feminization until the person is able to begin hormone replacement therapy.

37. Sex reassignment surgery includes various surgical procedures that transgender individuals may take to bring their body or appearance into alignment with their lived sex, such as genital surgery. Whether surgery is medically necessary or even appropriate, however, depends on the needs of the individual. One’s ability to access sex reassignment surgery may also be limited by age, health, financial resources, insurance coverage, provider availability and other barriers to health care access. In addition, an individual may simply decide for themselves that sex reassignment surgery is not something they need to or wish to undergo to live in a manner consistent with their lived sex.

38. These various components associated with transition—social transition, legal transition, hormone therapy, and sex reassignment surgery—do not change an individual’s sex, which is already determined by gender identity, but instead bring the individual’s physical appearance and social presentation into better alignment with their sex.

² APA, Policy Statement: Transgender, Gender Identity, & Gender Expression Non-Discrimination, August 2008, available at <http://www.apa.org/about/policy/transgender.aspx>. (last accessed 20 April 2018).

³ NASW, *Social Work Speaks: NASW Policy Statements 2009-2012*, at 347 (8th ed. 2009).

39. Depriving transgender individuals of birth certificates matching their sex harms their health and well-being. It also interferes with medical treatment for gender dysphoria by impeding a transgender individual's ability to live in a manner consistent with that individual's sex.

The Need for Accurate Birth Certificates Matching One's Correct Sex

40. A birth certificate is more than a piece of paper. It reflects government recognition of one's sex—just as a marriage certificate reflects government recognition of one's committed relationship. The government's refusal to provide transgender individuals with birth certificates matching their lived sex is a stigmatizing refusal to acknowledge their sex that deprives them of their equal dignity.

41. A birth certificate is an essential government-issued document that individuals use to prove their identity, citizenship, and other information conveyed on the birth certificate. This is why the government makes a copy of a birth certificate available to the individual reflected on the birth certificate, rather than merely reserving it for the government's own use.

42. Birth certificates are commonly used in a wide variety of contexts and on numerous occasions throughout life, but even more often when a person is a child. These uses include school registration, obtaining driver's licenses, proving age of majority/minority in court, qualifying for pensions, social security, health insurance, obtaining work permits, voter registration, entering military service, obtaining a social security number, playing sports, establishing birthplace to prove citizenship, obtaining a passport, enrolling in government programs, entering employment limited to citizens, obtaining licenses limited to citizens, establishing family relationships, proving legal dependency, obtaining inheritance benefits, receiving insurance benefits, and even conducting genealogical research.

43. All people need access to an *accurate* birth certificate that they can use to prove their identity. For transgender people, however, the sex marker on their birth certificate can undermine that purpose. A man born in Colorado who is transgender and cannot or will not have sex reassignment surgery, for example, has a birth certificate designating him as female, which can visibly conflict with his lived sex.

44. A perceived mismatch between one's sex and the information on one's birth certificate subjects transgender people to harm, including an invasion of privacy. Such a mismatch effectively discloses the fact that an individual is transgender, which constitutes deeply personal information over which a transgender individual has a reasonable expectation of privacy as well as information that can jeopardize an individual's safety and risk bodily harm upon disclosure.

45. Denying transgender individuals a birth certificate that matches their sex can disclose private information in contexts where it would otherwise remain undisclosed (*e.g.*, at a Social Security office), regardless of whether an individual's transgender status may otherwise be known by others (*e.g.*, to friends or family). Transgender individuals denied an accurate birth certificate are also deprived of significant control over the circumstances surrounding disclosure

of their transgender status, including when, where, how, and to whom their transgender status is disclosed.

46. According to the 2015 U.S. Transgender Survey, nearly one in three transgender individuals 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.

47. More generally, transgender people often experience substantial discrimination and harassment in a wide variety of settings, including in employment, public accommodations, health care, and interactions with the government, including law enforcement. Transgender individuals are also disproportionately targeted for hate crimes. These realities make the involuntary disclosure of an individual's transgender status particularly harmful and dangerous.

48. Denying transgender individuals a birth certificate that matches their sex deprives them of an identity document that aids accurate identity verification. The contents of an uncorrected birth certificate generally undermine rather than serves the purpose of verifying that a transgender individual is, in fact, the same individual reflected on his or her birth certificate. For example, a man who is transgender and who has taken steps to bring his appearance into alignment with his lived sex may be perceived as male by others; but a birth certificate with a female sex marker visibly conflicts with his correct sex, causing others to question whether he is the same individual reflected on the birth certificate.

Colorado's Birth Certificate Policy

49. Defendants exercise responsibility for issuing and changing Colorado birth certificates. Each of the Defendants enforces a policy and practice that categorically refuses to change the gender markers on transgender individuals' birth certificate to match their lived sex unless the transgender individual has undergone sex reassignment surgery. Even when transgender individuals are unable receive sex reassignment surgery on account of age, health, or financial constraints, or simply have chosen not to subject themselves to gender reassignment surgery, Defendants nevertheless refuse to provide Colorado birth certificates consistent with their correct sex.

50. Colorado has a "centralized registry of vital statistics," which includes birth certificates. C.R.S. § 25-5-103, 112.

51. A Colorado birth certificate may be modified at any point in a person's life. Reasons for modification include adding, removing, or changing a father or second parent, changing a person's legal name, or correcting the gender assigned at birth.

52. In 1984, Colorado amended its vital statistics law to provide:

(4) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that *the sex of an individual* born in this state has been changed *by surgical procedure* and that such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.

C.R.S. § 25-2-115(4) (emphasis added).

53. Defendants further stated that under the Birth Certificate Policy, transgender individuals who wish to amend their birth certificate must provide a “[c]ertified copy of a court order indicating the sex has been changed.” They then explain that “[s]ex change via sex reassignment surgery is a process in which a person’s physical characteristics are changed to reflect the sex opposite of that determined at birth.”⁴ (the “Surgery Requirement”).

54. Sex reassignment surgery that alters a person’s physical genital characteristics necessarily requires transgender individuals to consent to be surgically sterilized in order to change their sex marker on their birth certificate.

55. The Birth Certificate Policy challenged here also includes a statutory proscription against providing a birth certificate matching a transgender individual’s sex without the inclusion of revision history. Even when a birth certificate is modified pursuant to the existing laws, Colorado still requires the birth certificate to disclose that the individual is transgender. Specifically, Colorado requires that the “date of alteration and a summary description of the evidence submitted in support of the alteration shall be endorsed on or made a part of each vital statistics certificate that is altered. Every vital statistics report or certificate that is altered in any way shall be marked ‘Amended[.]’” C.R.S. § 25-2-115(1).

56. The Surgery Requirement of the Birth Certificate Policy stands in sharp contrast to the procedures in Colorado for changing a sex marker on other state-issued forms of identification. For example, Colorado permits a transgender male to indicate “male” on his driver’s license without undergoing sex reassignment surgery. Instead, he would only need a certification from a “Licensed Colorado Physician” that “[b]ased on the patient’s gender identity and full time gender role expression” the physician’s “professional opinion is that the person’s gender is ... male.” *See* Colorado Dep’t of Rev.’s form DR 2083, last updated 15 April 2015.

57. Over the past four years, senior staff from CDPHE in their official capacity testified in favor of eliminating the Surgery Requirement. Testifying senior staff included Dana Erpelding, the former Division Director for CDPHE’s Center for Health and Environmental Data which supervises the Vital Statistics and Vital Records office and controls the issuance and correction of Colorado birth certificates and Michael Nicoletti, CDPHE’s Legislative Liaison. Ms. Erpelding, during her testimony in the Colorado House’s Judiciary Committee on 9 March 2017, described officials from CDPHE consulting with registrars from nine other states which do not require surgery and do not mark the new birth certificate as amended and specifically “they have not identified that this process causes any issues or areas for concern.”

58. Similarly, the U.S. Department of State permits changes to the gender marker on an individual’s passport where a doctor certifies that the individual received appropriate clinical treatment for gender transition. Importantly, the definition of “appropriate clinical treatment for gender transition” is a determination made by the treating physician. The Department of State’s website under “Frequently Asked Questions” explicitly states that “[s]urgery is not a

⁴ available at <https://www.colorado.gov/pacific/cdphe/sex-changes-due-surgical-procedures> (last accessed 20 April 2018).

requirement[.]”⁵ Other federal agencies, such as the Social Security Administration, use similar standards for changing an individual’s gender in their records.

59. For Americans born overseas, a Consular Report of Birth Abroad (CRBA) is issued by the Department of State. Similar to the process used to correct a passport, an affidavit from a medical provider is used to certify that the applicant received “appropriate clinical treatment” for their transition to the correct gender. The text of the affidavit is not required to include any specifics regarding the appropriate clinical treatment or surgeries, if any.

60. For both the CRBA and the passport, the Department of State provides a template for the medical certification:⁶

(Attending Physician’s Official Letterhead)

I, (physician’s full name), (physician’s medical license or certificate number), (issuing State of medical license/certificate), am the attending physician of (name of patient), with whom I have a doctor/patient relationship.

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

Or

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

(Signature of Physician)

(Typed Name of Physician)

(Date)

61. Thus, a transgender male born in Colorado may have a birth certificate indicating his sex is “female” while his state-issued driver’s license and U.S. Government-issued passport indicate his sex is “male.”

62. Various states, e.g. New York, Nevada, Illinois, Maryland, Delaware, Massachusetts, Florida, Minnesota, Rhode Island, Connecticut, California, Iowa, Oregon,

⁵ available at <https://travel.state.gov/content/travel/en/passports/apply-renew-passport/gender.html> (emphasis in original) (last accessed 20 April 2018).

⁶ available at https://travel.state.gov/content/dam/passports/content-page-resources/Physician_Letter_Example.docx (last accessed 20 April 2018).

Vermont, and Washington among others, as well as the District of Columbia, updated their birth certificate policies to recognize that an individual's gender does not depend on surgical status.⁷

63. The Birth Certificate Policy is not supported by any compelling, substantial, or even legitimate government interest.

64. The Birth Certificate Policy lacks any narrowly-tailored, substantial, or even rational relationship to a valid government interest, and it is not the least restrictive means of achieving a valid government interest.

65. The Birth Certificate Policy is maintained and motivated by animus toward transgender individuals, including to the extent that it rests upon any actual or asserted statutory barriers to providing transgender individuals with birth certificates matching their sex.

66. Colorado specifically identifies transgender individuals as a suspect class and a class requiring heightened legal protections. Further, a recent federal district court found that transgender individuals facing discrimination based solely on their transgender status warranted strict scrutiny.⁸

67. The Defendants are aware of the policies of the State regarding transgender-based discrimination. Employment anti-discrimination laws are found at Colorado Revised Statutes (C.R.S.) 24-34-401 *et. seq.*, housing anti-discrimination laws are found at C.R.S. 24-34-501 *et. seq.* Colorado public accommodations anti-discrimination laws are found at C.R.S. 24-34-601 *et. seq.* Even the Colorado Department of Regulatory Agencies (DORA) recognize these rights. DORA's website states "[u]nder Colorado law, the CADA's protections against discrimination extend to a person's 'transgender status or another individual's perception thereof.' See C.R.S. § 24-34-301(7). A transgender person is someone whose [correct sex] differs from the sex marked on their birth certificate. The CADA prohibits discrimination in places of public accommodation, employment, and housing. (*see* C.R.S. 24-34-301 *et seq.*), including schools."

Plaintiff B.D.

68. B.D. was born in Denver County, Colorado and both he and Jane Doe are residents of both the City and County of Denver, Colorado. He was assigned female at birth on his birth certificate. B.D. has identified as a male for over two years and received "appropriate clinical treatment" as described in the requirements for the correct gender on a Colorado driver's license or state identification card, Social Security Administration records, and a U.S. passport through the Department of State.

69. The Vital Records Section of the CDPHE was contacted regarding the availability of updating a birth record for a transgender minor on 10 April, 2018. The staff person related that both surgery and a court order recognizing the surgical procedures were required before CDPHE would correct the birth record for a transgender Coloradan.

⁷ See Movement Advancement Project's graphic on nationwide identity document laws, available at http://www.lgbtmap.org/equality-maps/identity_document_laws (last accessed 20 April 2018).

⁸ See *Karnoski v. Trump*, 2018 WL 1784464 (W.D. Wash. April 13, 2018).

70. Plaintiff Jane Doe desires to exercise her parental right to make medical decisions for B.D. without impermissible interference from the State in the form of the State requiring her to consent to sex reassignment surgery for her minor child in order to correct B.D.'s sex marker on his birth certificate.

FIRST CLAIM FOR RELIEF
Free Speech Violation

71. Article II, Section 10 of the Colorado Constitution provides that “No law shall be passed impairing the freedom of speech[.]”

72. Section 10 protects both the right to speak and the right to refrain from speaking.

73. The Birth Certificate Policy violates the Free Speech rights of transgender individuals to refrain from speaking by forcing them to disclose their transgender status and to identify with a gender that conflicts with who they are. It also prevents transgender individuals from accurately expressing their gender.

SECOND CLAIM FOR RELIEF
Equal Protection Violation

74. The Colorado Constitution provides for equal protection of the laws for all its residents through the Due Process Clause. Art. II § 25.

75. The Birth Certificate Policy facially and intentionally discriminates against transgender individuals based on sex-related considerations. The sex that the government lists on an individual's birth certificate is literally a government classification of an individual's sex. In the case of transgender individuals, however, this classification reflects a sex contrary to their correct sex, causing harm as a result. Discrimination based on sex-related considerations also includes, but is not limited to, discrimination based on gender nonconformity, gender identity, transgender status, and gender transition.

76. The Birth Certificate Policy facially and intentionally discriminates on the basis of transgender status by depriving transgender people who were born in Colorado—and them alone—of a birth certificate that accurately reflects their correct sex unless they undergo sex reassignment surgery. Non-transgender individuals are not deprived of a birth certificate that accurately reflects their correct sex.

77. Discrimination because an individual is transgender is both discrimination based on a sex-related consideration, which requires courts to apply intermediate scrutiny in evaluating the constitutionality of the government's discrimination at a minimum, and discrimination based on transgender status, which requires courts to apply strict scrutiny to such discrimination.

78. Government discrimination against transgender individuals bears all the indicia of a suspect classification requiring strict scrutiny by the courts.

a. Transgender people have suffered a long history of extreme discrimination and continue to suffer such discrimination to this day.

b. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure express federal, state, and local protections specifically protecting them against discrimination, and have been and continue to be regularly targeted by anti-transgender legislation, regulations, bills, and other government action.

c. A person's gender identity or transgender status bears no relation to a person's ability to contribute to society.

d. Gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment. Gender identity is also generally fixed at an early age and highly resistant to voluntary change.

79. "The excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate." *Powell v. Schriver*, 175 F.3d 107, 109 (2d Cir. 1999) (citing *Farmer v. Moritsugu*, 163 F.3d 610, 611 (D.C. Cir. 1998) (per curiam))

80. The Birth Certificate Policy deprives transgender individuals born in Colorado, like B.D., of their right to equal dignity and stigmatizes them as second-class citizens in violation of Article II Section 25.

THIRD CLAIM FOR RELIEF **Due Process Violation (Right to Privacy)**

81. Article II Section 25 of the Colorado Constitution provides that "[n]o person shall be deprived of life, liberty or property, without due process of law."

82. The substantive protections of the Due Process Clause, as well as other constitutional provisions giving rise to a right to privacy, protect information that is highly personal and intimate as well as information that could lead to bodily harm upon disclosure. Government infringement of these protections requires the courts to apply strict scrutiny to such government action.

83. The fact that an individual is transgender constitutes highly personal and intimate information. A reasonable individual would find the involuntary disclosure of one's transgender status to be deeply intrusive.

84. The involuntary disclosure of one's transgender status can also cause significant harm, including placing one's personal safety and bodily integrity in jeopardy. This harm burdens and interferes with the ability of transgender individuals to live in a manner consistent with their correct sex in all aspects of life, including where doing so is medically necessary.

85. The Birth Certificate Policy violates transgender individuals' right to privacy by causing disclosures of their transgender status and depriving them of significant control over the circumstances around such disclosure.

86. There are no adequate safeguards to prevent the harm caused by the involuntary disclosure of one's transgender status. For example, an individual may need to disclose his or her birth certificate directly to third parties, without any of the privacy safeguards that may exist where the government discloses information to third parties.

87. There is no compelling, important, or even legitimate interest in the government causing transgender individuals to involuntarily disclose their transgender status any time third parties see their birth certificate.

88. There is no express statutory mandate, articulated public policy, or other recognizable public interest in causing transgender individuals to disclose their transgender status to third parties where they would not otherwise do so.

89. The Birth Certificate Policy also burdens the right to define and express one's correct sex, including a right not to be treated in a manner contrary to one's gender by the government. A man has a right to be treated as a man, rather than a woman, by his government; and the fact that he is a man who is transgender does not change that right. The same rights apply to transgender women. The constitutional protections that shelter individual and bodily autonomy, dignity, and personhood prohibit the government from interfering with the right to live in accordance with one's correct sex.

FOURTH CLAIM FOR RELIEF

Due Process Violation (Impermissible State Interference with Parent-Child Relationship)

90. One of the fundamental rights protected by the Due Process Clause is the right of a parent to be free from impermissible state interference in making decisions concerning the care, custody, and control of their children. Colorado explicitly affirmed this fundamental constitutional right in its laws. C.R.S § 13-22-107(1)(a)(III) ("Parents have a *fundamental right* and responsibility to make decisions concerning the care, custody, and control of their children.") (emphasis added).

91. A law interfering with this fundamental right is subject to strict scrutiny.

92. This fundamental right includes decisions regarding medical care and which surgeries, if any, are appropriate for a child. The U.S. Supreme Court, in identifying the identical fundamental right protected by the U.S. Constitution, held that "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000).

93. By dictating sex reassignment surgery as a prerequisite to correcting a transgender child's gender marker on their birth certificate, the State of Colorado is impermissibly injecting itself into the parental decision-making process of Jane Doe and other parents of transgender individuals.

94. There is no compelling, important, or even legitimate interest in the government requiring a parent to subject their child to a surgery in order to obtain an accurate birth certificate

for their child, which is not required to correct the sex on any other Colorado state or federal identity document.

FIFTH CLAIM FOR RELIEF

Due Process Violation (Impermissible State Interference with Plaintiff's Bodily Autonomy)

95. The Due Process Clause also guarantees the fundamental right to a child's bodily integrity. Laws that infringe on this right are evaluated under strict scrutiny.

96. The United States Supreme Court explained that "[n]o right is more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law... To compel any one, and especially a woman, to lay bare the body, or to submit it to the touch of a stranger, without lawful authority, is an indignity, an assault, and a trespass...". *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891).

97. A centuries-long line of common law and cases stand for the right of a person to make their own decisions about their body and who touches it, including British and United States common law; *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944), *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Ingraham v. Wright*, 430 U.S. 651 (1977); and notably here in Colorado in *People v. Medina*, 705 P.2d 961 (1985).

98. The Surgery Requirement, and in particular State-required sterilization through the Birth Certificate Policy, harkens back to the dark days of eugenics where socially-undesirable persons were subjected to unwanted and unwarranted assaults upon their bodies and reproductive capabilities.

99. There exists no compelling, important, or even legitimate interest in the government requiring transgender persons to undergo sex reassignment surgery in order to obtain an accurate birth certificate for themselves, which is not required to correct the gender on any other Colorado state or federal identity document.

Exhaustion of Remedies Not Required

100. Exhaustion of administrative remedies is not required in this particular case. The exhaustion requirement is subject to limited exceptions. Exhaustion is not necessary, for example, when it is "clear beyond a reasonable doubt that further administrative review by the agency would be futile because the agency will not provide the relief requested." Exhaustion is also unnecessary, for instance, when the matters in controversy are matters of law that the agency lacks the authority or capacity to determine, such as constitutional issues.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue a judgement pursuant to C.R.S. §§ 13-51-105 and 13-51-106, declaring the Birth Certificate Policy unconstitutional on its face and as applied for the reasons set forth above;

B. Permanently enjoin Defendants, their agents, employees, representatives, successors, and any other person acting directly or indirectly in concert with them from enforcing the Birth Certificate Policy, including from refusing to provide birth certificates to transgender individuals like Plaintiffs which accurately reflect their sex, consistent with their lived sex without requiring sex reassignment surgery and without the inclusion of information that would reasonably disclose an individual's transgender status on the face of the birth certificate;

C. Award Plaintiffs costs, expenses, and reasonable attorneys' fees; and

D. Grant any injunctive or other relief that this Court deems just, equitable, and proper.

Dated this 24th day of April, 2018.

s/ Emma Shinn

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