

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

M.H.W., a minor, by and through his parents  
and next friends JENNIFER L. WINGARD  
and MICHAEL SICINSKI,

*Plaintiff,*

v.

ANDREW M. CUOMO, in his official  
capacity as Governor of the State of New  
York; DR. HOWARD A. ZUCKER, in his  
official capacity as Commissioner of Health  
for New York State; and ROBERT  
LOCICERO, in his official capacity as  
Director of New York State's Bureau of Vital  
Records,

*Defendants.*

Civil Action No. 1:20-cv-17 (FJS/TWD)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff M.H.W., a minor, by and through his parents and next friends JENNIFER L. WINGARD and MICHAEL SICINSKI, and by and through his attorneys, files this Complaint for Declaratory and Injunctive Relief against Defendants ANDREW M. CUOMO, in his official capacity as Governor of the State of New York; DR. HOWARD A. ZUCKER, in his official capacity as Commissioner of Health for New York State; and ROBERT LOCICERO, in his official capacity as Director of New York State's Bureau of Vital Records (collectively, "Defendants"), and respectfully alleges as follows:

**INTRODUCTION**

1. Plaintiff M.H.W. is a transgender boy born in Ithaca, New York who wishes to correct his New York State birth certificate to accurately reflect his sex, consistent with his gender identity. He seeks access to a birth certificate he can use without the unnecessary and potentially

harmful disclosure of his transgender status and without being exposed to discrimination and other harms, including harassment and violence.

2. M.H.W. is a boy. Yet, even though he identifies as male, the Department of Health and Bureau of Vital Records incorrectly identify M.H.W. as female on his birth certificate.

3. Possessing accurate identification documents that are consistent with a person's gender identity—a person's core internal sense of their own gender—is essential to their basic social and economic well-being. A birth certificate is a critical and ubiquitous identification document used in many settings to verify an individual's identity. Access to employment, education, housing, health care, banking, travel, and government services all hinge on having appropriate and accurate personal documentation that reflects a person's true identity. Not only are birth certificates themselves commonly used for such purposes, but they are often required for obtaining other essential identification documents.

4. For transgender people, the sex designation on their original birth certificate is inaccurate because the sex they were assigned at birth does not match their true sex, consistent with their gender identity. Correcting the sex designation on their birth certificate is thus critically important for transgender people. Indeed, few things are as essential to one's personhood and navigating the world as being able to correctly and accurately identify one's gender to the world.

5. Yet, while the State of New York provides non-transgender (*i.e.*, cisgender) minors born in New York State with accurate birth certificates—birth certificates that reflect their true sex, consistent with their gender identity—the State of New York categorically bars transgender people under the age of 18 who are born in New York State from obtaining birth

certificates that reflect their true sex, consistent with their gender identity, and let alone in a manner that does not disclose their transgender status (the “Birth Certificate Policy for Minors”).<sup>1</sup>

6. To be sure, understanding the importance of having an accurate birth certificate for purposes of identification, the State of New York permits transgender persons 18 years of age or older who are born in New York State to correct the sex listed on their birth certificates, in a manner consistent with their gender identity. And similarly, the State of New York permits cisgender minors born in New York State to correct the sex listed on their birth certificates, but specifically prohibits transgender minors born in New York State from doing the same.

7. New York State’s categorical refusal to correct the gender marker on the birth certificates of transgender minors to accurately reflect their sex in a manner consistent with their gender identity, regardless of what steps they have taken to live in a manner consistent with their gender identity, stands in sharp contrast with the approach taken by a majority of jurisdictions in the United States, such as California, Colorado, Connecticut, New Jersey, Massachusetts, Pennsylvania, Washington, and even New York City, all of which permit transgender minors to correct the sex listed on their birth certificates, in a manner consistent with their gender identity.

8. New York State’s Birth Certificate Policy for Minors is also incongruous with Governor Cuomo’s stated commitment to “enacting critical protections for transgender individuals” and “that New York will always stand up for every single member of our LGBTQ family no matter what happens in Washington.”<sup>2</sup>

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<sup>1</sup> Throughout this Complaint, Plaintiff uses the term “minors” to refer to persons under the age of 18.

<sup>2</sup> See Press Release, New York Governor’s Press Office, *On Transgender Day of Remembrance, Governor Cuomo Announces New Actions to Protect Transgender and Gender Non-Conforming New Yorkers* (Nov. 20, 2019), available at <https://tinyurl.com/tuvs6c6>.

9. In practical terms, New York State's Birth Certificate Policy for Minors effectively deprives transgender minors born in New York State from access to birth certificates they can use. This policy categorically barring transgender minors from correcting the gender marker on their birth certificates subjects transgender minors to invasions of privacy, prejudice, discrimination, humiliation, harassment, stigma, and even violence and establishes a barrier to transgender minors' full engagement in society. For transgender minors who suffer from gender dysphoria, being denied the ability to correct the gender marker on their birth certificates also interferes with their medical treatment and may increase their dysphoria and distress.

10. The Birth Certificate Policy for Minors, which each Defendant enforces, violates the United States Constitution's guarantees of equal dignity, equal protection of the laws, fundamental rights to privacy, liberty, and autonomy, and freedom of speech. These constitutional guarantees protect personal decisions central to individual dignity and personal autonomy, including intimate decisions that define personal identity, such as a person's gender identity.

11. No compelling, important, or even legitimate governmental justification supports New York State's refusal to provide transgender minors with accurate birth certificates that match their gender identity.

### **JURISDICTION AND VENUE**

12. This action arises under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

13. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the laws and the Constitution of the United States.

14. Venue is proper in the Northern District of New York under 28 U.S.C. § 1391(b) because all Defendants reside within the district, Defendants reside and have offices within the

district, and/or a substantial part of the events that gave rise to Plaintiff's claims occurred, and will continue to occur, within the district.

15. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Federal Rules of Civil Procedure 57 and 65, and 28 U.S.C. §§ 2201 and 2202.

16. This Court has personal jurisdiction over Defendants because they are domiciled in New York State and/or have otherwise made and established contacts with New York State sufficient to permit the exercise of personal jurisdiction over them.

### **PARTIES**

#### **A. The Plaintiff**

17. Plaintiff M.H.W. is a 14-year-old boy who was born in Ithaca, New York and currently resides in Texas. He is transgender. M.H.W. wishes to correct his New York State birth certificate, which currently indicates his sex as female, to accurately reflect his sex as male, as determined by his gender identity. Because M.H.W. is a minor, this action is brought on his behalf by and through his parents and next friends Jennifer L. Wingard and Michael Sicinski.

#### **B. The Defendants**

18. Defendant Andrew W. Cuomo ("Governor Cuomo") is sued in his official capacity as Governor of the State of New York. In his capacity as governor, pursuant to Article 4, Section 3 of the New York State Constitution, Governor Cuomo is charged with the duty to "take care that the laws are faithfully executed," including New York State's Public Health Law, and supervises the implementation and enforcement of the Public Health Law and its attendant regulations. Pursuant to N.Y. Pub. Health Law § 204, Governor Cuomo has the power to appoint the Commissioner of the Department of Health for the State of New York, who serves at the pleasure of the governor. Governor Cuomo has knowingly condoned and acquiesced in the acts barring

Plaintiff from living consistent with his gender identity, namely the prohibition against correcting the gender marker on his birth certificate. Governor Cuomo is a person within the meaning of 42 U.S.C. § 1983 and has acted under color of state law at all times relevant to this Complaint.

19. Defendant Dr. Howard W. Zucker (“Commissioner Zucker”) is sued in his official capacity as Commissioner of Health for New York State. As Commissioner of Health, Commissioner Zucker has general supervision of vital statistics in the state, is charged with the execution of the vital statistics laws of New York, including the provision of the necessary instructions and forms for obtaining and preserving records of births. Commissioner Zucker also has supervisory authority over the vital statistics registrars, deputy registrars, and subregistrars throughout New York State. Commissioner Zucker has knowingly encouraged, condoned, and acquiesced in the acts barring Plaintiff from correcting his birth certificate to accurately reflect his sex, consistent with his gender identity. Commissioner Zucker’s administration and enforcement of the vital statistics laws are actions under the color of state law. Commissioner Zucker is a person within the meaning of 42 U.S.C. § 1983 and has acted under color of state law at all times relevant to this Complaint.

20. Defendant Roger Locicero (“Mr. Locicero”) is sued in his official capacity as Director of New York State’s Bureau of Vital Records. As Director of the Bureau of Vital Records, and New York State Registrar, Director Locicero supervises the activities of the Bureau of Vital Records, enforces New York State’s vital records laws, and is in charge of all matters connected with the registration of births, marriages, and deaths which may occur or take place in New York State (outside of New York City). Indeed, New York State’s policy regarding the ability of transgender people 18 years-old or older to correct the gender marker on their birth certificates is set forth in letter from the Director of the Bureau of Vital Records dated September 28, 2015.

Director Locicero has knowingly encouraged, condoned, and acquiesced in the acts barring Plaintiff from correcting his birth certificate to accurately reflect his sex, consistent with his gender identity. Director Locicero's administration and enforcement of the vital records laws are actions under the color of state law. Mr. Locicero is a person within the meaning of 42 U.S.C. § 1983 and has acted under color of state law at all times relevant to this Complaint.

### **STATEMENT OF FACTS**

#### **Background Information Regarding Sex, Gender Identity, and Gender Dysphoria**

21. A person has multiple sex-related characteristics, including hormones, external and internal morphological features, external and internal reproductive organs, chromosomes, and gender identity. These characteristics may not always be in alignment.

22. The phrase "sex assigned at birth" refers to the sex recorded on a person's birth certificate at the time of birth. Typically, a person is assigned a sex on their birth certificate solely based on the appearance of external genitalia at the time of birth. Other sex-related characteristics (such as a person's chromosomal makeup or gender identity, for example) are typically not assessed or considered at the time of birth.

23. Gender identity—a person's core internal sense of their own gender—is the primary factor in determining a person's sex. Every person has a gender identity.

24. There is a medical consensus that gender identity is innate, has biological underpinnings (including sexual differentiation in the brain), and is fixed at an early age. As such, efforts to change a person's gender identity are unethical and harmful to a person's health and well-being.

25. For the majority of people, their gender identity matches their sex assigned at birth. That is not the case, however, for transgender people.

26. Transgender persons are people whose gender identity diverges from the sex they were assigned at birth. A transgender man's sex is male (even though he was assigned the sex of female at birth) and a transgender woman's sex is female (even though she was assigned the sex of male at birth).

27. Cisgender persons are people whose gender identity aligns with the sex they were assigned at birth. A cisgender man's sex is male (and he was assigned the sex of male at birth) and a cisgender woman's sex is female (and she was assigned the sex of female at birth).

28. External reproductive organs are not determinative of a person's sex.

29. Gender identity is the primary determinant of a person's sex, including for transgender people whose sex-related characteristics are not in typical alignment.

30. Gender identity and transgender status are thus inextricably linked to one's sex and are sex-related characteristics.

31. Attempts to change a person's gender identity to bring it into alignment with the person's sex assigned at birth are not only unsuccessful but also dangerous, risking psychological and physical harm, including suicide.

32. Living in a manner consistent with one's gender identity is critical to the health and well-being of any person, including transgender people.

33. The incongruence between a transgender person's gender identity and sex assigned at birth can sometimes be associated with gender dysphoria. Gender dysphoria refers to clinically significant distress that can result when a person's gender identity differs from the person's sex assigned at birth.

34. Gender dysphoria is a serious medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition

(2013) (“DSM-V”), as well as by other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association. If left untreated, gender dysphoria may result in psychological distress, anxiety, depression, suicidal ideation, and even self-harm.

35. Treatment of gender dysphoria is usually provided pursuant to the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, published by the World Professional Association of Transgender Health (“WPATH”). Medical treatment for gender dysphoria must be individualized and tailored to the medical needs of each patient.

36. The process by which transgender people come to live in a manner consistent with their gender identity, rather than their sex assigned at birth, is known as transition.

37. The steps that transgender people take to transition, as well as to treat their gender dysphoria, vary with each individual’s specific needs, but these steps generally include one or more of the following: (1) social transition; (2) hormone therapy; and/or (3) gender-confirming surgery.

38. Social transition entails a transgender person living in a manner consistent with the person’s gender identity. For example, for a transgender man, social transition may include, among other things, changing his first name to a name typically associated with men; using male pronouns; changing his identity documents to indicate his male gender; wearing clothing and adopting grooming habits typically associated with men; and otherwise living as a man in all aspects of life.

39. Social transition requires that a transgender woman or a transgender man be recognized, respectively, as a woman or a man, and treated as such by family members, coworkers,

and others in the community. The refusal to treat a person in a manner consistent with their gender identity is harmful to that person's dignity and well-being.

40. Social transition is thus an important aspect of transition for a transgender person.

41. Social transition is also part of necessary medical treatment for many transgender people with gender dysphoria. While social transition is adequate treatment for gender dysphoria for some transgender people, others may require medical care as well.

42. Whether other treatment is medically necessary or even appropriate, however, depends on a person's individualized needs and health. A person's ability to access treatment—particularly gender-confirming surgery—may also be limited by financial resources, insurance coverage, provider availability, and other barriers to health care access.

43. The various components associated with transition—social transition and gender-confirming medical care—do not change a person's sex, but instead bring a person's physical appearance and lived experience into better alignment with their true sex, as determined by their gender identity.

44. Living in a manner consistent with one's gender identity is thus critical to the health and well-being of transgender people, as well as a key aspect of treatment for those who suffer from gender dysphoria.

45. Being able to possess identity documents consistent with one's gender identity is necessary for a person's optimal physical and mental health.

46. There is no medical or scientific basis for refusing to acknowledge a transgender person's true sex, as determined by their gender identity, based on whether that person has undergone surgery or any other medical treatment. Indeed, the WPATH specifically

acknowledges that surgical procedures are not required for social gender recognition and therefore should not be a prerequisite for identity document or record changes.

47. Depriving transgender people of birth certificates that match their gender identity harms their health and well-being. This deprivation also interferes with the international standards of care for gender dysphoria by impeding a transgender person's ability to live in a manner consistent with their gender identity, and can aggravate symptoms of gender dysphoria.

### **The Need for Accurate Birth Certificates Matching One's Gender Identity**

48. A person's birth certificate is a trusted and essential government-issued document that serves as proof of a person's identity. For this reason, the government makes a copy of a birth certificate available to the person reflected on the birth certificate, rather than merely reserving it for the government's own use.

49. The birth certificate also reflects the government's recognition of a person's identity, including the person's sex, just as a marriage certificate reflects government recognition of a person's relationship.

50. The use of birth certificates to demonstrate identity is ubiquitous in our society. Birth certificates are commonly used in a wide variety of contexts and are one of the primary ways of proving age and citizenship. In the ordinary course of life, a birth certificate is often required directly by employers and educational institutions for enrollment, or at a minimum, is required as a prerequisite to securing other important identification documents (such as driver licenses, state identification cards, social security cards, passports, and other state and federal identification documents).

51. Birth certificates are also commonly used in determining eligibility for enrolling in government programs, establishing school records, and proving age.

52. Because of these and other instances in which a birth certificate serves as proof of identity or citizenship, every person needs a birth certificate that accurately reflects their identity. However, transgender minors born in New York State (outside New York City), unlike cisgender minors born in New York State, do not have access to accurate birth certificates.

53. The gender marker originally placed on a transgender person's birth certificate is inaccurate because it is based on visual assumptions about that person's sex made at the time of their birth, without taking into consideration relevant factors that determine a person's sex, including most importantly, gender identity.

54. Depriving transgender persons of birth certificates that accurately reflect their sex, consistent with their gender identity, forcibly discloses private and sensitive information about them in contexts where it would otherwise remain undisclosed (such as when they enroll in school or seek employment), regardless of whether a person's transgender status may otherwise be known by others (for example, by friends or family), and regardless of a person's desire not to disclose that personal information.

55. Transgender persons denied an accurate birth certificate are thus 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.

56. Being compelled to present a birth certificate that inaccurately reflects a transgender person's sex can often subject that person to serious invasions of privacy. A person's transgender status (and medical diagnosis of gender dysphoria) constitutes deeply personal and sensitive information over which a transgender person has a reasonable expectation of privacy, and the disclosure of which can jeopardize a person's safety and risk bodily harm.

57. An inaccurate birth certificate thus subjects transgender people to invasions of privacy, prejudice, discrimination, humiliation, harassment, stigma, and increased likelihood of violence.

58. Indeed, as a result of being forced to use identification documents that are inconsistent with who they are, transgender persons experience high rates of discrimination (including being denied service or asked to leave public accommodations, workplaces, or housing), harassment, and violence. A national survey conducted by the National Center for Transgender Equality in 2015 revealed that nearly one third of respondents who had shown an identification document with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.

59. More generally, not having accurate identity documents can be a barrier to full engagement in society for transgender minors born in New York State, who, because they are unable to obtain accurate birth certificates, often forego opportunities and protections that cisgender people holding accurate identification currently enjoy. Transgender people experience substantial discrimination and harassment in a wide variety of contexts, including with respect to employment, education, public accommodations, health care, housing, and interactions with the government, including law enforcement. Transgender persons are also disproportionately targeted for hate crimes. These realities make the involuntary disclosure of a person's transgender status particularly harmful and dangerous.

60. Furthermore, denying transgender persons accurate birth certificates, consistent with their gender identity, undermines rather than serves the purpose of verifying that a transgender person is, in fact, the same person reflected on that person's birth certificate. For example, a transgender man who has taken steps to bring his body and lived experience into alignment with

his true sex, consistent with his gender identity, will correctly be perceived as male by others. Forcing that man to use a birth certificate that inaccurately states he is female will cause others to question whether he is the same person reflected on the birth certificate, exposing him to invasions of privacy, prejudice, discrimination, humiliation, harassment, stigma, and even violence.

61. New York State's refusal to provide transgender minors with a birth certificate that matches their gender identity constitutes a stigmatizing refusal to acknowledge their sex, which is particularly harmful given that a birth certificate is the quintessential identity document. This refusal deprives people like Plaintiffs of their equal dignity.

#### **New York State's Birth Certificate Policy**

62. The New York State Department of Health is the agency within the state responsible for public health. As such, the Department of Health, which includes the Bureau of Vital Records, exercises responsibility for the registration, issuance, correction, and changes to New York State birth certificates.

63. Birth records in New York State are confidential and are kept under seal.

64. New York State birth certificates include, *inter alia*, the given name and surnames of the newborn child, the date of birth, the names of the child's parents, and the sex of the child.

65. Upon information and belief, it is the practice of New York State, for purposes of determining the sex designation on birth certificates, to rely solely on observations about the external genitalia of newborns.

66. Recognizing that the information in a birth certificate may sometimes be inaccurate or need updating, the New York's Public Health Law and the regulations and policies promulgated and enforced by Defendants permit the correction of errors and updating of birth certificate records.

67. For example, pursuant to N.Y. Pub. Health Law § 4176, corrections to birth certificates may be made. As such, Defendants have published Form DOH-297 (“Application for Correction of Certificate of Birth”), which a person may submit to correct any errors to a birth certificate. Upon information and belief, Form DOH-297 may be used to correct the sex listed on a cisgender person’s birth certificate.

68. Further, pursuant to N.Y. Pub. Health Law § 4138(d), in cases in which a person has lawfully changed their name, such person may present a duly authenticated copy of the court order changing their name and request an amended certificate of birth. This applies to persons under 18 years of age as well.

69. Similarly, pursuant to N.Y. Pub. Health Law § 4138(c), following the adoption of a child, a new birth certificate reflecting only the names of the adoptive parents and in the new name of the adopted child must be substituted for the original registered birth certificate. The original registration certificate of the birth of the adoptee are kept under seal and can only be released upon a court order or upon a by the adoptee pursuant to N.Y. Pub. Health Law § 4138-e.

70. Lastly, evincing Defendants’ authority to permit corrections to the sex listed on a transgender person’s birth certificate in a manner consistent with that person’s gender identity, the Director of the Bureau of Vital Records issued a letter on September 28, 2015, setting forth the process by which a transgender person may correct the gender marker on their birth certificate. As part of this process a person seeking to correct the sex listed on their birth certificate must submit (1) Form DOH-297 and (2) a “Notarized Affidavit of a Gender Error.” The new birth certificate does not indicate that there was a change in the original sex designation. Copies of the September 28, 2015 letter and the Notarized Affidavit of a Gender Error are enclosed as Exhibits A and B.

71. However, notwithstanding their ability and authority to permit transgender persons to correct the sex listed on their birth certificates in a manner that is consistent with their gender identity, Defendants refuse to permit transgender minors to correct the sex listed on their birth certificates. The same is not true of cisgender minors whose sex designation on their birth certificates was inaccurately recorded. This is, in sum and substance, New York State's Birth Certificate Policy for Minors.

72. Thus, while Defendants have promulgated policies permitting persons born in New York State the ability to correct the sex listed on a person's birth certificate in order to accurately identify the sex of such person, Defendants categorically prohibit transgender minors born in New York State—and only transgender minors—from correcting the sex listed on their birth certificates in a manner consistent with their gender identity.

73. New York State's Birth Certificate Policy for Minors stands in sharp contrast to the approach taken by the vast majority of states, the District of Columbia, and even New York City, all of which permit transgender minors to correct the gender marker on their birth certificate to accurately reflect their sex, consistent with their gender identity. Many of these jurisdictions permit transgender minors to correct the sex designation on their birth certificates through just the submission of an affidavit.

74. New York State's Birth Certificate Policy for Minors is not supported by any compelling, important, or even legitimate government interest.

75. The Birth Certificate Policy for Minors lacks any necessary, narrowly-tailored, substantial, or even rational relationship to any valid government interest.

**Plaintiff M.H.W.**

76. Plaintiff M.H.W. is a 14-year-old boy who was born in Ithaca, New York and resides in the Houston metropolitan area in Texas. M.H.W.'s parents are Jennifer L. Wingard and Michael Sicinski. M.H.W. is bringing this suit by and through his parents.

77. M.H.W. wishes to correct his New York State birth certificate, which currently indicates that his sex is female, to accurately reflect his sex as male, as determined by his gender identity.

78. M.H.W. is transgender. He was assigned the sex of female at birth, and his New York State birth certificate identifies him as female. However, he is male. M.H.W.'s identity as a boy is just as deep-seated as that of boys who were assigned male at birth.

79. M.H.W. enjoys musical theater and anime. Falsettos and Death Note are his favorites, respectively. He is a good student. His favorite subjects are English and Art.

80. Growing up M.H.W. did not view himself in a gendered way. However, just as he was about to turn 11 years old in 2016, M.H.W. began puberty and felt very uncomfortable with his body. M.H.W. was depressed and anxious at having to go through puberty and be viewed as a girl, even though he did not identify as such.

81. With the support of his parents, M.H.W. worked with a therapist and ultimately came to the realization that he is transgender, as he identifies as male. This process of self-realization was deliberate and steady. M.H.W. was also diagnosed with gender dysphoria.

82. Because his gender identity is male, M.H.W. began using male pronouns and a more traditionally male name. He also maintained a more stereotypically masculine haircut and clothing style.

83. In September 2019, M.H.W. began undergoing clinically appropriate medical treatment for gender dysphoria, namely hormone replacement therapy, to bring his body into further alignment with his male gender identity.

84. As a result, the general public and community perceive M.H.W. as the boy he is.

85. Around the same time, M.H.W. petitioned a district court in Texas for an order to change his name and correct his sex/gender designation. On October 2019, a district court in Texas issued an “Order to Change Name and Correct the Sex/Gender Designation of a Minor” legally changing M.H.W.’s name to his current more traditionally male name.

86. In its order, the district court in Texas further found that M.H.W. “has met the generally accepted medical standards set forth in the WPATH (World Professional Association for Transgender Health) Standards of Care, and that [M.H.W.]’s gender is MALE.” The Texas district court further ordered that M.H.W.’s corrected name and that his sex/gender is male be reflected on “documents reflecting his identifying information,” which includes “licenses, certificates, or other official documents.”

87. Following the obtaining of his “Order to Change Name and Correct the Sex/Gender Designation of a Minor,” M.H.W. set about correcting M.H.W.’s identity documents. These included M.H.W.’s social security card and U.S. passport.

88. Having identification documents that accurately reflect his identity has been a positive and affirming experience for M.H.W.

89. However, as a result of New York State’s Birth Certificate Policy for Minors, M.H.W. has been unable to correct his primary identification document—his birth certificate—so that it accurately reflects his identity and true sex.

90. On or about October 21, 2019, Ms. Wingard called the New York State Department of Health to inquire about the process for correcting M.H.W.'s birth certificate so that it accurately reflects his male gender identity. Notwithstanding the fact that M.H.W. and his parents had compiled all the documentation required by the September 28, 2015 letter regarding corrections to the sex designation in a New York State birth certificate and the fact that they had an order from a district court in Texas, Ms. Wingard was informed that New York State does not permit such corrections for minors. On or about October 23, 2019, an attorney with the Trans Legal Aid Clinic Houston further confirmed that this was New York State's policy after calling the Bureau of Vital Records.

91. M.H.W. wants to correct both his name and the gender marker on his birth certificate so that it accurately reflects who he is.

92. Yet, as a result of the Birth Certificate Policy for Minors, the sex designation on M.H.W.'s New York State birth certificate still incorrectly identifies him as female, which is inconsistent with his male gender identity and other identification documents.

93. The inability to correct his birth certificate so that it accurately reflects his identity and true sex, as determined by his gender identity, has been distressing to M.H.W. As M.H.W. says in reference to the policy, "it is stupid."

94. M.H.W. is male and has lived as such for over two years now. It is nonsensical for M.H.W.'s birth certificate to not match his identity.

#### **The Birth Certificate Policy for Minors Harms Transgender Minors, Like M.H.W.**

95. M.H.W. is harmed by New York State's Birth Certificate Policy for Minors, which prevents him from obtaining an essential identity document – his birth certificate – that is congruent with his male gender identity.

96. As a minor, M.H.W.'s birth certificate is his primary identification document. He will need his birth certificate for enrolling in community college courses or dual-credit courses while he is in high school or, when he is old enough, to get a driver's license permit.

97. M.H.W. reasonably fears that possessing a birth certificate that fails to reflect his male gender identity increases the likelihood that he will be subjected to invasions of privacy, prejudice, discrimination, distress, harassment, or violence.

98. The forced disclosure of a person's transgender status impermissibly exposes them to prejudice, discrimination, distress, harassment, and violence.

99. Indeed, according a 2015 study, 32% of transgender people, both nationally and in Texas specifically (where M.H.W. lives), who have shown an identity document with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.

100. M.H.W. has already experienced the humiliation, discrimination, and distress that can arise from not having accurate identification documents.

101. On or about October 10, 2018, prior to his legal name change, M.H.W. was on a school trip when agents of the U.S. Department of Homeland Security's Transportation Security Agency pulled him aside because the name on his ticket did not match his gender expression. This experience was very distressing to M.H.W. and left him feeling humiliated and scared.

102. New York State's Birth Certificate Policy for Minors therefore violates transgender minors', including M.H.W.'s, fundamental right to privacy by forcing the disclosure of highly personal and sensitive information, such as their transgender status and medical condition, to others whom they might not trust or wish to know such information.

103. In addition, M.H.W., like other transgender minors born in New York State, is stigmatized and psychologically and emotionally harmed by the State's Birth Certificate Policy for Minors, as it indicates New York State's refusal to acknowledge his male gender identity or to recognize his core personhood.

104. As a result of the Birth Certificate Policy for Minors, M.H.W.'s current birth certificate reflects the sex he was incorrectly assigned at birth, erroneously stating that he is female and forcing him to use an identity document that inaccurately portrays his identity.

105. Defendants' refusal to issue a birth certificate accurately reflecting that M.H.W. is male is a persistent and stigmatizing reminder that New York State does not recognize him as male. That refusal impedes his ability to function successfully as a boy in all aspects of his life, including any time he will need to present his birth certificate to others.

106. When the government denies recognition of a transgender person's true sex, it necessarily imposes significant harms on that individual. The government's refusal to recognize a person's sex not only denies a transgender person equal dignity and respect by undermining—indeed denying—their very identity and existence, it also authorizes and invites other public and private entities to similarly discriminate and deny recognition.

107. Moreover, transgender people, regardless of whether they suffer from gender dysphoria, are harmed when they are prevented from taking steps to align their lived experiences with their true sex, as determined by their gender identity. The bar to having identification documents, such as a birth certificate, that reflect a transgender person's true sex not only stigmatizes them, but also inhibits their ability to self-define and express their identity. It interferes with a person's social transition and treatment for gender dysphoria.

108. New York State's refusal to respect a transgender minor's identity on the quintessential identity document—a birth certificate—serves as a scarlet letter, a reminder that New York State deems them to be second-class citizens, unworthy of recognition, equal dignity, and respect. Such refusal deprives transgender minors born in New York State (outside of New York City), including M.H.W., of their constitutional rights.

109. Lastly, M.H.W. objects to the state's message that sex is determined solely by the appearance of external genitals at the time of birth, a message that is inconsistent with the scientific and medical understanding of sex.

110. It is particularly distressing for a transgender person to be compelled to make an erroneous and inaccurate representation about their sex and identity, as such a statement is not consistent with who they are.

111. At all times relevant hereto, Defendants' administration and enforcement of the Birth Certificate Policy for Minors are actions under color of state law.

112. Plaintiff has been, and continues to be, injured by Defendants' conduct.

113. Plaintiff states all causes of action herein against all Defendants in their official capacities for purposes of seeking declaratory and injunctive relief, and challenges New York State's Birth Certificate Policy for Minors both facially and as applied to him, in order to remedy the violation of his constitutional rights.

### **CAUSES OF ACTION**

#### **COUNT I – DEPRIVATION OF EQUAL PROTECTION IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION**

114. Plaintiff hereby incorporates by reference and realleges all of the preceding paragraphs of this Complaint as though fully set forth herein.

115. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1.

116. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex as well as discrimination based on transgender status is presumptively unconstitutional and subject to heightened scrutiny.

117. Discrimination based on sex includes, but is not limited to, discrimination based on gender, gender identity, transgender status, gender transition, and nonconformity with sex stereotypes.

118. New York State’s Birth Certificate Policy for Minors facially and intentionally discriminates against transgender people based on sex. When the government lists a person’s sex on their birth certificate, the government literally creates a classification based on sex. In the case of transgender minors, like Plaintiff, this classification reflects a sex contrary to their true sex, as determined by their gender identity, causing harm as a result.

119. New York State’s Birth Certificate Policy for Minors also facially and intentionally discriminates based on transgender status by depriving transgender minors who were born in New York State—and them alone— of a birth certificate that accurately reflects their sex and that is consistent with their gender identity.

120. Discrimination because a person is transgender constitutes (1) discrimination based on sex, which requires courts to apply, at minimum, intermediate scrutiny when evaluating the constitutionality of the government’s discrimination, and (2) discrimination based on transgender status, which requires courts to apply strict scrutiny to such discrimination.

121. Government discrimination against transgender people because of their transgender status bears 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 explicit local, state, and federal protections to protect them against discrimination, and have been and continue to be regularly targeted for discrimination by legislation, regulations, 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; and

d. Gender identity is a core, defining trait that 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 change.

122. New York State's Birth Certificate Policy for Minors treats transgender individuals differently than cisgender individuals who are similarly situated.

123. The Birth Certificate Policy for Minors facially and intentionally discriminates based on sex and transgender status by depriving transgender minors—and only transgender minors—born in New York State (outside of New York City) of birth certificates that accurately reflect their sex and that are consistent with their gender identity. Cisgender people are not deprived of birth certificates that accurately reflect their sex and that are consistent with their gender identity.

124. The Birth Certificate Policy for Minors facially and intentionally discriminates on the basis of sex and transgender status by depriving all transgender minors—and only transgender minors—born in New York State (outside of New York City) of access to an accurate birth certificate that they can use without sacrificing their privacy, health, safety, dignity, and autonomy. Cisgender minors born in New York State are not deprived of birth certificates that they can use without sacrificing their privacy, health, safety, dignity, and autonomy.

125. The Birth Certificate Policy for Minors deprives transgender minors born in New York State, including Plaintiff, of their right to equal dignity and stigmatizes them as second-class citizens in violation of the Equal Protection Clause.

126. By enforcing the Birth Certificate Policy for Minors, Defendants deny transgender minors born in New York State, including Plaintiff, of their right to equal dignity, liberty, and autonomy because, unlike cisgender minors born in New York State, transgender minors born in New York State are deprived of a birth certificate that accurately reflects who they are.

127. The Birth Certificate Policy for Minors, thus, deprives transgender minors born in New York State, including Plaintiff, of their equality and dignity by stigmatizing them and branding them as second-class citizens, in violation of the Equal Protection Clause of the Fourteenth Amendment.

128. The Birth Certificate Policy for Minors deprives transgender minors born in New York State, including Plaintiff, of the ability to secure certain benefits to which they would otherwise be entitled.

129. The Birth Certificate Policy for Minors is not narrowly tailored to further a compelling government interest, substantially related to an important government interest, or even rationally related to a legitimate government interest.

130. Accordingly, Defendants are liable for their violation of the Fourteenth Amendment rights of Plaintiffs under 42 U.S.C. § 1983, and Plaintiff is entitled to declaratory and injunctive relief against Defendants declaring New York State's Birth Certificate Policy for Minors unconstitutional and enjoining its enforcement.

**COUNT II – DEPRIVATION OF DUE PROCESS  
IN VIOLATION OF THE FOURTEENTH AMENDMENT  
OF THE UNITED STATES CONSTITUTION**

131. Plaintiff hereby incorporates by reference and realleges paragraphs 1 through 113 of this Complaint as though fully set forth herein.

132. The Fourteenth Amendment to the United States Constitution, enforceable against Defendants pursuant to 42 U.S.C. § 1983, provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

133. The Due Process Clause of the Fourteenth Amendment places limitations on state action that deprives individuals of life, liberty, or property.

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

135. Forced disclosure of a person's transgender status violates that person's fundamental right to privacy. The fact that a person is transgender constitutes highly personal and intimate information. A reasonable person would find the involuntary disclosure of one's transgender status to be deeply intrusive.

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

137. New York State's Birth Certificate Policy for Minors violates transgender minors', including Plaintiff, fundamental right to privacy by causing disclosure of their transgender status and by depriving them of significant control over the circumstances around such disclosure.

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

139. The substantive protections of the Due Process Clause also protect the right of every person to the possession and control of their own person, and to define and express their identity. These protections extend to personal decisions central to individual dignity and personal autonomy, including intimate decisions that define personal identity.

140. The fundamental protections of an individual's autonomy encompass the right to define and express one's gender identity, including a right not to be treated in a manner contrary to one's sex, as defined by one's gender identity, by the government. The right to define and express one's gender identity is indeed among the most intimate imaginable, relating to matters that individuals are uniquely positioned to understand and define for themselves.

141. When the government identifies individuals by their sex in official documents, 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 gender identity.

142. By enforcing New York State's Birth Certificate Policy for Minors, Defendants deny recognition of a transgender minor's true sex and necessarily impose significant harms on that person. The government's refusal to recognize a person's sex not only denies a transgender person equal dignity and respect by undermining, indeed denying, their very identity and existence, but also authorizes and invites other public and private entities to similarly discriminate and deny recognition.

143. By enforcing the Birth Certificate Policy for Minors, Defendants unduly burden and unconstitutionally interfere with the fundamental right to autonomy in one's person and identity to which all transgender minors born in New York State, including Plaintiff, are entitled.

144. There is no compelling, important, or even legitimate interest in the government causing transgender minors to involuntarily disclose their transgender status to third parties every time they present their birth certificate to such persons. Furthermore, there is no compelling, important, or even legitimate interest in the government interfering with the right of transgender minors to autonomy in one's person and identity.

145. Accordingly, Defendants are liable for their violation of Plaintiff's Fourteenth Amendment rights under 42 U.S.C. § 1983, and Plaintiff is entitled to declaratory and injunctive relief against Defendants declaring New York State's Birth Certificate Policy for Minors unconstitutional and enjoining its enforcement.

**COUNT III – ABRIDGEMENT OF FREE SPEECH  
IN VIOLATION OF THE FIRST AMENDMENT  
OF THE UNITED STATES CONSTITUTION**

146. Plaintiff hereby incorporates by reference and realleges paragraphs 1 through 113 of this Complaint as though fully set forth herein.

147. The First Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983 and applicable to the states through the Fourteenth Amendment, provides that a state “shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I.

148. The freedom of speech protected by the First Amendment is multifaceted. The First Amendment protects both the right to speak and the right to refrain from speaking. A claim of compelled speech requires speech to which the speaker objects that is compelled by some governmental action.

149. The Birth Certificate Policy for Minors violates the First Amendment rights of transgender minors born in New York State, including Plaintiff, to refrain from speaking by forcing them to identify with a sex that was incorrectly assigned to them at birth and conflicts with who they are. It also prevents transgender minors from accurately expressing their gender identity.

150. The Birth Certificate Policy for Minors also forces transgender minors born in New York State to disclose their transgender status, thereby compelling them to disclose private, sensitive, and personal information that they may not want to be publicly known or that may expose them to discrimination, harassment, and violence.

151. The Birth Certificate Policy for Minors further violates the First Amendment rights of transgender minors born in New York State, including Plaintiff, to refrain from speaking, compelling them instead to endorse the government’s position as to their own gender, as well as on the meaning of sex generally, through the birth certificate they must show to others. The gender marker listed on Plaintiff’s birth certificate conveys the state’s message that sex is determined solely by the appearance of external genitals at the time of birth and never deviates from that—a message that is inconsistent with the medical and scientific understanding of sex and to which Plaintiff strongly objects.

152. The Birth Certificate Policy for Minors violates the First Amendment right of transgender minors born in New York State, including Plaintiff, to speak by preventing them from accurately expressing their gender.

153. The Birth Certificate Policy for Minors is not narrowly tailored to serve any compelling governmental interest.

154. Accordingly, Defendants are liable for violating the First Amendment rights of the Plaintiffs under 42 U.S.C. § 1983, and Plaintiff is entitled to declaratory and injunctive relief against Defendants declaring New York State's Birth Certificate Policy for Minors unconstitutional and enjoining its enforcement.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court enter Judgment in their favor and against Defendants on all claims as follows:

- a. Enter a declaratory judgment that the actions of Defendants complained of herein, including the enforcement of New York State's Birth Certificate Policy for Minors, are in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and the Free Speech Clause of the First Amendment to the United States Constitution;
- b. Permanently enjoin Defendants, their agents, employees, representatives, and successors, and any other person acting directly or indirectly in concert with them, from enforcing New York State's Birth Certificate Policy for Minors, including from refusing to provide birth certificates to transgender minors that accurately reflect their sex, consistent with their gender identity;

- c. Order Defendants, their agents, employees, representatives, and successors, and any other person acting directly or indirectly in concert with them, to permit transgender minors born in New York State to correct their birth certificates to accurately reflect their true sex, consistent with their gender identity;
- d. Order Defendants to immediately issue a corrected birth certificate to Plaintiff M.H.W. accurately reflecting his true sex, consistent with his gender identity;
- e. Award Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable laws; and
- f. Grant such other and further relief in favor of Plaintiff as this Court deems just, equitable, and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all claims asserted in this Complaint so triable.

Dated this 7th day of January 2020.

Respectfully submitted,

/s/ Omar Gonzalez-Pagan  
Omar Gonzalez-Pagan (Bar No. 520915)  
Carl Charles (Bar No. 520992)  
LAMBDA LEGAL DEFENSE AND  
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*Attorneys for Plaintiff M.H.W.*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

M.H.W., a minor, by and through his parents and next friends JENNIFER L. WINGARD and MICHAEL SICINSKI,

(b) County of Residence of First Listed Plaintiff Harris County, TX (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Omar Gonzalez-Pagan, Lambda Legal Defense and Education Fund, Inc., 120 Wall Street, 19th Floor, New York, NY 10005; tel. (212) 809-8585

DEFENDANTS

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York; et al. (See enclosed attachment.)

County of Residence of First Listed Defendant Albany County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §§ 1983 and 1988

Brief description of cause: Lawsuit seeking to redress deprivation, under color of state law, of rights secured by the United States Constitution.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/07/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Omar Gonzalez-Pagan

FOR OFFICE USE ONLY ANYNDC-4990768

RECEIPT # AMOUNT \$400.00 APPLYING IFP JUDGE FJS MAG. JUDGE TWD

**ATTACHMENT TO CIVIL COVER SHEET**

**PLAINTIFFS**

M.H.W., a minor, by and through his parents and next friends JENNIFER L. WINGARD and MICHAEL SICINSKI

**DEFENDANTS**

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York; DR. HOWARD A. ZUCKER, in his official capacity as Commissioner of Health for New York State; and ROBERT LOCICERO, in his official capacity as Director of New York State's Bureau of Vital Records