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CONFIDENTIAL AND ATTORNEYS' EYES ONLY  
IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

- - -

STACIE RAY, ET AL., :  
 :  
 Plaintiffs, :  
 :  
 vs. : CASE NO. 2:18-CV-00272  
 :  
 AMY ACTON, ET AL., :  
 :  
 Defendants. :

- - -

Deposition of

JUDITH NAGY

Taken at

American Civil Liberties Union  
Staff Counsel  
1108 City Park Avenue  
Suite 203  
Columbus, Ohio 43206

On Friday, August 2, 2019, at 9:00 a.m.

Reported by: Diane L. Schad, Court Reporter.

- - -

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18 - - -

19 ALSO PRESENT:

20 Mr. Ara Mekhjian.

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Friday Morning Session  
August 2, 2019  
9:00 a.m.

- - -

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of JUDITH NAGY, a Defendant herein, called by the Plaintiffs under the Federal Rules of Procedure, may be taken at this time in stenotype by the Notary; that said deposition may thereafter be transcribed by the Notary out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of her deposition before a Notary other than the Notary taking her deposition; said deposition to have the same force and effect as though signed before the Notary taking it.

- - -

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P R O C E E D I N G S

- - -

(Witness was sworn.)

MS. BONHAM: This is the 30(b)(6) deposition for the Ohio Department of Health in the matter of Ray versus Acton.

My name is Elizabeth Bonham. I'm Plaintiffs' counsel with the ACLU. Can you all just go around and introduce yourselves.

MS. INGELHART: Good morning. My name is Kara Ingelhart. I am Plaintiffs' counsel with Lambda Legal.

MS. BELENKER: Rachel Belenker, in-house counsel for the Ohio Department of Health.

MR. BLAKE: Jason Blake, outside counsel for the Ohio Department of Health and the other Defendants.

MS. NAGY: Judy Nagy, State Registrar, Office of Vital Statistics.

MS. BONHAM: Thanks.

- - -

1 JUDITH NAGY  
2 being by me first duly sworn, as hereinafter certified,  
3 deposes and says as follows:

4 EXAMINATION

5 BY MS. BONHAM:

6 Q Is it okay if I call you Ms. Nagy?

7 A Sure.

8 Q Okay. Great.

9 So I just want to go over a couple of ground  
10 rules before we proceed; you may have been deposed  
11 before, just so that we're all on the same page.

12 First, we're obviously here with a court  
13 reporter, so if you could just please answer all my  
14 questions audibly. Sometimes it's easy to get into a  
15 conversational tone and just nod, but she obviously  
16 can't show that on the transcript.

17 For the same reason it's important that we  
18 don't talk over each other. So I just want to make  
19 sure I finish every question before you start to answer  
20 and I won't interrupt you either.

21 Do you understand that you're under oath  
22 today and that means you're required to answer  
23 truthfully?

24 A Yes.

25 Q If there's any question I ask that you don't

1 understand, though, please just ask me for a  
2 clarification. It's your deposition and you're  
3 entitled to do that. So we just want the record to be  
4 clear.

5 A Okay.

6 Q If you don't ask for clarification and you  
7 answer, then I'll assume you understood my question  
8 then.

9 You are also just a witness not a prisoner,  
10 so we can take a break any time you want and get  
11 another cup of coffee. So just let me know. I'd just  
12 ask that we don't take breaks between a question and an  
13 answer.

14 A Sure.

15 Q Your counsel may object and he's just going  
16 to object for the record. So unless he instructs you  
17 not to answer, please still go ahead and answer the  
18 question.

19 A Okay.

20 Q And I am going to ask you about a series of  
21 exhibits and your preparation for this deposition, for  
22 example, but I'm never going to ask you a question that  
23 requires you to tell me what you talked about with your  
24 attorneys.

25 A Okay.

1           Q     So, you know, stop me and don't worry about  
2 stopping me if you feel like it's going there but I'm  
3 not going to do that.

4                     Is there any reason that you won't be able to  
5 testify truthfully and accurately today?

6           A     No.

7                     MS. BONHAM: Okay. I also wanted to get a  
8 couple of housekeeping matters out of the way.

9                     Your attorneys said that you would be willing  
10 to stipulate to the authenticity of the documents that  
11 were produced by the Ohio Health Department.

12                     Can we get that on the record?

13                     MR. BLAKE: Yes, we'll stipulate.

14                     MS. BONHAM: Thank you.

15                     There's a protective order in this case,  
16 meaning some of the records that we have are marked  
17 confidential or attorneys' eyes only, and I'm going to  
18 be showing you exhibits today and I just wanted to ask  
19 that we agree that if there's an exhibit that's already  
20 marked attorneys' eyes only or confidential that we  
21 see, it also be marked by the court reporter with that  
22 designation and we just continue that designation.

23                     Is that okay?

24                     MR. BLAKE: That's okay.

25                     MS. BONHAM: And then, additionally, I want

1 to assume that where a record is marked attorneys' eyes  
2 only but you, yourself, produced it and have already  
3 seen it we can use that as an exhibit in the  
4 deposition.

5 MR. BLAKE: And to the extent that the  
6 protective order doesn't already allow for deposition  
7 witnesses to see attorneys' eyes only information we  
8 stipulate to that.

9 MS. BONHAM: Okay. And I'm sure we'll do the  
10 same. Thank you.

11 Q So have you ever given a deposition before?

12 A No, I have not.

13 Q Have you ever been designated as a 30(b)(6)  
14 witness at all?

15 A No, I have not.

16 Q Have you ever been involved in litigation in  
17 any capacity?

18 A No.

19 Q Okay. Even a personal capacity?

20 A No.

21 Q Okay. Welcome to the party.

22 A Thank you.

23 Q So you are aware that a lawsuit has been  
24 filed by four Plaintiffs, Stacie Ray, Basil Argento,  
25 Ashley Breda and Jane Doe, against the Ohio Health

1 Department through its Director Amy Acton, yourself,  
2 and Karen Sorrell, right?

3 A Yes.

4 Q And you have been designated by the Ohio  
5 Health Department to be here on behalf of ODH, not  
6 yourself as an individual. Do you understand that?

7 A Yes.

8 Q Thanks.

9 MS. BONHAM: Let me just take a break for one  
10 second.

11 (A recess was taken.)

12 MS. BONHAM: Back on the record.

13 We just had somebody come in. Sir, could you  
14 just state your name and who you are for the record.

15 MR. MEKHJIAN: Good morning. My name is  
16 Ara Mekhjian. My name is spelled A-R-A, first name.  
17 My last name is spelled M-E-K-H-J-I-A-N. I'm the  
18 Section Chief of the Health and Human Resources  
19 Services Section at the Ohio Attorney General's Office,  
20 and I will just be observing today.

21 MS. BONHAM: Thank you.

22 Q We're going to look at some exhibits  
23 throughout the course of the deposition. It may take  
24 some time for me to get them together, and I know that  
25 can seem awkward. It's not going to show up obviously

1 on the transcript as an awkward pause. I apologize for  
2 that.

3 MS. BONHAM: I'd like to ask for this to be  
4 marked as Exhibit 1.

5 - - -

6 (Thereupon, Plaintiff's Exhibit 1 was marked  
7 for purposes of identification.)

8 - - -

9 BY MS. BONHAM:

10 Q I'm handing you what's been marked as  
11 Exhibit 1. I only have a couple copies. Have you seen  
12 this before?

13 A Yes, I have.

14 Q What is this document?

15 A This document is -- well, I'm not a lawyer  
16 but I would imagine it's the deposition notice.

17 Q That's right, this is the notice of 30(b)(6)  
18 deposition for the Ohio Health Department.

19 Where did you see this before?

20 MR. BLAKE: Yeah, I mean to the extent you  
21 can -- she doesn't want to know about communications  
22 but it's fine to tell her that you reviewed it with  
23 your attorney.

24 A Oh, okay. Yes, I reviewed it with my  
25 attorney.

1 Q Okay. Did you review it with anyone else?

2 A No, I did not.

3 Q Just with Jake?

4 A Yes.

5 Q And when was that?

6 A Yesterday.

7 Q Did you review anything else to prepare for  
8 the deposition?

9 A Yes.

10 Q What was that?

11 A Some discovery documents.

12 Q Do you remember what those were exactly?

13 A Email communications, some general notes  
14 regarding the statements of the case.

15 Q Do you remember what kind of notes in more  
16 detail?

17 A I'm not a lawyer. It's part of I guess the  
18 actual filed paperwork that indicates the people that  
19 are filing and their positions on what the case is  
20 about and the things that they have brought to the  
21 table as far as the allegations.

22 Q Okay. That sounds like to me the Complaint.  
23 Does that ring a bell?

24 A Yes, there you go.

25 Q The Complaint, emails between?

- 1 A Legal counsel and whoever the requestor was.
- 2 Q Legal counsel for ODH?
- 3 A Yes.
- 4 Q And who else?
- 5 A Between legal counsel and I think it was the
- 6 ACLU.
- 7 Q Okay. And do you remember the topic of those
- 8 emails?
- 9 A It was a request for records and what we
- 10 could or could not give as part of that records
- 11 request.
- 12 Q Did you review anything else?
- 13 A Not to my knowledge.
- 14 Q Did you bring any of those documents here
- 15 with you?
- 16 A I did not bring anything.
- 17 Q I'd like to continue looking at Exhibit 1,
- 18 the Notice of Deposition.
- 19 Are you aware that your testimony today is on
- 20 behalf of the Ohio Health Department?
- 21 A Yes, I am.
- 22 Q And are you aware that the testimony may be
- 23 used throughout this case, including at trial?
- 24 A Yes.
- 25 Q I'd like to look at this topic by topic.

1           If you can look on Page 1 at Topic 1. Are  
2 you the person designated by ODH to speak on its behalf  
3 with respect to the factual basis for ODH's arguments  
4 and defenses and all claims and defenses presented in  
5 this litigation?

6           A     Yes, I am.

7           MR. BLAKE: And I would just like to  
8 interpose an objection there in reference to my email  
9 dated July 18th which clarifies, further clarifies the  
10 scope of that topic. Obviously she's not going to be  
11 able to testify about any knowledge or allegations  
12 which is exclusively or even predominantly in the  
13 control of the individual Plaintiffs, but to the extent  
14 ODH would have reason to know about any of these  
15 allegations she's designated to testify about those  
16 allegations contained in the Complaint.

17           MS. BONHAM: We do have email correspondence  
18 clarifying that understanding.

19           MR. BLAKE: Thank you.

20 BY MS. BONHAM:

21           Q     Also on Page 1 at Topic 2. Are you the  
22 person designated by ODH to speak on its behalf with  
23 respect to the organization's responses to  
24 interrogatories, requests to admit, and requests for  
25 production of documents in this litigation and the

1 basis for those responses?

2 A Yes.

3 MR. BLAKE: And then just similarly, the same  
4 email July 18th clarifying that, yes, as to  
5 interrogatories and requests to admit to the extent  
6 that there are any. But as to specific documents  
7 without reference to have individual Bates numbers,  
8 she'll have a general knowledge of the documents that  
9 are shown here today that have been produced but not  
10 specific detail unless ahead of time there was some  
11 Bates range that was identified, which I don't believe  
12 there was any particular document which says, hey,  
13 we're going to ask you about this.

14 Does that correspond with your understanding?

15 MS. BONHAM: We have email correspondence  
16 reflecting I think our shared understanding on that.  
17 We can take it exhibit by exhibit to deal with the  
18 documents.

19 MR. BLAKE: Thank you.

20 BY MS. BONHAM:

21 Q Again, regarding Exhibit 1 I'd just like you  
22 to flip to the next page. And this is a three-page  
23 document. Under Topic 3, are you the person designated  
24 by ODH to speak on its behalf with respect to the Ohio  
25 Health Department's current and past policies and

1 practices regarding changing birth certificates,  
2 including formulation and application of and  
3 justification underlying those policies and practices?

4 A Yes.

5 Q And can we agree that when I say "ODH," I'm  
6 referring to the Ohio Health Department?

7 A Oh, that's fine. I understand.

8 Q It's my own shorthand. Thank you.

9 Besides reviewing the documents that we  
10 discussed and talking to counsel did you do anything  
11 else to prepare for the deposition?

12 A No, I did not.

13 Q Okay. Did anyone else from the Health  
14 Department help you prepare testimony at all?

15 A No, they did not.

16 Q Prior to reviewing the two documents that we  
17 discussed with your counsel for the deposition have you  
18 ever been asked to gather other documents related to  
19 the case?

20 A Not to my knowledge.

21 Q Have you ever assisted in the gathering of  
22 documents related to this case?

23 A Yes.

24 Q And can you tell me about that.

25 A How we can gather documents?

1 Q Yes.

2 A Hit the print button. I mean, a lot of the  
3 information is searchable and whatever we can produce  
4 we hit print and give to whoever is requesting it.

5 Q Okay. So related to this litigation did  
6 someone instruct you to gather and print documents like  
7 that?

8 MR. BLAKE: Objection. Instruct you not to  
9 answer. Attorney-client work product and all those  
10 things.

11 The people who instructed her are in-house  
12 for those conversations about what was she asked and  
13 how to gather documents and things like that.

14 To the extent they came from the attorneys at  
15 the ODH, I'm going to instruct you not to answer.

16 To the extent they came from other places,  
17 you can go ahead and give your testimony.

18 MS. BONHAM: Are you instructing her not to  
19 answer the question whether she was instructed to  
20 gather documents?

21 MR. BLAKE: I don't believe that was the  
22 question.

23 BY MS. BONHAM:

24 Q Let's start with that. Were you ever  
25 instructed to gather documents in the way you just

1 described for this litigation?

2 A Yes.

3 Q Who instructed you to do that?

4 A Legal counsel.

5 Q In-house or Jake?

6 A In-house.

7 Q At what time, do you remember?

8 A I would say approximately a year ago.

9 Q Okay. Were there multiple occasions?

10 A To update any new information, yes.

11 Q Do you remember when those occasions were?

12 A No.

13 Q How many times?

14 A Those documents don't go to me directly so I  
15 don't see them in the course of the day.

16 Q Which documents don't go to you directly?

17 A Any documents that come to our mailroom that  
18 get disbursed for work product don't come to me so I  
19 may not see everything. But if we needed to review, if  
20 there was anything else to produce, there's other  
21 people that would have more knowledge as to what has  
22 come in and if there's anything that we would need to  
23 make additional copies of.

24 Q Okay. So what I'm hearing you say is that  
25 you were requested by in-house counsel at one time

1 maybe a year ago to search for and produce documents?

2 A Correct.

3 Q And then some number of additional times  
4 since then you've been requested to supplement the  
5 production or search for new documents?

6 A Yes.

7 Q But that you don't directly oversee that,  
8 someone else does?

9 A I directly oversee it but I don't necessarily  
10 see all of the documents coming in firsthand.

11 Q Okay. Who else is involved in that from the  
12 Department?

13 A Rena Boler.

14 Q Anyone else?

15 A Not really.

16 Q What's Ms. Boler's job title?

17 A She is -- I knew you would ask me that --  
18 administrative officer and she oversees the corrections  
19 unit.

20 Q Do you know how long she's been at the  
21 Department?

22 A Fifteen years, approximately.

23 Q How long have you been there?

24 A Almost 19.

25 Q So when you were requested to gather

1 documents for the case, can you explain how you would  
2 go about gathering those?

3 A Sure. It's dependent upon what it is.

4 If the request is for a procedure manual how  
5 we actually do our work, that's easy. That's  
6 accessible from almost anyone in the Department to make  
7 a copy of.

8 If it's specific to an individual, we do a  
9 search on the system which will provide us information  
10 as to -- if there's more information connected to that  
11 record that may not be on the system that has come  
12 through as a legal document, we have a mechanism in  
13 place by which we can search for where that legal  
14 document is because we do house that via paper. And we  
15 can then review whether or not that that's a document  
16 that should be pulled or made copies of.

17 Q Okay. Let me ask you a couple of follow-ups  
18 on that.

19 When you say the document exists as a paper,  
20 do you mean it doesn't exist in electronic form?

21 A Correct.

22 Q Okay. What kinds of documents don't exist in  
23 electronic form?

24 A Anything that is provided to us by a court is  
25 always a piece of paper.

1 Any change notice such as an affidavit that  
2 may come from an individual that's also -- it's both  
3 electronic and paper, but we would have a paper copy  
4 because we need it notarized.

5 Attorney affidavits are always paper. We  
6 don't get those in electronic. And some death  
7 certificates are still paper.

8 Q Do you put any of these into electronic  
9 storage or do you keep them all as paper only?

10 A What do you mean by electronic storage?

11 Q For example, do you take any of these  
12 documents habitually as a practice and scan it in and  
13 store it electronically?

14 A No court paperwork is ever scanned. We have  
15 no electronic trail of a -- it simply is a paper of  
16 paper.

17 Paternity affidavits we do not scan.

18 Death certificates we do not scan, but the  
19 information on the death certificate resides  
20 electronically.

21 Q How does it reside electronically?

22 A We data enter the fields.

23 Q Do you data enter the fields similarly for  
24 birth certificates?

25 A Those are all data entered at the place where

1 the event occurred. So the Health Department does not  
2 do any of them because none of them occurred at the  
3 Health Department.

4 Q Does the Health Department somehow collect or  
5 aggregate that information from the source?

6 A Collect or aggregate meaning?

7 Q For instance, if that information is data  
8 entered locally, does it get transmitted and then kept  
9 by ODH?

10 A Yes, it does.

11 Q And how does that work?

12 A We are all using the same system, so as a  
13 user of the system let's say at a hospital you have the  
14 accessibility to data enter as a clerk which allows you  
15 to put in a new event to go over whatever your process  
16 is.

17 There's also a separate user of the system at  
18 that same location that can certify that the event  
19 occurred and that the facts are true and then that  
20 information -- like I said, we can actually see from  
21 our user level everything that has been started,  
22 everything that is complete and everything that has  
23 been certified. And then we have a different role that  
24 allows us to take that information, submit it as needed  
25 to other sources, as well as print it for certified

1 copies for customers.

2 Q Okay. So there's a uniform electronic  
3 storage system --

4 A Yes.

5 Q -- that the Department of Health can use?  
6 And what are the local entities that also use that?  
7 Hospitals?

8 A It could be either a hospital -- The system  
9 has two components. There's a birth component and a  
10 death component. So if you want to keep it to birth,  
11 it would be hospitals, birthing centers, local health  
12 departments, and the state office.

13 Q So when you were discussing how you would  
14 search for and produce records that you were asked to  
15 search for and produce for the case, so I think you  
16 said if there's a paper document you would have to go  
17 and get that?

18 A Yes.

19 Q How are the paper documents kept?

20 A The particular paper documents you're talking  
21 about being like a court document?

22 Q For example, yes.

23 A A court document that comes in is given a  
24 different sequential sequence of numbers that is not  
25 associated with the filing system of the birth

1 document. And that's a different sequence, resides  
2 apart from the old paper records of the births. And  
3 the only way of getting the link number to know the  
4 piece of paper that came in that resides with the birth  
5 record is you have to know the individual's name so we  
6 can uncover what the link is to get that number to go  
7 into an actual vault with an envelope that has that  
8 matching number which we then actually unseal and can  
9 review the paper documents inside.

10 Q I noticed the word "vault" in some of your  
11 records. It makes it sound very exciting.

12 A It's not that exciting. It's a large room.

13 Q So you have a set of paper records and then  
14 you have sort of a corresponding set of some kind of  
15 electronic data that will let you know where the paper  
16 records are. Is that fair?

17 A Yes.

18 Q And birth records you said are searchable by  
19 name?

20 A Correct.

21 Q And is that current name, current legal name?

22 A Yes.

23 Q And are these searchable in any other way?

24 A You can search records by the facility. You  
25 can search by a county. You can search by a particular

1 birth date, birth year, and mother's information.

2 Q So when you were instructed to search for  
3 records and produce them related to this case, you  
4 searched for and produced both paper and electronic  
5 records; is that right?

6 A Yes.

7 Q Or records that are kept as paper and kept  
8 electronically; is that right?

9 A Yes.

10 Q Did you use search terms like key words to  
11 perform that search?

12 A We can only -- For this particular case we  
13 could only utilize the name information as we knew it  
14 legally to see if there was any corresponding paperwork  
15 that would go with that record.

16 Q So in order to search for the documents you  
17 produced you used name information. Did you use any  
18 other search terms?

19 A No.

20 Q So what other principles did you use to  
21 perform this search? How else did you perform this  
22 search to produce relevant documents?

23 A That really is it.

24 Q You made name searches?

25 A Yeah.

1 MR. BLAKE: Let's stop for a second. We can  
2 go off the record.

3 (Discussion held off the record.)

4 MS. BONHAM: Okay. Back on.

5 We took a break and Jake offered to provide  
6 the search terms or any other details about the search  
7 for the document production in the case generally, so  
8 we're going to handle that later.

9 MR. BLAKE: The mechanisms that we used to  
10 initially collect and then create the production set.

11 MS. BONHAM: I appreciate that.

12 MR. BLAKE: And to the extent you have any  
13 other questions or you think that there's something  
14 missing, I'm more than happy to supplement our document  
15 productions.

16 MS. BONHAM: Okay. I appreciate that.

17 Q Let's move on. We'll re-visit how some of  
18 these Department documents are kept and searched for.

19 A Okay.

20 Q To return to your preparation for the  
21 deposition for a moment. You said you didn't talk to  
22 anyone else in the Department and you didn't review  
23 anything except for the Complaint and emails between  
24 ODH and my office?

25 MR. BLAKE: Objection.

1 BY MS. BONHAM:

2 Q Is that fair?

3 A Yes.

4 Q And you didn't prepare in any other way?

5 A No.

6 Q Okay.

7 - - -

8 (Thereupon, Plaintiff's Exhibit 2 was marked  
9 for purposes of identification.)

10 - - -

11 BY MS. BONHAM:

12 Q I'm handing you what's been marked as  
13 Exhibit 2. We just discussed this. Can you say  
14 whether you recognize that?

15 A Yes, I recognize it.

16 Q And what is it?

17 A It is the Complaint.

18 Q And you testified previously that you saw  
19 this before in preparation for your deposition and that  
20 your counsel showed it to you.

21 I want to direct you to the caption of the  
22 Complaint right on the first page, page number one,  
23 which lists the four Plaintiffs by name.

24 Do you know Stacie Ray?

25 A I do not.

1 Q Have you heard of her?

2 A No.

3 Q In connection with the lawsuit only?

4 A Yes.

5 Q Have you ever reviewed her records related to  
6 your position at ODH?

7 A Can you clarify what you mean.

8 Q Have you ever reviewed any record related to  
9 Stacie Ray?

10 A No.

11 Q No, or you don't know?

12 A No.

13 Q Okay. Do you know Basil Argento?

14 A No, I do not.

15 Q Have you ever reviewed any record related to  
16 Basil Argento?

17 A No.

18 Q Have you ever spoken to anyone about either  
19 of these people?

20 A Spoken to anyone as in?

21 Q Have you ever spoken to anyone at all about  
22 Stacie Ray?

23 A I have spoken to the staff once the request  
24 was received that we needed additional review but that  
25 would be it.

1 Q Can you tell me about that request.

2 A Sometimes we receive court paperwork that we  
3 need additional guidance in the review process. So it  
4 gets forwarded to me first for discussion and then we  
5 usually include other people at ODH to further review  
6 the request to make a determination whether or not we  
7 can perform the work.

8 Q Okay. Let me ask you a few follow-ups about  
9 that.

10 Who else at ODH would be involved in that  
11 kind of conversation?

12 A Our legal counsel. Usually the paperwork  
13 goes to our processing unit first, Rena. And so it  
14 would be a person in the processing unit, Rena, myself,  
15 and usually legal counsel.

16 Q Is the person in the processing unit always  
17 the same person?

18 A No.

19 Q How many people work in the processing unit?

20 A Two to six. It depends on where it kind of  
21 is.

22 Q Do you know their names offhand?

23 A Yeah.

24 Q Can you tell me?

25 A Yeah. Sure. There's Harold Burces and

1 Denise Sinkfield would probably be the two. And then  
2 from there there's typists that -- they're actually  
3 like the reviewers and that would probably be the  
4 people that would have the questions.

5 Q Okay. So a request of this kind comes in and  
6 it goes to Harold and Denise that review it?

7 A Correct.

8 Q And then they push it up to you?

9 A To Rena.

10 Q To Rena.

11 A For assistance if they need some  
12 clarification. And if Rena needs to review it further,  
13 she pushes it up to me. And then if we feel like it  
14 still needs to be evaluated further, then we usually  
15 ask legal counsel for some assistance.

16 Q Okay. So with regard to Stacie Ray what was  
17 this request?

18 A To my knowledge Stacie Ray had a court order  
19 which we determined that needed further review because  
20 we don't get many court orders with a legal name change  
21 attached. So it was stopped at the review process  
22 because it looked different than what most of the  
23 paperwork is that we receive, and Rena and I discussed  
24 it and we needed to have further review with legal  
25 counsel to figure out what we should do with the

1 paperwork.

2 Q Do you remember when that was about?

3 A That I cannot say.

4 Q Did you produce records related to that in  
5 the litigation?

6 A I'm not too sure I understand.

7 Q So you said there was a request that came in,  
8 then there was some correspondence related to this  
9 request getting pushed up the chain, and then there was  
10 some determination made. Were there any records  
11 generated at any part of that process?

12 A If there were you have them because they  
13 would have been emails.

14 Q Okay. Including the request itself that came  
15 through?

16 A I believe so.

17 Q So Stacie Ray made a request for a legal name  
18 change on a birth certificate and attached a court  
19 order for the legal name change, true?

20 A The court order had two requests in it. And  
21 the legal name change was actually part of the court  
22 order, and also there was a request for a different  
23 change as well.

24 Usually legal name changes are not a court  
25 order like that, so it was confusing.

1 Q Okay. And what was the other part of the  
2 order that you just referenced?

3 A The other part of the order was a request to  
4 change the gender.

5 Q So she made a request to change the name and  
6 the gender on the birth certificate?

7 A Correct.

8 Q And it was all part of one request?

9 A Yes.

10 Q And the court order included both the name  
11 change and the gender?

12 A Yes, it did.

13 Q What court generated that order?

14 A I do not know offhand.

15 Q Was it an Ohio Probate Court or out-of-state?

16 A I honestly do not know.

17 Q Can you take me through exactly what happened  
18 when that request came in and what you all did with it.

19 A Usually what happens, a legal name change  
20 comes in on a different document and court-ordered  
21 requests come in as a court-ordered correction.

22 This document kind of combined two things  
23 together onto one document. So it was something that  
24 we hadn't really seen so once the review process  
25 started and it was reviewed we really weren't too sure

1 how to handle it because legal name changes are usually  
2 not a court order, which means they're not sealed,  
3 which is why they're usually on different documents.  
4 So we didn't know how to handle that.

5 So Rena looked at it, also didn't know  
6 exactly what to do. I looked at it, also had never  
7 seen it before and didn't know what to do. So we  
8 reviewed what the request was with legal counsel and it  
9 was determined that only one-half of the request could  
10 be processed.

11 And we reached out to the individual that had  
12 filed it to indicate what we could do. And whether  
13 that individual chose for us to just do the legal name  
14 change, we would go ahead and do that, but the rest of  
15 the request we could not go ahead and change. That's  
16 pretty much it.

17 Q And the individual you're referring to is  
18 Stacie Ray --

19 A Yes.

20 Q -- one of the Plaintiffs in the litigation?

21 So the reason it was unusual is not because  
22 there was a request for name change, right, that  
23 happens with some kind of regularity?

24 A Usually name changes are not done as a court  
25 order, so that was actually a little bit weird for us.

1 And like I said the reason being, our legal name  
2 changes do not get sealed and the court orders do. So  
3 if we were to seal a name change, that seemed kind of  
4 weird. So the whole thing was reviewed to see if we  
5 needed to contact the court or if we could process the  
6 request or what action we had to take.

7 Q And you said you processed half of the  
8 request. You processed the name change and not the  
9 gender change; is that right?

10 A Right. We ask each individual their  
11 preference. And some people choose not to do anything.

12 Q Okay. So when someone asks you for both a  
13 name change and a gender change at the same time, you  
14 ask them their preference whether (A) they want nothing  
15 done or (B) they just want the name change done?

16 A That is correct.

17 Q And those are the only two options?

18 A Yes.

19 Q And why don't you process the gender change?

20 A Because under Ohio law that's a change that  
21 we do not have the ability to do.

22 Q Okay. We'll come back to that.

23 So you asked in this instance Stacie Ray  
24 whether she wanted to have nothing done or whether she  
25 wanted to have only the name change done; is that

1 right?

2 A Correct.

3 Q And then she told you what?

4 A I believe she requested that we process the  
5 name change. So we held onto the paperwork, processed  
6 her name change and updated her record accordingly.

7 Q Generally speaking, how common are requests  
8 just for name change?

9 A We probably receive 25 per week.

10 Q Okay. So that in itself is not unusual, it  
11 was just the form that was unusual here as you were  
12 discussing?

13 A The form was not what we expect for a legal  
14 name change.

15 Q About how often do you receive requests for a  
16 gender change?

17 A To my knowledge one a month.

18 Q One a month for how long?

19 A The past year.

20 Q Okay. What about before that?

21 A Very infrequently. I think -- well,  
22 specifically what are you -- for what kind of change?

23 Q Well, are there multiple ways to change the  
24 gender marker?

25 A There are no ways to change a gender marker.

1 Q Okay. So when people request that you change  
2 it, just generally speaking that happens about once a  
3 month over the past year?

4 A Yes.

5 Q And previous to the past year it happened  
6 less frequently you're saying?

7 A Yes.

8 Q About how often?

9 A It's hard to say. Maybe a few a year.

10 Q Okay. Can you talk about the nature of any  
11 of these requests. What does it look like when such a  
12 request comes in?

13 A Such a request as what?

14 Q What does it look like when someone makes  
15 the request to you to change their gender marker?

16 A I would imagine it depends upon the court,  
17 the state, they could look a little bit different, but  
18 we usually ask for a court order.

19 The court orders have all been very different  
20 with the types of verbiage that they use, the type of  
21 request that is made. So they're not a standard format  
22 necessarily. It's just different information is  
23 provided.

24 As long as the court order is an original  
25 copy or certified, we'll go ahead and review it to see

1 if it can be processed.

2 Q Okay. So when you say you ask for a court  
3 order, why do you do that?

4 A For those individuals that have a mistake on  
5 their birth record we would request that you go to do a  
6 correction. All corrections that have a mistake are  
7 usually done through a court and the court -- whatever  
8 evidence you need to provide to that individual through  
9 the court system. They then send us the request to our  
10 department ordering us to make the change, and that's  
11 what we expect to have in order to do the process.

12 Q So there are some instances where you'll  
13 change the gender marker?

14 MR. BLAKE: Objection.

15 A We don't have the ability to change a gender  
16 marker.

17 Q Then why are you requesting a court order  
18 from folks that are asking you to change the gender  
19 marker?

20 A If you want to make a correction to your  
21 birth record for the sex because it was not entered  
22 correctly at the time of birth, then we do ask for a  
23 court order, because there's evidence that you would  
24 need to produce in order for that correction to be  
25 done.

1 Q So if someone asserts that there was a  
2 mistake, you'll process a change for their gender  
3 marker?

4 MR. BLAKE: Objection. Hypothetical.

5 If you know, go ahead.

6 A If someone knows a mistake has been done,  
7 goes to court and asks that their sex information be  
8 changed, we can do that.

9 Q So it's physically possible to change the  
10 gender marker designation?

11 MR. BLAKE: Objection.

12 A We don't have a gender marker designation.

13 Q I see.

14 - - -

15 (Thereupon, Plaintiff's Exhibit 3 was marked  
16 for purposes of identification.)

17 - - -

18 BY MS. BONHAM:

19 Q I'm going to hand you what's been marked  
20 Exhibit 3. Do you recognize this document?

21 A It's a certified birth abstract.

22 Q And how do you recognize it?

23 A It's the form that's certified and it tells  
24 what health district issued it.

25 Q And is this commonly referred to as a birth

1 certificate?

2 A Yes.

3 Q Is that your signature near the bottom  
4 right-hand corner?

5 A It is.

6 Q So did you produce this document?

7 A No.

8 Q Who produced it?

9 A Mahoning County General Health District.

10 Q And then you signed it?

11 A That signature is in the system.

12 Q And what is the effect of attaching your  
13 signature to this?

14 A We have a centralized database so any birth  
15 record that is issued out of the database gets the  
16 State Registrar's signature.

17 Q And what does that do for a record to get the  
18 State Registrar's signature on it?

19 A It's one of the components of getting a  
20 certified copy.

21 Q Can I have you read the name on the birth  
22 certificate that we're looking at.

23 A The name on the birth record is  
24 Ashley Abigail Breda.

25 Q And can I have you read where it says "Sex."

1 A The sex is listed as male.

2 Q Where it says "Sex" on this birth record  
3 would you agree that's commonly what someone would use  
4 to indicate whether they were male or female?

5 MR. BLAKE: Objection.

6 A What was the question?

7

8 Q Where it says "Sex" on this birth certificate  
9 next to the word "Male," would you agree that's what  
10 someone would commonly use to indicate whether they  
11 were male or female?

12 MR. BLAKE: Objection.

13 A I don't know how people use a certified copy  
14 of a birth record and in what capacity, so I can't say.

15 Q Do you have a driver's license?

16 A Yes, I do.

17 Q Does it designate whether you're male or  
18 female?

19 A I believe it does.

20 Q Can I ask you how you identify? Do you  
21 identify as male or female?

22 A Female.

23 Q Does your driver's license say female?

24 A I believe it does.

25 Q And when you take it out and show it to

1 somebody, is that congruent with how you look and feel?

2 MR. BLAKE: Objection.

3 Go ahead. Obviously at this point she's not  
4 testifying on behalf of ODH how her subjective feelings  
5 are, but go ahead if you know.

6 A I don't really put any thought into it.

7 Q Okay. But if you were to take out your  
8 driver's license right now and show it to me and it  
9 says female on it and I'm looking at you, Ms. Nagy, is  
10 that an accurate reflection of who you are as a woman?

11 MR. BLAKE: The same objection.

12 A I guess so, sure. It also says I weigh  
13 150 pounds too. I don't think that's accurate, but...

14 Q So we can agree -- I'm a woman. I identify  
15 as a woman. I have a driver's license that says female  
16 and I take it out to indicate that I'm a woman, that's  
17 how I use it, and is that how you use your driver's  
18 license, you take it out and show it to me?

19 MR. BLAKE: The same objection.

20 Q You feel like it's right?

21 A I feel like it's right.

22 Q Okay. So I'm going to refer to this  
23 designation where it says, for example, Sex: Male on  
24 the birth certificate that's Exhibit 3 generally as the  
25 gender designation on the birth certificate throughout

1 the deposition.

2 MR. BLAKE: Is there a question?

3 BY MS. BONHAM:

4 Q And we can use this to refer back to indicate  
5 what we're talking about if we have a disagreement  
6 about that. Let's put that aside and re-visit the  
7 Complaint, which is Exhibit 2.

8 So you said you've never met Stacie Ray, the  
9 first Plaintiff listed on the Complaint caption. You  
10 don't know her but you have talked about her as you're  
11 previously testifying, and that was in the context of  
12 her making this request for a change of name and  
13 gender --

14 A That is correct.

15 Q -- to ODH?

16 And you were able to process only the name  
17 change that was court ordered for her?

18 A That is correct.

19 Q And that's because -- Let's just clarify why  
20 that is.

21 Why wouldn't you process the half of the  
22 court order that directed the gender change?

23 A The change that was requested is not  
24 something that we have statute over in law, so we could  
25 not comply with that part of the court order, but we

1 could do the legal name change.

2 Q So it's the Department's position that you  
3 can't do it or you won't do it in the case of Stacie  
4 Ray?

5 MR. BLAKE: Objection.

6 A It doesn't matter who requests it, we don't  
7 have the capacity through our law to make that  
8 particular change on a birth record.

9 Q And why is that?

10 A Well, first of all, we don't have a gender  
11 field to change and --

12 Q But we can agree -- I'm sorry to interrupt  
13 you. We can agree what we're talking about here is on  
14 Exhibit 3 where it says "Sex: Male"?

15 MR. BLAKE: Objection.

16 BY MS. BONHAM:

17 Q That field someone ordered a change of?

18 MR. BLAKE: Objection.

19 BY MS. BONHAM:

20 Q And ODH can't or won't change it in the case  
21 of Stacie Ray. Why is that?

22 MR. BLAKE: Objection.

23 A That particular field is designated as sex.  
24 There are changes that we do make via law that enable  
25 us to do like a legal name change to change parentage,

1 to do adoptions. That particular change is not  
2 reflected in our law as something that we can legally  
3 do, so we did not feel that we could comply with that  
4 court order but we could do the legal name change part.

5 Q But you had changed that field in the past  
6 for other people, not Stacie Ray but in other  
7 instances?

8 A Yes.

9 Q And you can do it?

10 A Yes.

11 Q So you do it in other cases but not here in  
12 Stacie Ray's case?

13 A In Stacie Ray's case in reviewing the court  
14 order we determined that that was not something that we  
15 could legally do under our law.

16 Q Okay. Why was that exactly? How was that  
17 court order different than the court orders in other  
18 instances where you have changed that field?

19 A Well, in some instances if there's a mistake  
20 documenting the event at the time of birth, those  
21 corrections we can do and we have done.

22 In this particular case there was no need for  
23 correction because the event information was correct at  
24 birth, thereby we could not comply with that component  
25 of the court order, but we could go ahead and do her

1 legal name change.

2 Q And what does that mean that that was  
3 corrected at birth? What does that mean to ODH?

4 A Well, for example, and this is my personal  
5 example, I had twins, a boy and a girl. My girl was  
6 born first. When you enter information into the system  
7 when you have multiples, a clerk is able to copy over  
8 the first birth record in order to produce the second  
9 or third. That clerk did that and brought over all of  
10 my daughter's medical information, which included her  
11 sex, onto my little boy's birth record.

12 One day when I was using his birth record to  
13 put him into preschool I finally found that that sex  
14 designation on his birth record actually said female.  
15 So I contacted the hospital. They reviewed the record.  
16 They agreed that there was a mistake in putting the  
17 health information into his record at the time of  
18 birth. I got medical documentation together through  
19 the hospital, went to court and corrected that  
20 information. It was sent over to the Health Department  
21 where his document was corrected. So now his sex  
22 information on his birth record now says male.

23 In that particular instance obviously it was  
24 recorded wrong at the time of birth so it was corrected  
25 through the court and corrected through our office. So

1 we did do it.

2 Q Okay.

3 MR. BLAKE: We've been going about an hour.  
4 I don't know, do you want to break in the next few  
5 minutes?

6 MS. BONHAM: Oh, sure thing. Yeah, we can  
7 break now if you wish.

8 MR. BLAKE: Is this a good stopping time?

9 MS. BONHAM: Yeah.

10 (A recess was taken.)

11 MS. BONHAM: Let's resume.

12 Q We were on a break and I think you said you  
13 had a point of clarification?

14 A Yes. From reviewing with my counsel, I  
15 actually have met very briefly Ms. Ray, Stacie Ray, one  
16 of the Plaintiffs.

17 She did come into the Vital Statistics Office  
18 to inquire about changing her birth record, and I tell  
19 everyone pretty much the same pathway to do a  
20 correction is taking your information to the court. We  
21 direct them to the proper court and from there we  
22 expect them to follow the process and then submit the  
23 paperwork for consideration. So that was kind of our  
24 meeting.

25 Q Okay. So that's basically what you told

1 Stacie Ray?

2 A Uh-huh.

3 Q Do you remember how long ago that was?

4 A I have no idea.

5 Q The past five years?

6 A Yes.

7 Q The past year?

8 A No, I wouldn't think so.

9 Q Did she indicate at that time that she wanted  
10 to have both a name and a gender change on the birth  
11 record?

12 A My conversation with her -- to be honest I  
13 have a lot of conversations with a lot of people, but  
14 in particular I do remember her being very distraught,  
15 that she needed a correction done in order to take some  
16 training.

17 She was trying to get all this done so she  
18 could do the training, and I just basically said the  
19 way you get a correction done is you have to then apply  
20 to the Probate Court where you reside and this, this  
21 and this. And I said when we get the paperwork, we'll  
22 review it and see if we can go ahead and do the  
23 correction for you.

24 I'm not a lawyer. I don't give legal advice.  
25 That's all I can pretty much tell anyone that needs

1 something to look different on their record, that they  
2 just have to go to court and do what the court asks  
3 them to do and provide whatever documentation. Because  
4 I don't know that, I don't know the cost. We just kind  
5 of send them on the right pathway for them to pursue  
6 and send the paperwork.

7 Q Okay. So that's what you did in Stacie Ray's  
8 case?

9 A Uh-huh.

10 Q Sort of a general statement?

11 A Right. There's nothing that we could do.  
12 She's on-site. We understand that she had an issue but  
13 we can't do things through our office just by her  
14 showing up. So this is what she would have to do.

15 Q So you do need to get a court order to get a  
16 name change?

17 A Yes, you do.

18 Q From the Probate Court where you live?

19 A Usually it's where you reside, yes.

20 Q And are there other courts you can go to or  
21 other options?

22 A For changes -- like, for example, if the  
23 parentage of a child is changing, they lump in changing  
24 the child's name at that time. So if you want to call  
25 that a legal name change I guess you could.

1           But for individuals who are not changing  
2 parentage and they just want to change that particular  
3 name information, just a legal name change through the  
4 court is what we request. And then it's optional  
5 whether or not you even want to file with us.

6           Q     So just as a point of clarification. I think  
7 you testified before that it's atypical to have a court  
8 order when you're requesting just a name change?

9           A     Correct.

10          Q     Can you explain that to me. You need to get  
11 the court order but it's atypical to file it with you  
12 or what's the procedure?

13          A     So I can just tell you what we receive on our  
14 end, what our forms look like. I can't tell you what  
15 the court does or doesn't do or maybe there's multiple  
16 documents but we only get what we get.

17                 Usually what happens from many courts is  
18 there's a form. It's actually called court-ordered  
19 correction. When the court sends us that information,  
20 the top tells us the information that is currently on  
21 the birth record, the incorrect. And then on the other  
22 side it basically says we are asking you that you  
23 correct this information that you currently have, it  
24 should look like this, be changed to look like that  
25 (indicating.) It could be just one thing, it could be

1 multiple things.

2 But that actually is part of the court order.  
3 It's just like our little document. That's because we  
4 are not necessarily staff trained to go through many,  
5 many pages of legal paragraphs to try to figure out  
6 what is needed, so a lot of times our end result even  
7 though let's say we get a packet, we're really just  
8 looking for that court-ordered correction document that  
9 we can type from to get the right spellings and the  
10 right information corrected.

11 That is a totally different document than  
12 when someone is asking for a legal name change. It  
13 actually has a different title. It looks different.  
14 You can change multiple names, just your last name.  
15 It's not a correction, it's a legal name change.

16 The corrections are sealed so the documents  
17 look different.

18 A legal name change form if you chose to file  
19 a certified copy with us to update your record, those  
20 remain public. And those are attachments, and they're  
21 also footnoted at the bottom of the certificate so  
22 anyone knows that you have a legal name change on file.  
23 Whereas, a correction those documents no one would be  
24 any wiser that something had been produced at one time  
25 that was incorrect. We corrected it, now the document

1 looks the way it should have looked from like day one  
2 let's say.

3 Q I see. That's very helpful.

4 So in Stacie Ray's case the reason that this  
5 was confusing is because it was a court-ordered  
6 correction for both the name and gender change  
7 together?

8 A So if she would have put both of hers on the  
9 same document, for us processing it's confusing. A  
10 legal name change is public and goes one direction. A  
11 court-ordered correction means that we're going to seal  
12 paperwork in our vault correcting our information. The  
13 two travel different paths but they were on the same  
14 document. So when multiple requests come in like that,  
15 it's challenging for us and we get assistance to figure  
16 out what we should do.

17 Q So then in her case when you did process the  
18 name change, even though it was on this unusual form  
19 you processed it as a public record so there is a  
20 record of her name having been changed?

21 A Right. It's also recorded. Anyone who would  
22 come through as a court-ordered correction with their  
23 legal name change, yeah.

24 Q But other types of information on a  
25 court-ordered correction would be sealed in the vault?

1 A Right.

2 Q And so the way you handle the correction is  
3 that there's just a new record and nobody knows?

4 A (Nodding head in the affirmative.)

5 Q Can you give an audible.

6 A Oh. Yes. I'm sorry. Sorry.

7 Q So in instances that you've mentioned where  
8 you have done a change to the gender marker -- or we  
9 can call this designation we've been discussing on  
10 Exhibit 3 gender or sex marker interchangeably so we  
11 have the shared understanding.

12 In instances where you have changed like that  
13 for your son, is that information sealed in the vault?

14 A Yes, it is.

15 Q So the fact of that change as you said no one  
16 would be the wiser?

17 A Right.

18 Q Because it's a correction?

19 A It's a correction so now his birth record  
20 looks the way it should have looked from day one.

21 Q So regarding Stacie Ray we've been through  
22 her interactions with you totally; is that right? You  
23 haven't had further interactions with her that we  
24 haven't discussed?

25 A Correct.

1 MR. BLAKE: Is that a court-ordered  
2 correction or just a --

3 A Listen --

4 (Laughter.)

5 BY MS. BONHAM:

6 Q So let me direct you back to the Complaint  
7 caption on Exhibit 2 and we'll go through and talk  
8 about Basil Argento.

9 A Okay.

10 Q You said you have never met him in person; is  
11 that right?

12 A Yes, that is correct.

13 Q But have you reviewed any kind of records  
14 related to him?

15 A If Basil had a similar product sent to us,  
16 which would be a legal name change embedded in a court  
17 order asking for additional changes to be done to the  
18 record, that would have been reviewed.

19 Q But you don't know whether that occurred?

20 A It probably did because it wasn't a form that  
21 we were familiar with and we always make sure that we  
22 get further review and okay to go ahead and process  
23 something. And that if we need to reach out to the  
24 customer that everyone is aware that this is what we're  
25 going to do.

1 Q Okay. And how do you know that that would  
2 have been an unusual form, do you recall?

3 A Again, if the legal name change is embedded  
4 in a court order, then we do a review process and we  
5 usually get legal counsel advice as far as should we  
6 send a letter, do we make a phone call, are there any  
7 other problems with the paperwork, and then we go from  
8 there.

9 Q Do you recall specifically whether that was  
10 the case as to Basil Argento?

11 A Specifically, no.

12 Q Do you recall having any conversation with  
13 anyone related to Basil Argento?

14 A I do not make the phone calls. If a phone  
15 call is made back to an individual that submitted a  
16 court order, usually Rena would do a phone call, if  
17 necessary.

18 Q Do you know if she did one in this instance?

19 A I do not know offhand, no.

20 Q Did you ever talk to anyone else about  
21 Basil Argento?

22 A No, just the people who process. Rena, maybe  
23 legal counsel, but that would be it.

24 Q Do you remember specifically whether you had  
25 conversations about him or not?

1 A No.

2 Q Then let's turn to the fourth Plaintiff  
3 listed on the caption of the Complaint that's  
4 Exhibit 2, Ashley Breda.

5 Do you know her personally?

6 A No, I do not.

7 Q Have you ever met her in person?

8 A No, I have not.

9 Q Have you ever spoken to her?

10 A No, I have not.

11 Q Have you corresponded with her?

12 A No.

13 Q Have you ever spoken to anyone about her?

14 A No.

15 Q Did you ever see any records related to her  
16 or mentioning her?

17 A Not to my knowledge, no.

18 Q Do you have any knowledge of her at all?

19 A No.

20 Q To prepare for the deposition did you review  
21 anything or ask anyone about anything related to her?

22 A No.

23 MS. BONHAM: And I'm going to ask about our  
24 fourth Plaintiff who's a Jane Doe Plaintiff, and I'm  
25 going to just ask that any mention of Jane Doe on the

1 transcript be designated as attorneys' eyes only.

2 Can we agree to that?

3 MR. BLAKE: Absolutely.

4 MS. BONHAM: Thanks.

5 Q Do you know the identity of the Jane Doe  
6 Plaintiff in this case?

7 A I do not.

8 Q Have you ever reviewed any records related to  
9 the Jane Doe in this case?

10 A Not knowing that individual's name, no.

11 Q Okay. So are you aware that these four  
12 people, Stacie Ray, Basil Argento, Ashley Breda and  
13 Jane Doe are alleging in this Complaint that the Ohio  
14 Health Department's policy of not changing the gender  
15 or sex designation on their birth record  
16 unconstitutionally discriminates against transgender  
17 people born in the state of Ohio?

18 A I'm aware that's their complaint, yes.

19 Q Do you have an understanding of the basis of  
20 their claims?

21 A I've read through the Complaint.

22 Q Can you describe your general understanding  
23 of the claims.

24 A From the processing standpoint that my office  
25 does it is my understanding that they wished that the

1 court orders be evaluated differently so we can correct  
2 their birth record sex, which we currently do not do.

3 Q And do you have a general understanding of  
4 the Health Department's defenses against those claims?

5 A Yes, I do.

6 Q Can you describe that to me.

7 A We do corrections to the birth record right  
8 now. We currently do not have the basis in law to  
9 correct gender. It's something we don't collect. It's  
10 something that was not a mistake at the time of birth.  
11 So at this point we have reviewed our statute to  
12 determine that this is something that we cannot correct  
13 for an individual because it was a snapshot that was  
14 correct at the time of birth.

15 Q I want to ask you a little bit about that.

16 First, I think you just testified that gender  
17 is something that you don't correct?

18 A Correct.

19 Q So it's your contention that the sex marker  
20 on the birth record is not related to gender?

21 A The sex marker is information that's provided  
22 to us by the healthcare professional that assists in  
23 the delivery and that medical information is provided  
24 to us based on the biological genitalia of the infant  
25 that's born.

1           So that's not something that's provided by  
2 the parents, nor the child. That's something that the  
3 hospital, physician, nurse, midwife provides to us  
4 regarding the event.

5           Q     So what the attending physician at birth  
6 understands about the genitalia is what the Health  
7 Department believes to be the sex that's accurate to  
8 record?

9           MR. BLAKE:   Objection.

10           Go ahead if you understand what belief means.  
11 That's just vague. I don't know what you mean by  
12 belief, that's all.

13           A     I would presume that a medical professional  
14 that is helping or assisting the delivery of a birth  
15 knows how to identify a male or a female newborn. So  
16 we think that that would be correct information that we  
17 were receiving from that individual.

18           Q     And as you testified that's collected based  
19 on the doctor's understanding of the child's genitals?

20           A     Yes.

21           Q     Do you understand that the Plaintiffs in this  
22 case and others requesting a change to their gender or  
23 sex designation on the birth record are asking for the  
24 Department to change where it says sex and then it's  
25 followed by male or female?

1           A       I understand the Plaintiffs are asking for a  
2 change in information that we don't collect.

3                   I believe that when I reviewed these  
4 particular court orders with other individuals that not  
5 once did it end up indicating that the sex information  
6 was incorrect. We don't collect gender. There's  
7 nothing to correct. It wasn't a mistake.

8                   This is a historical document that gives us  
9 statistical information about the event surrounding the  
10 birth and it was recorded correctly at that time.

11           Q       So when you use the word "snapshot," that's  
12 come up in a couple of the documents that the  
13 Department produced in the litigation, what do you mean  
14 by snapshot?

15           A       Well, things can change. Obviously when a  
16 child is born there are certain statistical things that  
17 happen. I mean, you know, you're a certain length,  
18 you're a certain weight, you're a certain sex. You may  
19 have certain parents at the time of your birth. Of  
20 course we all grow and maybe some people get adopted or  
21 they're parentage change or you change your name,  
22 whatever, but at the time we certify that the facts  
23 surrounding the birth were correct and this information  
24 was attested by a physician or whoever was helping the  
25 parents through the birth process and it was correct.

1 Q So when you use the word "snapshot" you're  
2 referring to as we've seen in Exhibit 3 the sex or  
3 gender marker which lists male or female after it, that  
4 is a snapshot in time at the moment of birth from the  
5 physician's understanding of the child's genitals?

6 A Yes.

7 Q Do you consider every field on the birth  
8 record to represent a snapshot?

9 A Some. Your date of birth is probably  
10 something that would not change, hopefully. Unless  
11 there is a mistake and the information is wrong such as  
12 your mom's birthplace. Maybe you get adopted or you  
13 get different legal guardians, that information could  
14 change.

15 Again, you can change your name but when the  
16 record is filed, your birth date, things like that  
17 usually there's a couple of fields that would probably  
18 never ever, ever, ever change but other ones could.

19 Q So this document which is we agreed commonly  
20 referred to as a birth certificate, Exhibit 3 that  
21 we're looking at it, this is one piece of paper; is  
22 that right?

23 A That is correct.

24 Q If I requested this I get one piece of paper?

25 A Yes.

1 Q That shows all your fields and your  
2 signature?

3 A Yes.

4 Q And the State of Ohio.

5 And some fields on here it's ODH's contention  
6 are snapshots in time that never change and other  
7 fields change?

8 A They could possibly change, sure.

9 Q As we discussed, for example, parentage and  
10 name?

11 A Uh-huh.

12 Q So the whole document can't be a snapshot in  
13 time because some fields on it change; is that right?

14 MR. BLAKE: Objection.

15 A Statistically we take the facts of birth as  
16 being true and consistent as far as the birth event.

17 Now, this particular certificate of birth are  
18 just basic fields that we get from that event. If  
19 they're are incorrect, we can correct them. If not,  
20 they don't just change. It's just what it is.

21 I mean, again, you don't have to necessarily  
22 go by this name that's on your birth certificate.  
23 Maybe you got married or divorced or taken on another  
24 name. You don't have to notify us. It doesn't mean  
25 that the information on the birth certificate is wrong.

1 It just means when you were born these were the facts.  
2 We certify that these are the facts that we have and we  
3 give them to you to do what you want to do with them.

4 Q But if I do submit to you that my name has  
5 changed, you'll change it on the birth record?

6 A Correct. But more often than not someone has  
7 changed their name and we have no knowledge of that.

8 So, I mean, I can't tell you how many people  
9 have processed a legal name change and out of those how  
10 many we actually end up receiving, but I can tell you a  
11 lot of people get married and divorced and we have no  
12 knowledge of what's happening there, which doesn't mean  
13 that this is any more inaccurate. This is exactly what  
14 happened the day you were born.

15 Q So let's talk about accuracy a little bit.

16 If I have had a legal name change and I  
17 haven't changed my birth record, then the name on  
18 another identity document that I have changed or my  
19 legal name change that I got would be incongruent with  
20 this birth record; is that right?

21 A The two of them together bridge how you were  
22 born, what you currently want to legally go by, and the  
23 two of them together make that assumption.

24 Q In other words, these two documents wouldn't  
25 match?

1 A Correct.

2 Q And if I went and got a legal name change and  
3 then I submitted it to you and you changed the birth  
4 record, then I would have two documents that matched?

5 A Theoretically.

6 Q And in that instance the name field on those  
7 documents if the change was processed correctly would  
8 match?

9 A Yes.

10 Q But in the name context there would be a  
11 record of that having changed?

12 A If you submitted the legal name change to us,  
13 sure.

14 Q Because as you testified previously, in the  
15 name change context you don't consider that to be a  
16 correction and doesn't go in the vault?

17 A No, correct. And it's also footnoted so  
18 people know that the name that is currently on your  
19 birth certificate was not the name as it was originally  
20 filed.

21 Q But that's not so with parentage in the case  
22 of an adoption?

23 A Correct.

24 Q Okay. Can you take me through what happens  
25 with parentage in the case of an adoption if someone

1 needs that to be corrected?

2 A Sure. In the case of a child going through  
3 an adoption it can be one of two things. Either one  
4 parent has gotten married so we're going to just add a  
5 father to step-parent adoption, or a child will be  
6 getting one or two brand new parents.

7 We have a particular statute that allows us  
8 the ability to recreate the birth record by sealing  
9 down whatever facts were recorded at the time of birth  
10 and bringing back that record with a new name if  
11 applicable, new parent information. The date of birth  
12 would stay the same, the file date still stays the  
13 same, and the state file number does change. But we do  
14 take the information that the court provides us from  
15 the adoption information so we can complete out just  
16 the minimum information regarding the parentage and the  
17 child.

18 The original record facts still remain but  
19 the legal paperwork that you could purchase would  
20 change.

21 So the original court information and if  
22 there is a paper record are sealed up in the vault and  
23 they're only able to be made copies or given back to a  
24 parent if the proper adoption procedure laws. But as  
25 far as everyone is concerned that paperwork is not to

1 be disclosed and the new legal information remains on  
2 file.

3 Q Is there any limit to when in time after the  
4 birth you can go and change that?

5 MR. BLAKE: Objection.

6 A Specifically an adoption?

7 Q Yes.

8 A Not to my knowledge. You can be adopted up  
9 until your mid-twenties pretty much.

10 Q And that same process would take place?

11 A Yes.

12 Q And as you testified previously a similar  
13 correction in sealing of records in the vault occurs  
14 when there's a mistake as to the gender or sex marker?

15 A If there is a mistake recording the facts at  
16 the time of birth, you can get a court-ordered  
17 correction which allows us the ability to seal down  
18 your original record and bring it back updating  
19 whatever fact was wrong. And then that would be the  
20 only copy that you would have, right. So we do seal it  
21 down.

22 Q You gave me one example of an instance where  
23 the Department would consider the sex or gender  
24 designation to have been mistaken, which was your twin  
25 son. Can you give me examples of other instances that

1 you would consider to be a mistake and then changed?

2 A A mistake anywhere in the record or --

3 Q As to the sex or gender marker.

4 A The only other would be there are very few  
5 infants born that because of their gestation they were  
6 born alive but only lived for a few minutes and the  
7 baby died. Many of those children if they're under 18,  
8 19 weeks they are undetermined, so their sex  
9 designation on their birth record would be  
10 undetermined.

11 If for some reason -- there's very few, but  
12 if the child did survive, usually the parent or the  
13 parents would work with the hospital or their physician  
14 to determine later on that they would want to update  
15 the record to male to female once the child is of age  
16 and they can actually tell what the sex designation is  
17 and then they could go to court to update the record.  
18 But we do have quite a few records that would remain  
19 undetermined just because the baby died and it's never  
20 updated.

21 Q Okay. So far it appears to me based on your  
22 testimony that there are three possible fields that  
23 could be listed after that sex or gender designation:  
24 Male, female, or undetermined?

25 A Yes.

1 Q Are there any others?

2 A We do have one certificate that does list a  
3 different sex -- and why am I drawing a blank? I'll  
4 come back to that. I can't -- I'm sorry.

5 Q That's no problem. Is it --

6 A It's like intersex. I forget the word  
7 offhand.

8 Q Is it an old-fashioned word for --

9 A I'm thinking about every word except I know  
10 what it is. Oh, hermaphrodite. It's hermaphrodite.  
11 Sorry.

12 Q Thank you.

13 So you have one certificate --

14 A One.

15 Q -- that says hermaphrodite. Okay.

16 Did you produce that in the litigation?

17 A I honestly don't know.

18 Q Okay. And you only have that one?

19 A Yes.

20 Q Do you know when it's from?

21 A When as in when we --

22 Q Or when it was --

23 A Updated?

24 Q Created.

25 A Within the past two to three years we

1 received a court order asking us to update the sex  
2 field to hermaphrodite. We reviewed it and we did it.

3 Q How do you distinguish that from the  
4 undetermined designation that you use?

5 A My recollection from reviewing the paperwork  
6 was that this individual went to court, successfully  
7 proved that -- I'm sorry, I don't know if this  
8 individual goes by he or she but felt that they had  
9 both sex organs. They had a doctor that verified it.  
10 They submitted the court documentation. The court  
11 agreed. And this individual felt very strongly that  
12 they were both, and we reviewed the court information  
13 and so we did update to indicate that this individual  
14 was a hermaphrodite. But that is the only record that  
15 has that other distinction.

16 Q To your knowledge has anyone else made a  
17 similar request for their sex or gender marker to  
18 change to reflect that they consider themselves to be  
19 both genders?

20 A No. That was the only -- first and only I've  
21 ever had in my 20 years.

22 Q With that particular request?

23 A Yes.

24 Q Have you received other requests from people  
25 who identify as intersex?

1 A Not to my knowledge, no.

2 Q Just to be clear. Have you received any  
3 request for any change to the sex or gender marker from  
4 an individual who identified as intersex?

5 A I have never read a court order indicating  
6 intersex, no.

7 Q Have you ever, court order or not, received a  
8 request from a person who is intersex identified to  
9 change their sex or gender marker on their birth record  
10 in any way?

11 A Those don't come directly to me so I can't  
12 say for certainty. But it depends on how it would come  
13 through. A request could be a phone call. It could be  
14 just a piece of paper.

15 We basically direct people if they need a  
16 correction done to their birth record to please visit a  
17 court, and we can help them find a proper pathway to  
18 get there and then from there I really don't know.

19 Q So you don't know or you don't remember is  
20 your testimony?

21 A Yeah.

22 Q Who would know that information?

23 A Well, can you specify what you mean by a  
24 request? Is it just like any request --

25 Q Like you said verbal, written; isn't that

1 correct?

2 A It could have come through a number of -- we  
3 have eight phone people. We have a few phone people  
4 that review the mail that puts standardized letters in  
5 there.

6 I guess a conglomeration of people could  
7 probably say if they've ever had contact with someone  
8 inquiring about changes, but if it's not specifically  
9 getting through the process where it's being reviewed  
10 it's hard to say how many times interactions may have  
11 occurred at different stations around the Department.

12 Q If the request had occurred in writing, would  
13 the Department have records of the correspondence?

14 A No.

15 Q Why not?

16 A We only keep them for two years. So many  
17 times if a request comes in, there is no application,  
18 there is no court paperwork, there is no money, it's  
19 just something handwritten, we usually send back the  
20 original correspondence with a standardized letter  
21 saying that we weren't able to assist you because  
22 there's nothing here that we can process. So we think  
23 this is what you want so you need to send back the  
24 following information so we can try to do your request.

25 Q And you only retain that kind of

1 correspondence for two years?

2 A Yes.

3 Q If you do take further action, for instance  
4 processing the request, do you retain records of that  
5 for longer?

6 A No, two years.

7 Q Everything is two years?

8 A Yeah.

9 Q Do you record those requests in any other  
10 way?

11 A No. If it has no money, we don't record them  
12 in our system.

13 Q And can you tell me what you mean by "has no  
14 money"?

15 A If you put a request through our office to  
16 purchase a certificate and there is money attached, we  
17 have a cash system that would have how much you sent  
18 us, a check or money order, whatever, cash, the  
19 request, and so we can go ahead and process those first  
20 in and first out, understand what we did.

21 So if you get a product from us that doesn't  
22 match your expectation we can go back in and make sure  
23 that you paid for it, it was our office that processed  
24 it and we can go ahead and do an exchange or, you know,  
25 review the paperwork again to make sure we typed it

1 correctly. So we do have record of all of that.

2 But if you send something more of an inquiry  
3 or something that really needs our processing, we're  
4 not changing anything, we're not going to produce a  
5 certificate, we usually have a standardized letter that  
6 we can usually send back to the customer within 24  
7 hours kind of indicating that we need more something  
8 from you and this is how you would go ahead and send it  
9 back to us.

10 Q So if I were to request a change to my birth  
11 certificate without sending money and actually  
12 requesting a new copy also, that would be the sort of  
13 request that you don't keep a record of after two  
14 years?

15 A Correct.

16 Q But if I were to make the request and also  
17 send you the requisite check and say can you also issue  
18 me a new record, you keep that type of request for  
19 longer?

20 A Yes, because one is actually tied to our  
21 electronic application and one is not.

22 Q And the latter category of request, how  
23 exactly do you record that?

24 A The latter category being?

25 Q The one that comes with the money.

1           A       So a couple of things. Most things that come  
2 in with money are just wanting a certificate so the  
3 application is kept for two years. We generate the  
4 certificate.

5                   As long as we keep this application, we have  
6 probably a good five years that we can review and say,  
7 yeah, at one time you requested a certificate, this is  
8 what we sent out to you.

9                   If it doesn't have money, if you just sent  
10 like your legal name change, you don't want anything  
11 from us, we have a different document that we do  
12 record. It's a Word document. So we can find your  
13 legal paperwork.

14                   In case you call and say I sent you  
15 something, it doesn't look like you processed it, we  
16 have the ability to look at a different like it's in a  
17 Word document that we can correspond like old and new  
18 names so we can search for it and verify when we  
19 received it, who processed it, and where it should be  
20 in the Department.

21           Q       And how long do you keep that certified  
22 record?

23           A       That list -- we have a good five or six years  
24 of that list.

25           Q       In cases that you mentioned where the sex or

1 gender field is initially marked undetermined and then  
2 is later corrected to male or female, about how often  
3 does that occur would you say?

4 A We actually did a review of what records were  
5 remaining in the system that still had a sex  
6 designation as U.

7 I can tell you that most of the Us are  
8 deceased infants, and I would say out of the list --  
9 it's a very short list, there's probably under 30 --  
10 maybe four or five eventually got corrected to a gender  
11 or sex designation through the court process. But,  
12 again, most of them will remain as U.

13 Q And in cases where those folks who did  
14 survive and request a change, in cases where you made  
15 that change do you require any evidence besides the  
16 court order?

17 A We don't see any of the evidence. We just  
18 receive the court order.

19 Q Okay. So whatever they need to produce to  
20 prove that, they do it at the court?

21 A Yes.

22 Q I want to re-visit Exhibit 3, which is the  
23 birth record we've been referring to, and go through  
24 that a little bit.

25 Can a birth certificate be used to verify

1 someone's identity as required by their employer?

2 MR. BLAKE: Objection.

3 To the extent you know, go ahead and answer.

4 A I don't know the specifics of what other  
5 entities require as far as verifying your identity.

6 Q Do you know whether generally people use  
7 these birth records that you create to verify their  
8 identity to their employer?

9 MR. BLAKE: Objection.

10 A We don't ask why you need a copy of your  
11 certified birth record, so I don't know how many times  
12 or what people are doing with their birth record. I  
13 have no knowledge of that.

14 Q When we were discussing one of the Plaintiffs  
15 in this case, Stacie Ray, I believe you testified that  
16 she told you she needed a birth record in order to  
17 update some licensure. Is that generally right?

18 A Yes.

19 Q And she was distraught because she couldn't  
20 do it?

21 A Yeah. Yes.

22 Q So that's one reason that someone might need  
23 a birth certificate to identify themselves?

24 MR. BLAKE: Objection.

25 BY MS. BONHAM:

1 Q That you have personal knowledge of in your  
2 capacity at ODH?

3 MR. BLAKE: Well, is it in her personal  
4 knowledge or are we talking about what ODH knows about?

5 MS. BONHAM: It's obviously both because she  
6 testified about her personal conversation, yeah.

7 MR. BLAKE: So let me just interpose the  
8 objection. To the extent that you or ODH has reached  
9 any conclusion about what the Plaintiffs' believe these  
10 can be used for, you can go ahead and answer.

11 MS. BONHAM: Well, she can answer my  
12 question.

13 MR. BLAKE: Yes, you can answer her question.

14 A She felt strongly she needed to correct her  
15 birth record.

16 Q And she told you it was because she needed to  
17 take this step in her life, she needed to update her  
18 licensure?

19 A All I know is that she gave me information  
20 about needing to have this updated so she could go  
21 ahead and I guess take a driving course or some type of  
22 training and she felt strongly that it needed to be  
23 corrected. I don't know if she needed it for the  
24 course, how she was utilizing it, but she wanted the  
25 correction done.

1 Q So Stacie Ray needed the correct identity  
2 document to identify herself for that purpose --

3 MR. BLAKE: Objection.

4 BY MS. BONHAM:

5 Q -- and have other people like her in making  
6 these sorts of requests told you why they needed the  
7 request to be honored?

8 A As part of the application process we don't  
9 ask anyone who you are, why you need it when you make  
10 an application for a certified copy of birth because  
11 we're an open records state. I wouldn't know why you  
12 need a certified copy of a birth record or what your  
13 reasons or purposes are. We don't ask it and we don't  
14 verify who you are, so I wouldn't know any of that  
15 information.

16 Q So just to be clear. It's your testimony  
17 that you don't know whether people need to produce  
18 their birth certificates to their employers sometimes  
19 or ever?

20 A If you request a certified copy of a birth  
21 record, we don't ask why you're requesting it. So I  
22 wouldn't know you're going to take it to an employer.  
23 I wouldn't know you're enrolling your child. I  
24 wouldn't know you're getting a driver's license. I  
25 don't have any knowledge. We don't ask you.

1 Q So those three things you listed, enrolling  
2 your child in school, getting a new job or interacting  
3 with your employer and getting a driver's license are  
4 obviously three instances where you may need to  
5 disclose a birth certificate; is that right?

6 A If that is the opinion of the entity, I  
7 suppose so.

8 Q So those could be three reasons why someone  
9 requests a copy of their birth certificate from you?

10 MR. BLAKE: Objection.

11 A Sure.

12 Q Can a birth certificate be used to verify an  
13 individual's identity as required to obtain other  
14 identify documents?

15 You mentioned driver's licenses. What about  
16 passports?

17 MR. BLAKE: Objection. Speculation.

18 A I honestly don't know what the passport  
19 process is for verifying identity.

20 Q And you mentioned enrolling your child in  
21 school. What about other educational opportunities?

22 MR. BLAKE: Objection. Speculation.

23 A I really don't know what other educational --  
24 I don't know what the institutions are requiring.

25 Q So looking at Exhibit 3, you did testify that

1 this is a record that establishes information, right?

2 A Right.

3 Q And that includes information about the  
4 subject's identity; is that right?

5 A It includes the facts that you are a United  
6 States citizen, your legal name, your legal parent's  
7 name, and how old you are because of your date of  
8 birth.

9 Q Let's take it field by field. Can you just  
10 identify every field for me and what that means.

11 Let's start at the top left where it says  
12 state file number.

13 A So the state file number is two numbers put  
14 together. The first four characters is the year that  
15 you're born and then sequentially as birth certificates  
16 are filed throughout the year you get the next  
17 sequential number, and it's a six-digit number.

18 Q And are those numbers related to how you  
19 store these records?

20 A It used to be when they were paper but not  
21 anymore.

22 Q So why is the number still there?

23 A Because that's how we account for how many  
24 births happen.

25 Q Do you record the number anywhere besides on

1 the birth certificate?

2 A It's in the electronic file as well. But  
3 that's how we report event information to other  
4 entities because that's a unique number. Only you have  
5 that number. Of course, there's going to be that  
6 number in every other year, but what makes it unique is  
7 your year of birth. So that's your unique identifier  
8 for the state.

9 Q Okay. And so the information on these fields  
10 and this document in general is unique to each person;  
11 is that right?

12 A For us for every -- you could have a person  
13 with the same name born on the same day, but we would  
14 know that you have a different line item, that this is  
15 your unique number that goes with your facts of the  
16 event.

17 Q So this birth record contains unique  
18 information that is used to identify every unique  
19 person?

20 MR. BLAKE: Objection.

21 A It depends what you mean by unique. Is  
22 everyone's birth date unique? No. You share it with  
23 thousands of other people.

24 Q Sure. But as you said this, for example,  
25 what we're looking at is Exhibit 3 is Plaintiff Ashley

1 Breda's birth certificate and you're talking about the  
2 state file number on the top line.

3 A The state file number helps us organize the  
4 facts of every birth that we receive from all the  
5 different hospitals. So that's how we keep an event  
6 record from, you know, not crossing over -- and like I  
7 said, those are specific to identifying the facts of  
8 the event as they occurred so we don't get them  
9 confused with other events.

10 Q So you can tell looking at this that even if  
11 there's another Ashley Abigail Breda that was born in  
12 1990, that this information is unique to this Ashley  
13 Abigail Breda?

14 A This information is unique to that state file  
15 number.

16 Q So this document, a birth record, can only  
17 convey information about this one person that has this  
18 state file number?

19 A Correct.

20 Q We went through and talked about a couple of  
21 these fields that you could change or correct and I  
22 just want to go over each field to make sure we have it  
23 nailed down.

24 So the state file number does not ever  
25 change; is that right?

1           A     No, it can change.

2           Q     It can change.  And, I'm sorry, how can that  
3 change?

4           A     It can change because when we seal down your  
5 information, you will get the next sequential number  
6 for that birth year.

7           Q     And can you explain seal down your  
8 information.

9           A     So let's say you're doing a change process to  
10 put a father on the record, you're going to do a  
11 paternity change.  In those cases the original  
12 information when we have a paternity document or court  
13 order asking us to maybe update the name of the child,  
14 add a father, we can do that.  The state file number  
15 that goes with this information is sealed  
16 electronically.  And we also if there's a paper copy we  
17 would remove that from our vault and that's sealed up  
18 and it is typed back up with the information from the  
19 court.  There's a new state file number given and the  
20 1990 sequencing, the next one available, and it comes  
21 back with a new state file number with the new  
22 information as the court has directed us.

23          Q     Okay.  I understand.

24                 So just to be clear.  When someone has a U  
25 designation where the sex or gender field is and they

1 later have that corrected to, for instance, a male  
2 designation, at that time they also receive a new state  
3 file number and their old record is sealed in the  
4 vault?

5 A Yes. Correct.

6 Q So that new record that they have with the  
7 new sex or gender designation and the new state file  
8 number is now the only one that they would request to  
9 be contemporaneously true to convey that this is me?

10 A Correct.

11 Q So just going down the list. As we  
12 discussed, the name can change but that's a little  
13 different. That happens and it remains a public  
14 record. It doesn't go into the vault?

15 A Correct. Any correction to your name or a  
16 legal name change is not a sealed document. You would  
17 keep your state file number and we just do the  
18 correction to that document.

19 Q And you testified earlier that there's a  
20 footnote, but that doesn't go on the birth record  
21 itself, right?

22 It's here where it says "Note" on Exhibit 3,  
23 for example?

24 A Correct.

25 Q Are there any other fields that would change

1 and produce a note like the one we're looking at?

2 A There would be. So let's say an example is  
3 this is your certificate and you say my first name  
4 Ashley is spelled incorrectly. I spell it A-S-H-L-Y  
5 but my birth record is reflecting L-E-Y, you can do an  
6 affidavit, which is a notarized document that you do  
7 for free at the Health Department or the State. We  
8 will go ahead and correct that field. A note is put at  
9 the bottom of your certificate indicating that a  
10 correction affidavit is on file correcting the spelling  
11 of your first name, and that's produced for you as a  
12 certified copy.

13 So any changes via an affidavit for spelling  
14 mistakes to a name, your mom's name, your father's name  
15 and in some cases your date of birth will reflect as a  
16 note at the bottom and let people know that there is a  
17 change on file that they're not seeing.

18 Q Okay. And besides the instances you just  
19 listed are there any other instances that would produce  
20 such a note?

21 A Any affidavit would produce that note. But  
22 court-ordered corrections would not produce a note  
23 because the certificate is reproduced.

24 Q How long have you been doing things that way  
25 at the Department of Health?

1 A As far back as when I started 18 years ago.

2 Q And forgive me for all the questions about  
3 your own records system.

4 A That's okay.

5 Q If someone were to ask me about mine, I  
6 would --

7 The state file number in instances where you  
8 do get a new one and the old one is sealed away, does  
9 the Department retain a link between these two numbers  
10 so that you could retrieve the sealed version?

11 A We do have a link. It's important because  
12 even though the number goes away, the medical  
13 information and the statistical information that  
14 produce that child's record still remains and we still  
15 kind of have information that goes with that number.  
16 But our legal document that we produce no longer goes  
17 to that number. It's reflected as a different state  
18 file number.

19 So we do have a link. Your new number has  
20 the new demographic birth information attached. Your  
21 old one has all the medical and all the event  
22 information as it occurred, which we don't carry over  
23 to your new information.

24 Q Okay. Including in instances where that  
25 information was corrected because it was an error?

1           A       None of the medical carries over because  
2 obviously for paternity corrections, adoptions that  
3 medical is not the new parent information.

4                   In our system we don't differentiate a lot of  
5 times between the different corrections that we do.

6                   A correction means something changed legally.  
7 We have the power to recreate your certificate but we  
8 don't try to figure out if all the medical is still  
9 adequate for how it was produced, because a lot of the  
10 medical is also the birth parents and we don't know if  
11 the new information is relevant to the new parent  
12 information that may be created. If that makes sense?

13           Q       When you're talking about that medical  
14 information are you referring to additional demographic  
15 data that's not reflected on this birth record?

16           A       Right. Oh, sorry. Deep dive.

17           Q       No, that's fine.

18                   What I want to ask is, in instances like you  
19 mentioned for your son -- and just to be clear. I'm  
20 using this example that we're talking about to discuss  
21 your knowledge in your capacity at the Ohio Health  
22 Department, because you also obviously are also  
23 responsible not just as his mother but more managing  
24 his records.

25           A       Right.

1           Q     So in this example we discussed about your  
2 son who just had an incorrect gender sex marker when he  
3 was born, in that case there's an old incorrect record  
4 kept in the vault with an old state file number that's  
5 linked to the new state file number with the new  
6 correct record that is a legal document that he would  
7 get when he requests his birth certificate; is that  
8 right?

9           A     You are on -- Yes.

10          Q     Thank you.

11          A     That's absolutely correct.

12          Q     Okay. Thank you.

13                   This may seem silly but I want to ask you  
14 sort of mechanically when someone is requesting that  
15 their sex or gender marker be changed pursuant to a  
16 court order when there's an error like the certain  
17 instance we just discussed, how mechanically is that  
18 changed? Like how does somebody enter it and produce  
19 the new record? Can you take me through that.

20          A     It's very exciting.

21          Q     Briefly if possible.

22          A     The first thing we do when we get a court  
23 order is verify that there is a child that matches the  
24 court order. Sometimes we get court orders for kids  
25 that weren't born in Ohio so we can't do anything for

1 those.

2           So once we're able to identify the correct  
3 record there is a series of key strokes. I think you  
4 may have a manual we may have provided that actually  
5 walks you through how to use our system. But basically  
6 we ask for -- there's two types of correction  
7 processes. One where we do an update where it doesn't  
8 seal and one where we can do an update that will seal  
9 the record, which brings up the demographic top half of  
10 the record with the new state file number. We're able  
11 to verify or pull over fields from the old record if  
12 necessary. And basically we have to touch each field  
13 of the new record to ensure that that information will  
14 or will not be changed.

15           Once it's done we can certify it back down  
16 and it comes up in our new system as being a legally  
17 viable record that someone can purchase.

18           The first record gets electronically sealed  
19 but linked in the background, but that link is not  
20 exposed to anyone that uses the system. So as a clerk  
21 you can't bring up a legal record and then do some type  
22 of key strokes to see iterations of it. You can only  
23 see legally. If you were to search by let's say my  
24 son's name, you don't find two records, you only find  
25 the current legal record that's available to purchase.

1 Q It sounds like you have explained that  
2 before.

3 A I try to be as succinct as I can.

4 Q Thank you.

5 MR. BLAKE: I don't know if you're going to  
6 jump into another topic, but a short break?

7 MS. BONHAM: Yeah, I think we're going to  
8 change. We can take a little break, yes.

9 (A recess was taken.)

10 - - -

11 (Thereupon, Plaintiff's Exhibit 4 was marked  
12 for purposes of identification.)

13 - - -

14 BY MS. BONHAM:

15 Q All right. I'm going to hand you what's been  
16 marked as Exhibit 4. Do you recognize that?

17 A Oh, yes. It's the interrogatories that were  
18 answered, sure.

19 Q Okay. And these were answered by the Ohio  
20 Health Department?

21 A Yes.

22 Q And you?

23 A Yes, they were.

24 Q And where did you see this before?

25 A I helped answer the questions. Saw it then.

1 And then we reviewed this a little bit. Just went  
2 through it yesterday.

3 Q Okay. I think previously you testified that  
4 the only documents you went through to prepare for the  
5 deposition were the Complaint and a little bit of  
6 correspondence, and I just wanted to be clear about it.

7 A Can I make a correction and say that this was  
8 the other document that we reviewed at the end.

9 Q The interrogatories?

10 A Yes.

11 Q These interrogatory responses which were the  
12 responses to Plaintiffs' first interrogatories and  
13 requests for production. And then do you remember any  
14 other documents, including court documents that might  
15 look similar like this?

16 A No.

17 Q I appreciate that.

18 So you helped answer these. Did you work  
19 with anyone else besides your attorneys to help answer  
20 them?

21 A Rena Boler and Karen Sorrell.

22 Oh, sorry. Do you want me to spell that?

23 THE COURT REPORTER: Yes, please.

24 A Rena Boler, R-E-N-A B-O-L-E-R. Karen  
25 Sorrell, K-A-R-E-N S-O-R-R-E-L-L.

1 Q Let me direct you to Page 4 of this document  
2 and your answer to Interrogatory No. 1 near the bottom  
3 of Page 4 where it says 1 and then date of response.  
4 Can you review that momentarily.

5 A Okay.

6 Q Do you remember answering that interrogatory?

7 A I helped in the response.

8 Q And is that still a true response?

9 A Yes, it is.

10 Q I'm going to refer to these again if we could  
11 keep them out. That's Exhibit 4.

12 A Okay.

13 Q So based on that interrogatory response and  
14 your testimony today is it the Department's position  
15 that Ohio law does not permit changes to the sex or  
16 gender designation on a birth certificate?

17 MR. BLAKE: I'm just going to object. I kind  
18 of let this go a few times, but the ACLU's fully aware  
19 as Defendants made clear in various filings that it's  
20 our position that the birth certificate reflects sex,  
21 sex identifier, which is distinct from gender. You can  
22 go ahead and refer to it whatever you want, but our  
23 position is the information recorded is the sex and sex  
24 identifier.

25 And I'm just asking for a standing objection

1 on that particular thing, so you can go ahead and ask  
2 your questions.

3 MS. BONHAM: That's fine. The standing  
4 objection is noted.

5 MR. BLAKE: Thank you.

6 BY MS. BONHAM:

7 Q I'll restate the question.

8 A Please.

9 MR. BLAKE: Yeah, sorry about that.

10 BY MS. BONHAM:

11 Q Is it the Department's position that Ohio law  
12 does not permit changes to the sex or gender  
13 designation on the birth certificate?

14 A We permit a correction to the item which is  
15 indicated as sex on a birth record through a  
16 court-ordered correction process if it was not properly  
17 recorded at the time of birth.

18 Q And it's the Department's position that in  
19 any other instance Ohio statute does not permit changes  
20 to that designation?

21 MR. BLAKE: Objection.

22 A If it is an accurate reflection of what  
23 happened at the time of birth there is no reason to  
24 change it.

25 Q So is it the Department's position that

1 Ohio's statute does not permit changes to the sex or  
2 gender designation on a birth certificate when the  
3 basis for a request to change that designation is that  
4 the individual requesting it is transgender?

5 MR. BLAKE: Objection. I'm not sure what the  
6 question is.

7 MS. BONHAM: Your is objection noted.

8 MR. BLAKE: If you can maybe rephrase it to  
9 clarify it, unless you understand the question?

10 A She can restate it, please. That would be  
11 great.

12 Q Is it the Ohio Health Department's position  
13 that Ohio statute does not permit changes to the sex or  
14 gender designation on a birth certificate when the  
15 basis for the request for that change is that the  
16 requesting individual is transgender?

17 A It is my understanding that you can correct  
18 your sex marker on your birth certificate if it was  
19 incorrect at the time that it was recorded.

20 I have no idea about the journey someone is  
21 taking. If it's incorrect it's incorrect whoever you  
22 are. So, I mean, I wouldn't know someone is requesting  
23 it for any reason other than it was wrong at the time  
24 it was recorded.

25

- - -

1 (Thereupon, Plaintiff's Exhibit 5 was marked  
2 for purposes of identification.)

3 - - -

4 BY MS. BONHAM:

5 Q I'm handing you what's been marked Exhibit 5.  
6 This was produced by the Department. And it's also  
7 marked Bates No. 698. Do you recognize this document?

8 A Yes, I do.

9 Q What is it?

10 A When there was a change to the law regarding  
11 married same sex couples who are having children, we  
12 had some information that we wanted to share regarding  
13 the update to parents' titles.

14 We also had a couple other concerns that had  
15 come up that hospitals or local health departments may  
16 run into. One was the processing of longer children's  
17 names into the system, and the other one was regarding  
18 not having the statute in place to change a sex  
19 designation on a record if there was not a mistake at  
20 the recording at the time of birth.

21 Q I want to -- well, I'll ask you first, who  
22 created this document, do you know?

23 A I don't know offhand. It could have been a  
24 couple of authors.

25 Q Do you have any idea who those couple of

1 people might be?

2 A Well, because it is indicated that there's  
3 Help Desk, it was probably a summary document that was  
4 started with Dan Burleson, D-A-N B-U-R-L-E-S-O-N, who  
5 manages the Help Desk.

6 He gets phone calls from stakeholders  
7 regarding how to enter information into the system and  
8 so his document was probably reviewed by other staff  
9 members as well as probably some of legal counsel.

10 Q Okay. And you referred to this as a summary  
11 document that he or someone similar would have made  
12 discussing how the Department was going to respond to  
13 these concerns?

14 A Correct.

15 Q And can I direct you towards the third  
16 subtitle on this page that's bolded and underlined.  
17 Can you read what that says.

18 A "Gender changes."

19 Q Okay. And can you read the first sentence of  
20 that paragraph.

21 A "Below is our stance on changing the gender  
22 on a birth record in regards to someone that has a  
23 gender reassignment surgery or transitioned."

24 Q Okay. So one of your staff made this as you  
25 testified to discuss how you were going to communicate

1 the Department's position to others who were concerned  
2 about this; is that right?

3 A Correct.

4 Q And so this would you agree reflects what  
5 this document called the organization's stance on  
6 changing the gender on a birth record for transgender  
7 people?

8 A As it indicates here, we don't have the legal  
9 authority to do this so when talking to customers we  
10 put it in the language that they may receive when  
11 they're on the phone when speaking to individuals.

12 Q Okay. And the way this document puts it,  
13 this is the Department's stance on changing the gender  
14 on a birth record -- that's a quote -- for someone who  
15 is transgender; is that right?

16 A I would say yes.

17 Q Okay. So previously you testified that  
18 you're not aware of what someone's journey is or why a  
19 particular individual may be requesting their birth  
20 record?

21 A Correct.

22 Q But the Department is aware that people in  
23 the transgender community are requesting changes on  
24 their birth record for this reason and you're  
25 responding to that; is that right?

1 MR. BLAKE: Objection.

2 A We get many inquiries via the phone, to be  
3 honest. I don't know if it may be that individual, a  
4 family member. It could be anyone. But we try to be  
5 as helpful as possible to direct people where they  
6 would need to go to do a correction to their record.

7 Q So there were enough requests or, you know,  
8 there was enough concern from transgender people  
9 wanting to change the gender designation on the birth  
10 record to reflect their identity that someone at ODH  
11 put together this document to be helpful; is that  
12 right?

13 MR. BLAKE: Objection. Vague. Compound.

14 A It's nice to give information to the phone  
15 staff regarding how to direct a phone call of a query  
16 that you may not get very many times.

17 To say that we get a lot -- We have 150,000  
18 births a year. I don't really know in conjunction with  
19 that how many a lot of them phone calls would be on  
20 this particular subject, but we want information out to  
21 the phone staff to be able to take a name, refer it to  
22 the proper person so we can direct them where they  
23 would need to go or how they would make a correction to  
24 a birth record.

25 Q So the Department formulated this to be

1 helpful in the particular instance of transgender  
2 people calling or writing to get help with this  
3 problem; is that right?

4 MR. BLAKE: Objection.

5 A We were trying to be helpful for anyone who  
6 had questions regarding how to change their sex marker  
7 on their certificate, especially for individuals that  
8 were going to the legal trouble to get a legal name  
9 change together with this so there was a better  
10 understanding and our message could be a little bit  
11 clearer.

12 Q Okay. And that was for folks -- I'll just  
13 read it again. I know you read it. "When someone that  
14 has had gender reassignment surgery or transitioned."

15 And most of these gender change requests come  
16 to your office with a legal name change together?

17 A Yes.

18 Q This is your stance on how you help the  
19 customer in that case; is that right?

20 A Yes.

21 Q And this paragraph, I know you said that --  
22 you identified the person who may have written this or  
23 a couple of people who may have written this, but the  
24 paragraph uses "I" language. You know, if you receive  
25 a call from a customer, if they want to speak to

1 someone, you can take their name and send it to me.

2 Who is "me" in that paragraph, do you know?

3 A In that paragraph it's most likely  
4 Rena Boler.

5 Q Okay. So in that instance she will either  
6 call them directly or have legal contact them; is that  
7 right?

8 A Correct.

9 Q Okay. And in the bold here below where it  
10 says what your stance is on gender changes can you just  
11 read the bold.

12 A "The Ohio Department of Health, Bureau of  
13 Vital Statistics can process a name change but has no  
14 legal authority to process a gender change. The Ohio  
15 Revised Code Section 3705.15 specifies the procedure  
16 for updating a birth certificate after a legal name  
17 change and for correcting mistakes on a birth  
18 certificate that were made shortly after the birth. It  
19 does not authorize changing a gender marker on a birth  
20 certificate to reflect gender transition.

21 Ohio Revised Code Section 3705.22, which  
22 allows for amendments of a birth certificate to correct  
23 errors, also does not authorize changing the gender  
24 marker on a birth certificate to reflect gender  
25 transition.

1           Sorry for any inconvenience this may cause."

2           Q     So is this text, is this what the Department  
3 always tells people who are requesting a change to the  
4 gender marker on the birth certificate to reflect a  
5 gender transition?

6           MR. BLAKE:  Objection.  Vague.

7           A     I don't know if this is specifically stated  
8 over a phone.  But it was given to the staff.  I doubt  
9 that they're giving this information directly to a  
10 customer.

11          Q     Okay.  But this is reflective of the  
12 organization's position?

13          A     It's the information given to the staff  
14 regarding what to do when they have a customer that may  
15 fall into a category and they need more information  
16 regarding what they can do.

17          Q     Okay.  And that category is as this document  
18 puts it someone requesting a gender marker change on  
19 their birth certificate to reflect gender transition.  
20 That's what this is for; is that right?

21          A     Correct.

22          Q     I want to look at another document alongside  
23 this.

24               MS. BONHAM:  If I could ask you to mark that.

25

- - -

1 (Thereupon, Plaintiff's Exhibit 6 was marked  
2 for purposes of identification.)

3 - - -

4 BY MS. BONHAM:

5 Q I'm going to hand you Exhibit 6. Do you  
6 recognize this document?

7 A This is the letter that we send some  
8 individuals regarding when they give us a court order  
9 with a legal name change and the request to change a  
10 gender marker on a birth certificate.

11 Q Is the text of this document what you always  
12 send in that instance?

13 MR. BLAKE: Objection. Vague.

14 BY MS. BONHAM:

15 Q Is it the same text?

16 A Unless our legal department needs to put a  
17 specific information for a particular request, this is  
18 pretty much what would go out.

19 Q Who created this document?

20 A Legal counsel in conjunction with our  
21 department.

22 Q And how long have you been sending these out?

23 A Probably approximately two to three years.

24 Q Looking back at Exhibit 5. About when was  
25 that document created that we were just discussing

1 previously?

2 A Oh, gosh. Well, probably about the same  
3 timeframe.

4 Q And you can take a minute to look at these  
5 again if you need to, but the bolded text here on  
6 Exhibit 5 that you had read out into the record and  
7 then the text in Exhibit 6 that you commonly send out  
8 now, would you say these reflect the same position on  
9 behalf of the organization?

10 A Yes.

11 Q So based on your testimony today the Health  
12 Department does sometimes permit changes on the sex or  
13 designation on a birth certificate?

14 A That is true.

15 Q But based on these documents, Exhibit 5 and 6  
16 and your testimony about them, the Department does not  
17 permit such a change if the basis for the request for  
18 the change is a gender transition; is that right?

19 MR. BLAKE: Objection. Asked and answered.

20 A If the basis is not to correct something that  
21 was incorrect at the time of birth, then we do not  
22 change it. We don't have the legal authority to do so.

23 Q And specifically if I'm requesting that my  
24 sex or gender marker on my birth record be changed  
25 because I am transgender and I have gone through a

1 gender transition, it's the Department's position that  
2 you will never make that change?

3 MR. BLAKE: Objection. Asked and answered.  
4 Hypothetical and compound.

5 A We'll make the correction to a birth record  
6 if at the time of birth the sex designation was  
7 incorrectly, you know, given to us. It doesn't matter  
8 who requests it.

9 Q Since she hasn't really answered I'm going to  
10 ask you to answer.

11 MR. BLAKE: She's answered.

12 BY MS. BONHAM:

13 Q The question on the table is, if I'm a  
14 transgender individual and I make a request to ODH I  
15 want to change the sex or gender marker on my birth  
16 record on the basis of my gender transition, what will  
17 ODH do?

18 MR. BLAKE: Objection. Asked and answered.  
19 She's answered this now twice.

20 MS. BONHAM: I'm going to ask the witness to  
21 answer. And speaking objections are getting to be a  
22 bit much as well.

23 MS. BELENKER: It's been asked and answered  
24 now three times.

25 A If the request to change your birth record is

1 anything other than a mistake we do not have the legal  
2 authority to do that change for you.

3 Q Does the Department consider it to be a  
4 mistake when someone is identified as one gender at  
5 birth by a physician and that's not their true gender?

6 MR. BLAKE: Objection. Vague. Assumes facts  
7 not in evidence.

8 A We rely on medical professionals to give us  
9 the information as they certify it to be true.

10 If a medical professional indicates that the  
11 newborn is a male or a female, we basically record that  
12 based on their medical expertise.

13 This is given to us from a medical provider.  
14 It's not given to us from a parent or from the child.  
15 So if it's recorded wrong and the documents in the  
16 medical record show that it was incorrectly recorded,  
17 we will correct it.

18 Q And what you need is a court order?

19 A To correct that field, yes. You will have to  
20 go to court, prove that was incorrectly submitted to us  
21 upon birth and we will go ahead and make that  
22 correction once we get the court order.

23 Q So if I present ODH with a court order saying  
24 that my gender was originally marked on my birth  
25 certificate as male and actually it should be female

1 and I submit it along with a request to change that  
2 field to ODH, ODH will honor that court order?

3 MR. BLAKE: Objection. Vague. Compound.  
4 Assumes facts not in evidence.

5 Go ahead and answer if you can.

6 A If the court order indicates that there was  
7 an error in recording the sex at the time of birth, we  
8 will make the correction to the child's birth record.

9 Q Okay. So ODH looks at the court order and  
10 determines whether ODH believes that the underlying  
11 reasoning is error or something else?

12 A This is correct.

13 Q Okay. And in cases where you determine it's  
14 error or mistake you will make the change. And in  
15 cases where you don't believe it was an error or  
16 mistake you won't make the change?

17 MR. BLAKE: Objection. Compound.

18 A Correct.

19 Q Other than the instance we've talked about  
20 with your son being misdesignated, what do you consider  
21 to be a mistake?

22 A A typographical error is basically a mistake.

23 In some instances way back when we had only  
24 paper records very infrequently a doctor who was hand  
25 filling it out could have missed a variety of fields.

1 In those cases those individuals also had to go to  
2 court.

3           Regardless of how the child was named or what  
4 you presumed may be the answer they would still need to  
5 go to court and give us a court order to update  
6 something that was filed without that information in  
7 play. But other than that it truly is data entry or  
8 information not known which can go to court and be  
9 corrected.

10           Q     Okay. How did the Department make that  
11 determination? How did you decide what is a mistake?

12           MR. BLAKE: Objection. Vague.

13           A     A mistake is when you basically know what the  
14 answer is but it's not reflected correctly in the  
15 record.

16                   So if there's a true mistake the first thing  
17 that we tell people is you can easily correct it but  
18 you need to first verify it with the hospital that they  
19 have the documentation that you need because you'll  
20 probably need that for your court. And usually the  
21 hospital's really good, as I know, preparing a packet  
22 for you to take to court so you can go ahead and  
23 request the correction be done.

24           Q     So how did the Department determine what it  
25 will consider to be a mistake?

1 MR. BLAKE: Objection.

2 A So in our statute of law we have very  
3 specific statutes that allow us the ability to change a  
4 record and correct a record. We've gone through a  
5 couple of them just as paternity actions, adding a dad  
6 or an adoption, a court-ordered correction and we will  
7 make a change.

8 So reviewing the law determined whether or  
9 not we had legal authority to update or change the sex  
10 designation. Outside of that we do not.

11 So a correction to the sex information if it  
12 was incorrectly recorded we can do upon a court order,  
13 but if it was properly recorded at the time of birth  
14 then we do not update it.

15 Q Who was involved in making that  
16 determination?

17 MR. BLAKE: Objection. Vague.

18 A ODH.

19 Q Who from ODH?

20 A Legal counsel. I would imagine they reached  
21 out to the governor's office.

22 We discussed the paperwork that we were  
23 receiving and they reviewed the law and recognized that  
24 there was no legal authority for us to make those  
25 particular changes.

1 Q When you say paperwork you were receiving,  
2 what does that mean?

3 A So to give examples of questions that we had  
4 and whether and how we should pursue the request we  
5 gave examples of court orders with the legal names  
6 attached. They could review the court order which was  
7 the legal language that people were describing what  
8 they wanted to have done and we gave that all to legal  
9 to review and help us determine whether or not we had  
10 the authority to make the correction via the court  
11 order.

12 Q Was some of what you reviewed requests from  
13 transgender individuals to change their gender marker  
14 to reflect their gender transition?

15 A I assume so. I didn't really get down into  
16 the nitty gritty of their particular cases, so I'm  
17 going to say yes.

18 Q Do you remember any other individuals who  
19 played a major role in making the determination?

20 A No.

21 Q Do you remember when that was?

22 A I'd say probably in the about two or three  
23 year timeframe, approximately.

24 Q And what triggered that?

25 A So we did get some court orders from

1 out-of-state courts requesting a correction to the  
2 birth record, but we also received ones from the state  
3 of Ohio courts which was a little bit different. And,  
4 again, because we're kind of form sensitive it looked  
5 very different from anything we usually get from any  
6 Ohio Probate Court.

7           So it went up the chain. Someone had the  
8 paperwork. They didn't really understand it. Went to  
9 Rena, went to myself. We contacted legal counsel.  
10 They reviewed the paperwork as we had received it and  
11 determined that there was no legal statute available  
12 for that person to change their sex designation, so we  
13 determined that you could do the legal name change if  
14 you wish.

15           So then we would reach out to those  
16 individuals to explain we had received their paperwork,  
17 this is what we could do. We could do nothing and send  
18 it back. We could do the legal name change, but we  
19 couldn't do the sex designation correction for them  
20 because it was correct and we didn't have the  
21 authority.

22           Q     Okay. So about two or three years ago the  
23 Department you're saying received these two requests.  
24 One was from an out-of-state court order, one was from  
25 an Ohio Probate Court order, and this triggered an

1 agency review of what you were going to do in these  
2 instances; is that right?

3 A Yes.

4 MR. BLAKE: Objection. Misstates.

5 Go ahead.

6 A This is correct.

7 Q Thank you.

8 And as a result of that review the Department  
9 made a determination and the Department's stance as a  
10 result is reflected in the documents that we went  
11 through, Exhibits 5 and 6; is that right?

12 MR. BLAKE: Objection.

13 Go ahead.

14 A Legal counsel verified that we did not have  
15 the legal authority to process the court-ordered  
16 correction as it was coming through our office. So  
17 that determination was made upon re-review of the law  
18 and that's the way that we were to handle the documents  
19 from now on.

20 Q Okay. And the two court orders that  
21 triggered this were they both court orders requesting  
22 that the gender marker designation be changed on the  
23 basis of gender transition?

24 MR. BLAKE: Objection. Misstates.

25 A I'm not exactly aware of the transition

1 process or the specific journey of that individual, but  
2 it probably had something to do with I would say  
3 something medical but I don't know. I really don't  
4 have that.

5 Q That's fine.

6 In other words, it was a person saying I'm  
7 transgender, this designation is wrong and I would like  
8 the other one?

9 A It was the court indicating what they had  
10 received and what the request was. So what that  
11 individual explained to the court I don't know.

12 Q Okay. So in those two instances that  
13 triggered you to review your practices and come up with  
14 this stance two or three years ago those were both  
15 instances, one in an Ohio court, one in an out-of-state  
16 court, where it was a transgender individual who had  
17 obtained a court order saying that the gender marker  
18 needs to be changed on the basis of that person's  
19 transgender identity. ODH decided that that wasn't  
20 considered to be a mistake and that it wasn't going to  
21 process that type of change. Is that right?

22 MR. BLAKE: Object and misstates.

23 I also just want to instruct you not to  
24 disclose any attorney-client privileged information.  
25 So go ahead and answer. To the extent you can do that

1 go ahead and answer.

2 A Yes.

3 MR. BLAKE: Fair enough.

4 BY MS. BONHAM:

5 Q When ODH made that determination of how you  
6 were going to handle these requests going forward,  
7 besides this summary document that we looked at in  
8 Exhibit 5, was there any other internal guidance  
9 provided in how to handle this for staff?

10 MR. BLAKE: Objection.

11 If you can do so without revealing  
12 attorney-client privileged information, go ahead and  
13 answer.

14 A Any time we need guidance it goes through the  
15 exact same pathway.

16 If you receive a document you're not  
17 comfortable through your review process, you get  
18 assistance from your manager, get assistance from me.  
19 If we don't know how to pursue we would get guidance  
20 from legal.

21 So it doesn't matter in what arena. If it  
22 doesn't look like something we're comfortable with  
23 because the form looks different, maybe the wording is  
24 something we've never read before, then we would go  
25 ahead and submit that to legal to make sure we would be

1 processing the court order correctly.

2 Q So there was no, for example, written  
3 guidance or verbal instruction provided to ODH staff on  
4 how to handle this policy other than what we talked  
5 about in Exhibit 5?

6 MR. BLAKE: Objection.

7 To the extent you can answer without  
8 disclosing attorney-client privileged information, go  
9 ahead.

10 A The guidance that we give the reviewers of  
11 paperwork is if it's indicating that a gender needs to  
12 be changed, because that's information we don't  
13 collect, that they were to go ahead and get guidance as  
14 to what we're going to do. And usually that paperwork  
15 is handled because we don't do the change because we  
16 don't collect the information.

17 Q Okay. And what you're saying -- so Exhibit  
18 No. 5 refers to gender changes and discusses gender  
19 changes. And I've been to make things simple referring  
20 to this designation on the birth record, Exhibit 3, as  
21 sex or gender. But I hear you saying that it's  
22 currently your position that you don't collect gender  
23 information and that you only collect sex information;  
24 is that right?

25 MR. BLAKE: Objection. Misstates.

1           A     That is correct.

2           Q     So why do some of the internal documents that  
3 you produced refer to gender markers or gender changes  
4 then?

5           A     I think it's ease of understanding. If you  
6 were on the phone talking to a variety of people you're  
7 trying to use the same verbiage as you may be hearing a  
8 customer calling to say how do I do this. So we do  
9 refer to the words that a customer would use such as  
10 gender reassignment, gender change, to help the phone  
11 staff understand this request probably needs to be  
12 routed in this direction.

13                     So we want to use the words that other people  
14 use to describe their issue. And so, like I said, this  
15 is for phone staff so they would know how to handle a  
16 customer and how to route them directly.

17           Q     Right. That makes sense, right? If I'm  
18 requesting my birth certificate it's because it's a  
19 document that I want to use for some purpose; is that  
20 right?

21                     MR. BLAKE: Objection. Speculation.

22                     Answer if you know.

23           A     If you request your birth record, I don't  
24 know why you're using it. It could be your dead  
25 grandmother for all I know. I mean I don't know why

1 you're using it. I don't even know what you're  
2 requesting is your own to be honest with you. So it's  
3 hard to identify the purposes of who you are because we  
4 don't ask or what you need it for because we don't ask.

5 Q But as a practical matter, if someone needs  
6 to have their birth certificate to identify the subject  
7 of the birth certificate, right?

8 A We send out a lot of birth records to people  
9 that are not on the record.

10 Q And the record identifies the person that is  
11 the subject of the record, obviously?

12 A Right. But sending something out I don't  
13 know who that person is or what you're using it for.

14 Q All right. Okay. So when ODH two or three  
15 years ago as we discussed was making this determination  
16 about how to handle the requests of transgender people  
17 to change the gender marker on their birth certificate,  
18 did the Department specifically consider how to  
19 interact with transgender customers?

20 A Interact with transgender customers via the  
21 phone?

22 Q In any way. How to help them, how to talk  
23 with them about requests for gender marker changes, for  
24 example?

25 A I don't believe we did any outreach to a

1 specific subset of the community, no.

2 Q Did the Department internally consider how to  
3 treat the topic of transgender individuals requesting  
4 new birth records with changed gender markers?

5 A No.

6 MS. BONHAM: Okay. I am going to ask for  
7 this to be marked Exhibit 7.

8 - - -

9 (Thereupon, Plaintiff's Exhibit 7 was marked  
10 for purposes of identification.)

11 - - -

12 BY MS. BONHAM:

13 Q Okay. I'm handing you Exhibit 7.

14 A Thank you.

15 Q Do you recognize that?

16 A I actually saw it the first time yesterday,  
17 yes.

18 Q Okay. You saw this yesterday?

19 A Uh-huh.

20 Q In what context?

21 A Preparing for the deposition today.

22 Q I just want to ask if you can remember any  
23 other documents that you reviewed in preparation for  
24 the deposition?

25 A No. I swear this is the last one.

1 Q Okay. And so you recognize it from reviewing  
2 it yesterday. Do you recognize it in any other way?

3 A These look like notes that were taken from a  
4 Midwest conference.

5 Q And what's a Midwest conference?

6 A There's an organization that helps vital  
7 statistics offices throughout the states trying to give  
8 advice.

9 Basically, it's a good meeting ground for  
10 states to talk to one another about changes that  
11 they're experiencing, law changes, how they record  
12 their birth and death information, et cetera and the  
13 Midwest conference are just kind of the Midwest states  
14 getting together and trying to determine if there's  
15 different laws or changes that each one of us are  
16 experiencing and how we dealt with it, what the law  
17 looks like, things like that.

18 So it is a -- it's not a -- NAPHSIS is  
19 basically like a body of individuals that -- it's just  
20 like a -- it's not a government group. It's just an  
21 entity that kind of helps state vital statistics  
22 offices.

23 Q Okay. So this is -- is it an annual  
24 conference?

25 A It used to be. Not anymore. But, yeah, so

1 just a handful of states were invited to come to  
2 Columbus and you can basically just say these certain  
3 things have happened, does anyone else have any  
4 experience, tell me a little bit about what you did.  
5 Maybe things that would be helpful. It could be a  
6 variety of different topics.

7 Q That's nice. That's a good vital statistics  
8 meeting of the minds for our region.

9 A Exactly. There you go.

10 Q These notes that we're looking at in  
11 Exhibit 7, do you remember what year this conference  
12 was?

13 A I'm going to say it's 2017.

14 Q Okay. And so do you know who generated these  
15 notes?

16 A That I do not know.

17 Q So do you see on this -- and this is a  
18 two-sided document. It's all the same exhibit. It's  
19 also Bates numbered 709 and 10.

20 Where it says Judy - OH on this document, is  
21 that you?

22 A That is me.

23 Q Okay. So does this group -- you said they  
24 discuss experiences they've had, how they've handled  
25 them. Does it include social issues or new vital

1 statistics problems to solve that come up?

2 A It literally can be anything. It could be  
3 your response to updating your whole electronic system.  
4 It could be training. It could be recruiting people  
5 for your office. I mean it could be anything that  
6 impacts how you run and operate the vital statistics  
7 system.

8 Q What does these notes appear to reflect?

9 A So at the end of the conference there is  
10 an informal topic called Hot Topics and it's when you  
11 can just say, hey, I have a situation that has come up,  
12 I'm not aware if anyone else has had the same thing.

13 So you can see some of the content in here  
14 such as three parents on a birth certificate, that's  
15 something that I don't have exposure to yet but other  
16 people already did. So it's a way of getting out these  
17 things may be happening, this is how we're trying to  
18 handle it. Lessons learned. Maybe a best practice so  
19 you will know maybe who you can contact to try to get a  
20 better feel for the road that you've already been down  
21 so we can kind of help other states navigate that as  
22 well.

23 So it can be a variety of different things or  
24 even how to do you pick a vendor to scan your records.  
25 It could be anything. It doesn't necessarily have to

1 be law or specific ways about how you actually record  
2 an event.

3 Q Okay. So things come up that people need and  
4 they have some kind of impact on the vital statistics  
5 world and you can talk about them together as  
6 practitioners?

7 A Yes.

8 Q Are most of the folks that come to this,  
9 though, a government --

10 A They're all state offices from their state,  
11 so yeah, they're all government.

12 Q And so the hot topics that were discussed  
13 here that are reflected in these notes what are those?

14 A So these were some of the topics that came  
15 up. A little blurb about what that is, so if for some  
16 reason in the future you get let's say a court order  
17 requesting three parents and we've never seen that  
18 before and we start to gather legal opinion about  
19 whether or not we can do something we would have notes  
20 to say, oh, I can also tell you other states that may  
21 be of interest to us to call so we can kind of see how  
22 it is that, you know, they're reviewing the paperwork  
23 and what they're accepting and not and why.

24 Q And do these particular notes from this  
25 particular conference that we're looking at discuss

1 changing gender markers on the birth records?

2 A It kind of goes all over the place. It talks  
3 about parents who don't want sex listed, as well as  
4 individuals who want gender listed or removed.

5 Every record for every state is not  
6 necessarily the same in style or format. So their  
7 certified copy of a birth record may have different  
8 information and reflected differently, so this is  
9 specific to how their state is.

10 Q And from your knowledge, for instance, based  
11 on groups like these do most states have some kind of  
12 sex or gender designation on the birth record?

13 A To my knowledge most states would have a sex  
14 designation on their birth record.

15 Q Can I ask you to read the bolded sentence  
16 that begins "Judy - Ohio."

17 A "Ohio does not change gender on birth  
18 certificates. Our view of snapshot birth certificates  
19 versus gender changes. How do other states make people  
20 request that change?"

21 Q And so is that -- can we agree that's a  
22 summary of a question that you asked?

23 A Yes.

24 Q Why were you asking that question?

25 A It's always good to have knowledge regarding

1 the practices of other states because it runs the gamut  
2 of -- it's very eye-opening what states allow and the  
3 types of forms and it's just nice information.

4 Q And so can we agree that this document  
5 reflects some further discussion of how other states do  
6 this?

7 A It reflects how other states need paperwork  
8 regarding their law about changing their information on  
9 their birth certificates.

10 Q Including the gender marker?

11 MR. BLAKE: Can we take a quick break? I  
12 know there's a question pending.

13 Can you answer the question?

14 A I don't know that for a fact because I don't  
15 know if the other states have gender. I can only speak  
16 to what our state collects and what we have on our  
17 certificate, because they're not standard.

18 Q I'm going to give you a minute to just review  
19 this document and we can go off the record.

20 (A recess was taken.)

21 BY MS. BONHAM:

22 Q So now that you've had another chance to  
23 review this does it reflect there were some discussion  
24 of changing the gender and sex markers on the birth  
25 records and what the different states' practices are

1 for that?

2 A It was different states' practices regarding  
3 updating the records.

4 Q I also want to look at another document.

5 - - -

6 (Thereupon, Plaintiff's Exhibit 8 was marked  
7 for purposes of identification.)

8 - - -

9 BY MS. BONHAM:

10 Q Do you recognize this document?

11 A I have never seen this document before.

12 Q Okay. Can you see what it says on the cover?

13 A Yes.

14 Q A report of the N-A-P-H-S-I-S. How would you  
15 pronounce that?

16 A Oh, that's NAPHSIS.

17 Q NAPHSIS. What is NAPHSIS again?

18 A National Association of --

19 MS. BELENKER: Public Health.

20 A -- Public Health Systems or Information  
21 Systems.

22 Q That's okay. It's a group you were referring  
23 to previously, right?

24 MR. BLAKE: With assist from co-counsel.

25 A Yes, that meets.

1 Q And so do you see this says on the cover that  
2 it's a review of social issues affecting registration  
3 of vital statistics with recommendations of best  
4 practices?

5 A Yes.

6 Q But you've never seen this before?

7 A No.

8 Q Is there anyone at ODH since ODH produced  
9 this that would have reviewed this document?

10 A No. If you are a NAPHSIS member you have  
11 access to their website which has a variety of  
12 committees that produce reports on security, on  
13 registration, on different topics regarding collection,  
14 so someone must have had it in their email.

15 Q Okay.

16 A I probably got it at one time too but I  
17 didn't open it up.

18 Q Are you on any of these committees or active  
19 with the group?

20 A I'm a member of NAPHSIS but not on any of  
21 their committees.

22 Q Is anyone on the ODH staff, do you know?

23 A Yes. A member of NAPHSIS but not on the  
24 committees, yes.

25 Q Is anybody on the committees?

1 A No.

2 Q But you go to these conferences that we're  
3 discussing?

4 A Yes.

5 Q So if you look on Page 5 of 7 of this  
6 document also Bates numbered 716. Can you see what it  
7 says at number one in bold?

8 A "Gender neutral label."

9 Q And can you see what it says at A?

10 A "Recommended the use of one gender neutral  
11 label."

12 Q And can you see that the rest of this page of  
13 the document talks about, for example, same sex  
14 marriages. Do you see that?

15 A Let's see.

16 Q At No. 5.

17 A 'female same sex marriages," yes.

18 Q And on the previous page 4 of 7 otherwise  
19 Bates 715 that it discusses gender identity?

20 A Yes.

21 Q Did ODH ever review or discuss anything  
22 similar to this document or its contents?

23 A No.

24 Q Did ODH ever review or discuss any kind of  
25 best practices for dealing with transgender clients?

1 A No.

2 Q Customers. You call them customers, folks  
3 who request changes.

4 A No.

5 Q Did ODH or anyone there ever discuss  
6 generally how to deal with requests from transgender  
7 customers?

8 A Through like NAPHSIS?

9 Q No, just in general at all.

10 A No. Once the paperwork is reviewed on a  
11 case-by-case basis, then -- I mean no, no overarching.

12 Q So no one at ODH has ever had a conversation  
13 about how to address the needs of a transgender  
14 customer in any way?

15 MR. BLAKE: Objection.

16 A I'm going to answer it stating that we did  
17 have a discussion with -- sorry, Rachel --  
18 TransEquality and some other individuals that came in  
19 to give us some insight, but other than that forum,  
20 roundtable with a variety of ODH people I don't recall  
21 any other discussions happening at ODH.

22 Q Okay. When about was that?

23 A I'm going to say in the three-year time  
24 period.

25 Q Two or three years ago?

1 A Yeah.

2 Q And what was the topic of those  
3 conversations?

4 A A variety of individuals came in to kind of  
5 talk about Ohio law and what they perceived to be  
6 something that needed to be changed. They talked about  
7 their own unique experiences. They talked about other  
8 states and what they have been able to enact. And we  
9 listened and at the end of that the discussion turned  
10 to, it would be nice if some of those individuals could  
11 turn to their legislative representatives to see if  
12 they could get a law in place that was designed to do  
13 what they wanted to do.

14 Q And I know obviously ODH had those meetings.  
15 Were you personally involved in those meetings?

16 A I was involved in one and this was that  
17 roundtable of individuals.

18 Q Did they present ODH with any kind of  
19 educational materials about how to serve transgender  
20 customers?

21 A I don't believe the materials that I received  
22 were on that level. It was basically ideas about what  
23 other states had done and kind of reflective of the  
24 information that they had available. But not  
25 necessarily customers, no.

1 Q Okay. Do you know how many of those meetings  
2 occurred, do you remember?

3 A I was only party to one so that's all I know.

4 Q Did you ask anyone before the deposition  
5 about those meetings or try to find that out?

6 A No.

7 Q And those were basically meetings with  
8 advocates for the transgender community; is that right?

9 A That would be correct.

10 Q Okay. And in your understanding what exactly  
11 were those folks asking ODH to do?

12 A I'm not really actually too sure. It was  
13 basically more of a discussion, a one-way discussion,  
14 if you will, of like individuals just giving their  
15 background as to what their life was like, what would  
16 be helpful, some recommendations that they brought to  
17 the table that they thought that would help them.

18 And, like I said, legal counsel was also  
19 present at those roundtables and indicated that we  
20 heard the stories and we thought it would be best  
21 served if they would contact someone like a legislative  
22 representative to try to talk about a law change.

23 Q When you indicated to this group that they  
24 should seek remedy with the legislature, was that  
25 before or after you determined that you were going to

1 construe the statute in a way that wouldn't allow you  
2 to change these people's gender marker on their birth  
3 certificate?

4 A I recall it being after because they knew  
5 exactly the procedures that other states already used,  
6 what they had heard that Ohio currently does legally,  
7 and so they wanted to comment on what they thought we  
8 could also do.

9 Legal did tell them that they reviewed the  
10 law and legally we did not have to correct something  
11 that was not a mistake and that they really needed to  
12 go and get some type of help legislatively to make a  
13 correction to the law.

14 Q And that specific determination of what is or  
15 is not a mistake is there an individual at ODH that  
16 made that determination?

17 MR. BLAKE: Objection.

18 If you can answer without revealing  
19 attorney-client information, go ahead and do so.

20 A If you feel there was a mistake on your birth  
21 record you're going to the court and asking a judge  
22 with I would imagine documentation to indicate why it's  
23 a mistake. That's information we don't get at the  
24 Health Department. So I can't really speak to what  
25 someone determines to be a mistake or not. I just get

1 the court order with the summary judgment of what  
2 should occur.

3 Q Okay.

4 A So I don't know how you presented your case  
5 of being a mistake.

6 Q But as you testified previously, if the court  
7 order reflects that the gender marker change was  
8 ordered on the basis that the person is transgender,  
9 ODH will not consider that to be a mistake and so will  
10 not make the correction on the record; is that right?

11 A If the transgendered individual does not  
12 indicate that a mistake has been done on their record,  
13 then we can't make a change because he's indicating the  
14 record was correct upon being filed.

15 Q What if the applicant says and the  
16 corresponding court order says this person is  
17 transgender therefore their sex that was designated at  
18 birth is a mistake, make the correction?

19 MR. BLAKE: Objection.

20 BY MS. BONHAM:

21 Q What does ODH do in that instance?

22 MR. BLAKE: Objection. Hypothetical.

23 A We would still route the paperwork because  
24 chances are great there's a legal name change with that  
25 request as well and we route it for review and respond

1 accordingly.

2 Q And how do you respond?

3 A It depends what the court order says.

4 Q So if the court order says that there has  
5 been a mistake and the mistake is that the person's sex  
6 recorded at birth is wrong because this is a  
7 transgender person, what does ODH do then?

8 MR. BLAKE: Objection. Hypothetical.

9 A I've never seen that court order. I can tell  
10 you what my court order said for my child, and it just  
11 basically says it was recorded in error at the time of  
12 birth, it should be corrected for the following. They  
13 don't have to give any evidence as to how it was  
14 recorded incorrectly or what the consequence -- we  
15 don't really get all this detail and --

16 Q But you do make some distinction?

17 A Well, sure. I think that it's -- you can  
18 review things. You can call the court and review with  
19 them what it is if you have a problem. But obviously  
20 in some cases where the child is six months old, eight  
21 months old and the court says an error was done of the  
22 recording of this child's birth, okay.

23 If you get someone who's maybe in their  
24 thirties or forties who has a complete name change  
25 indicating that there is a correction to be done on

1 their birth certificate, we can follow-up with a phone  
2 call to say is that a correction or is that something  
3 that is a -- and a lot of times it doesn't say gender  
4 to the sex information. They want a gender change,  
5 which is something we don't correct because we don't  
6 ever collect it. So there's really not a lot we can  
7 do.

8 Q And if you do have a court order and it  
9 doesn't say error or mistake but it does order that  
10 that their sex or gender field be changed?

11 A I'm trying to think if I've ever seen one  
12 like that.

13 Q What if the court order just says without  
14 saying anything about error or mistake, this person is  
15 transgender therefore their gender marker must be  
16 changed?

17 MR. BLAKE: Objection. Hypothetical.

18 A I don't know if I've ever, honestly, seen  
19 anything like that.

20 But a court-ordered correction like I said  
21 it's on a form to be corrected and a lot of times if  
22 there is not a mistake that form is not filed so we  
23 can't do what the court order is asking us because  
24 (A) we don't collect it and (B) it's not on the right  
25 form and we just don't really know how to handle it.

1 Q What about in those two instances that you  
2 said triggered this review of how you were going to  
3 handle this, the court order from the Ohio Probate  
4 Court and the court order from out-of-state, what did  
5 those court orders indicate?

6 MR. BLAKE: Objection.

7 Go ahead.

8 A The court orders indicated that there was a  
9 legal name change inside the court order, which again  
10 is confusing because a court order is sealed up with  
11 the original birth record, but the legal name change  
12 needs to stand outside of that as a public record, so  
13 we didn't know how to handle that.

14 Q But did it also indicate a gender change?

15 A It indicated a gender change, correct.

16 Q Okay. And it didn't discuss error or  
17 mistake?

18 A Not to my knowledge, no.

19 Q So there have been two instances where you  
20 have seen this and had to decide what to do, and as a  
21 result your team reviewed this policy and came up with  
22 the stance that we discussed; is that right?

23 MR. BLAKE: Objection.

24 A We reviewed the law, we looked at the  
25 paperwork and determined that the law did not

1 substantiate the change because there was not a mistake  
2 at the time that the record was recorded. So we could  
3 do the legal name change.

4 Q Only?

5 A Yes.

6 MS. BONHAM: Okay. I think we're going to  
7 move on to another set here in a second and we  
8 shouldn't be too much longer if folks want to take a  
9 little break or work through lunch. I just want to see  
10 where people are at. I don't want to exhaust you  
11 either. You're out of Snapple.

12 (A luncheon recess was taken.)

13 BY MS. BONHAM:

14 Q So we're back from lunch. At this point I  
15 want to go over a couple sets of records with you and  
16 ask you some questions about these.

17 - - -

18 (Thereupon, Plaintiff's Exhibit 9 was marked  
19 for purposes of identification.)

20 - - -

21 BY MS. BONHAM:

22 Q I'm handing you Exhibit 9. Can you review  
23 that briefly for me. And this is a four-page exhibit  
24 that I handed you. It's also Bates Nos. 650 through  
25 653.

1           So it's the public records request and our  
2 response. Have you seen this before?

3           A     Yes.

4           Q     When was that?

5           A     When Rachel shared it with me when we helped  
6 her get the records request like about two years ago.

7           Q     Okay. Can you see the date on there?

8           A     Let's see. Our response was May 31st -- Oh,  
9 no. Our response was June 22nd, 2017.

10          Q     Okay. And are these -- is this the  
11 correspondence that you reviewed also in preparation  
12 for the deposition?

13          A     I saw it but I did not read it, so ...

14          Q     And when you say "Rachel" you're referring  
15 to?

16          A     Oh, I'm sorry. Rachel Belenker from legal  
17 counsel.

18          Q     Okay. Do you pronounce it Belenker?

19          A     Belenker. Sorry, Rachel.

20                MS. BELENKER: Either one. It doesn't  
21 matter. It really doesn't.

22                BY MS. BONHAM:

23          Q     Can you tell me when Ms. Belenker gave this  
24 to you originally, reviewed it with you originally,  
25 what was the purpose of you looking at this?

1           A       So when Rachel received this email from  
2       Freda, she contacted our office and asked for us to  
3       review it and see if we could comply with this  
4       certificate request.

5                    We basically told her that the way that our  
6       information is organized that we do not have the  
7       capacity to find all the certificates that meet this  
8       records request, so she responded back with her answer.

9           Q       Okay. And their request is from  
10       Freda Levenston from my office; is that right?

11          A       Yes.

12          Q       And what exactly is it requesting, can you  
13       see?

14          A       So Freda was requesting every birth  
15       certificate where we changed or corrected the gender  
16       marker, and all other records referring to any  
17       instances where we have changed or corrected the gender  
18       marker on the birth certificate.

19          Q       Okay. And can you just summarize again your  
20       response. I don't want you to have to repeat yourself.

21          A       So our recordkeeping is organized by event  
22       name. It's not by the process that we perform. So  
23       there was no way for us to get a listing of records  
24       that met her criteria.

25          Q       Okay. And so what did you do in response to

1 the request?

2 A We worked with Rachel to craft a response  
3 back to Freda.

4 Q Okay. And did you have any further  
5 correspondence with my office on that issue after that?

6 A There may have been another one or two  
7 requests after that to maybe pare down this request and  
8 scope to see if records could be obtained underneath  
9 that new request.

10 Q Did you ever end up producing responsive  
11 records?

12 A I think we did end up producing some. I'd  
13 have to review what we sent out. I did not review this  
14 prior to today so I'm not absolutely sure how many  
15 times this may have popped back and forth.

16 Q Did you talk to my office on the phone about  
17 the request?

18 A I don't recall ever contacting anyone via  
19 phone for this request.

20 Q Do you remember a time in about July of 2017  
21 after this request was made where you and Ms. Belenker  
22 talked to my office on the phone about it?

23 A May, but I don't have any recollection.

24 Q Okay. Before the deposition did you ask  
25 anyone about it or try to find out about a conversation

1 like that?

2 A No.

3 Q Okay. You mentioned that you had already  
4 reviewed other correspondence between your office and  
5 the ACLU. Can you tell me what that other  
6 correspondence was about.

7 A You mean in preparation for today?

8 Q Today.

9 A Like I said, we didn't review anything. This  
10 came up as information that was received but I didn't  
11 review it, I didn't read it, and I didn't follow-up  
12 with anything. So I just knew that we had taken part  
13 in trying to satisfy the records request.

14 Q We've been talking about determination made  
15 by ODH over the past two or three years that when you  
16 receive requests for gender or sex marker changes on  
17 the birth certificate that you don't believe there is  
18 birth certificate error that you won't change those.  
19 Before that determination was made were there ever  
20 instances where you would make that change?

21 A Yes.

22 Q Okay. Can you tell me about every such  
23 instance.

24 A I can't tell you about every such incident  
25 but I can tell you that there was a time period when we

1 did receive a couple of out-of-state court orders  
2 probably about 10 over about a five-year period or so  
3 that we followed the court order and did process the  
4 change in sex. However, when we received the court  
5 order from Ohio asking us to do that on a different  
6 form and we went ahead and re-evaluated the law, ODH  
7 found out that we were not correcting the certificates  
8 to the letter of the law and that we should not go  
9 ahead and follow that practice further, that we should  
10 only do the legal name change.

11 Q Okay. So there was a time, maybe a five-year  
12 period. And how long ago was that time?

13 A Approximately like 2011 to about 2015-ish.

14 Q What did you do before 2011?

15 A Honestly, I don't recall getting anything  
16 except -- definitely not out-of-state. But we would  
17 have received a correction document from the court of  
18 Ohio if a child's record had an error upon being filed.  
19 So we didn't get court order requests with legal name  
20 changes in them like we did around 2011.

21 Q Okay. So if you got a request before 2011  
22 that didn't also have a legal name change but didn't  
23 explicitly say it was an error or mistake, what would  
24 you do?

25 A Prior to 2011 we don't have any recollection

1 of getting anything except for Ohio-based court orders  
2 asking for a correction to be done to the birth record.

3 Q Okay.

4 A So the form is standard for any correction to  
5 the birth record and we would have gone ahead and  
6 performed that change.

7 Q Okay. Regardless of the basis if there was a  
8 court order?

9 A Right.

10 Q Okay. Got it.

11 And obviously this timeframe here is  
12 approximate you're saying?

13 A Yes.

14 Q And has there been a time any time since you  
15 made this determination about how to handle this where  
16 you have made an exception?

17 A I don't think we've made an exception to my  
18 knowledge.

19 Q And the instance that you indicated where you  
20 marked a third or neither M, F nor U but a  
21 hermaphrodite marker, when did that occur?

22 A I'd have to actually have to look it up. It  
23 was within the past five years.

24 Q Okay. But you don't know if it was before or  
25 after this determination?

1           A     Yeah, that I do not know.  Sorry.

2           Q     That's okay.

3                     I'd like to draw your attention back to the  
4 interrogatories, which I think are Exhibit 3, and can  
5 you turn for me to Page 4.  Or, I'm sorry, Page 6.

6           MS. BONHAM:  And let me make a correction for  
7 the record.  This is not Exhibit 3.

8           Q     Would you mind just turning to page and  
9 showing me.  It's Exhibit 4.

10                    So we're looking at Exhibit 4, the ODH's  
11 responses to Plaintiffs' first set of interrogatories  
12 and requests for production.

13           MS. BONHAM:  And I'd also like to ask the  
14 court reporter to mark this.

15   - - -

16                    (Thereupon, Plaintiff's Exhibit 10 was marked  
17 for purposes of identification.)

18   - - -

19 BY MS. BONHAM:

20           Q     And this is Exhibit 10 that I'm handing you  
21 that we can look alongside of Page 6 of Exhibit 4.

22                    So you've already testified that you are  
23 familiar with and have reviewed the interrogatory  
24 responses.  Can I ask you to review what's now marked  
25 as Exhibit 10.

1 A Sure.

2 Q That's also Bates numbered 156 through 158.

3 A Okay.

4 Q Do you recognize that document?

5 A It's our mail log that we keep at work.

6 Q Okay. And did you review it in preparation  
7 for your deposition?

8 A Nope.

9 Q Can you explain to me in a little bit more  
10 detail what that is, the mail log that you keep at  
11 work.

12 A So when we do process corrections since many  
13 of them pertain to the changing of a child's name, if a  
14 customer called us wanting to know if we processed a  
15 request that they have sent in or the court has sent  
16 in, you may know the child by the new name but we can't  
17 search by the new name because it's still listed as the  
18 old name. So we actually have a mail log that we keep  
19 that we record documents that we receive from the  
20 court, the date that we receive it, and the information  
21 off the paperwork which would reflect their current  
22 name in the system and the new name that they're going  
23 to be known as once the court paperwork is processed.

24 So we can keep that and help our customers  
25 and also verify that we received something, first of

1 all, and where it is in being processed and whether or  
2 not we've done it.

3 Q Okay. So the purpose of keeping the log is?

4 A Different people may know the same child by  
5 different names dependent upon what the situation is.

6 Q Okay.

7 A So if you call as a parent that is adopting a  
8 child, you know the child as the name that you have  
9 gone to court to provide the child, but in the system  
10 because that paperwork hasn't been processed it's still  
11 legally listed as whatever the child was born with,  
12 whatever name. So I can't help you if I can't do that  
13 connector. This way I can search by the new name not  
14 in the system because it's not there yet and kind of  
15 ensure that we've received the paperwork and kind of  
16 where it is in order to be processed.

17 Q Okay. So this would reflect documents that  
18 are in the process of being changed only?

19 A Right.

20 Q Okay. And how far back do you keep this log?

21 A I would have to check for sure but I think it  
22 goes back quite a few years, like four or five.

23 Q Does what you're looking at appear to you to  
24 be a complete log, a complete version of this log?

25 MR. BLAKE: Object to form.

1           A     It's hard for me to say because it runs many,  
2 many, many, many, months. So this is a -- it may have  
3 been sorted by date.

4                     I mean it's a Word document so it's  
5 (gesturing.)

6           Q     And we can see on here that it appears to  
7 list a processing date between September of 2014 all  
8 the way through December 2017, if that help you  
9 remember whether this is complete or not.

10          A     So complete meaning every single entry  
11 between '14 and '17?

12          Q     Well, first of all, yes, would it have every  
13 entry between '14 and '17?

14                     MR. BLAKE: Objection.

15          A     It doesn't have every entry on this exhibit,  
16 no.

17          Q     Okay.

18          A     We usually get 40-some thousand a year.

19          Q     I see.

20          A     Yeah, this is not --

21          Q     Then do you know how this subset was  
22 generated?

23          A     I do not. I did not generate it.

24          Q     Do you know who would have generated it?

25          A     I'm going to assume that it's Rena Boler.

1 Q And then this shows '14 to '17. Would the  
2 log that you keep, the full log that you keep also go  
3 back further in time than '14?

4 A I would honestly have to check to tell you.

5 Q Would you keep it up through the present day?

6 A It's definitely up to the present day at  
7 least for the past couple years. I don't know if  
8 previous information has been archived or available.

9 Q So I want to ask you to just from left to  
10 right read the top row so that we can see what every  
11 column says.

12 A Okay. So New SFN is the new state file  
13 number.

14 AFS is the service -- is what it's called our  
15 service request.

16 Old Name is the current name that's in our  
17 system for the child.

18 New Name is the new name as requested by the  
19 court.

20 The date of birth of that child.

21 The gender of the child.

22 The date we received the court paperwork into  
23 our office.

24 Whether or not that court paperwork also  
25 included money.

1 The state that sent us the court paperwork.

2 The date that we processed the court change  
3 on.

4 And whether or not a letter has been sent.

5 And finally there's a comment section.

6 Q And whether or not a letter has been sent,  
7 does that mean to the requestor?

8 A It could have been a variety of things.  
9 Usually there's like a standard letter that sometimes  
10 is mailed. But it could have been a specific letter  
11 back to the parent, but usually it's just a standard  
12 letter saying something has been completed.

13 Q And what's the comment section for?

14 A The comment section is if we have to return  
15 something for processing or it couldn't be completed as  
16 requested we can put a comment there. So if a parent  
17 calls and doesn't get what they expect we can look up  
18 the information in the system and try to help them  
19 navigate why that request may not have been processed.

20 Q And you're using the words "parent" and  
21 "child" but could this refer to anyone who requested a  
22 change?

23 A It depends the age of the child. So if  
24 you're under 18 your parents have to request it. And  
25 if you're over 18 you can do it yourself.

1 Q And both cases are listed in this document?

2 A Yes.

3 Q And under "Processed On," if there's a date  
4 does that mean that the request was processed?

5 A It means that we're done doing whatever we  
6 can do so you can pretty much assume that we processed  
7 as much as we could. That could have been we sent it  
8 back, we actually did the correction, but it's done,  
9 it's completed as far as we can complete it.

10 Q And under "Processed" when it says "No," what  
11 does that mean?

12 A No means it wasn't processed, that there was  
13 something sent out. It could have been not a complete.  
14 Maybe it wasn't processed because we actually don't  
15 have that child in our system, they sent it to the  
16 wrong state. It's a handful of things that caused us  
17 to say this is not something we can complete.

18 Q And on this subset in the Gender column  
19 there's always either an M or an F and then a little  
20 arrow and then the opposite. So in the first row it  
21 says M arrow F. Do you see that in every row in the  
22 gender column?

23 A Uh-huh.

24 Q What does that indicate?

25 A To be honest, I don't know.

1 Q Let's look, for example, at the row on the  
2 first page here that begins with the New SFN number  
3 19591. Do you see that? It's about five from the  
4 bottom.

5 A Yep.

6 Q And all the way over to the right in the  
7 Comment Section can you read that out.

8 A Sure. "Name changed previously done  
9 1/28/16. Customer sent letter from doctor for gender  
10 change request."

11 Q And then what does that say on the Processed  
12 On column?

13 A It says "No."

14 Q And then in the state?

15 A Where is my state? Oh. "Ohio."

16 Q And then in the Gender column what does it  
17 say?

18 A It says, "Male greater than female."

19 Q Okay. And the greater than sign is like a  
20 little arrow towards the right?

21 A Right.

22 Q So does that indicate to you that this person  
23 who sent a doctor for gender change request was  
24 requesting a change of the gender marker from male to  
25 female?

1 A Yes.

2 Q And so can we assume that when that's  
3 indicated on this chart the customer is requesting a  
4 gender change from male to female?

5 A Yes.

6 Q So the document will show that all of these  
7 instances after the first five from the top have a No  
8 in the Processed On column. In other words, none of  
9 these appear to have been processed. Do you agree?

10 A I would agree.

11 Q But the first five listed do have a processed  
12 on date?

13 A Yes.

14 Q And in the Comment Section can you see what  
15 they all say?

16 A Yes.

17 Q What is that?

18 A The ones from the top or the ones from the  
19 bottom?

20 Q The top five.

21 A In the Comment Section it says, "Processed as  
22 court-ordered correction."

23 Q In all five instances?

24 A Yes.

25 Q Do you remember specifically any of these

1 instances?

2 A No.

3 Q Who would have that information?

4 A I'm going to say Rena Boler.

5 Q Do these appear to be past instances where  
6 ODH did make or process a change of the gender  
7 designation on the birth record?

8 A We processed a change in the sex information  
9 on the child's birth certificate.

10 Q Okay. And it indicates that there was a  
11 court order from these different states listed under  
12 State; is that right?

13 A Correct.

14 Q The last one of which is Ohio; is that right?

15 A Yes.

16 Q Did you talk to Rena Boler before the  
17 deposition to find out about these instances?

18 A No.

19 Q Did you talk to her to find out anything  
20 about what the Department has done in the past with  
21 regard to changing these markers?

22 A No.

23 Q Now, I want to go back and look at the  
24 interrogatory responses that you made, Exhibit 4.

25 In the middle of the page on Page 6 there's a

1 chart. Can you read the final sentence of your answer  
2 right before the chart.

3 A Starting with "Subject"?

4 Q Yes.

5 A "Subject to the foregoing Defendants state  
6 that the sex identifier has been changed for reason  
7 other than set forth in Ohio Revised Code 3705.15 and  
8 3705.22 for the following individuals:"

9 Q And then how many individuals are listed  
10 here?

11 A Ten.

12 Q Do you know if there is any overlap between  
13 this list of instances where the Department changed the  
14 gender marker and the list of instances that we just  
15 discussed from Exhibit 10?

16 A The only way of verifying that is by name. I  
17 wouldn't know just by looking at the list.

18 MS. BONHAM: Okay. And I just want to make a  
19 note that because of the redactions on the documents  
20 that are still in dispute we don't have any way of  
21 cross-referencing that either and so we have names and  
22 other information redacted on every single document we  
23 have.

24 Q Can you tell me from this chart in the  
25 interrogatory responses what the first date is?

1 A Sure. It's January 8th, 2004.

2 Q Okay. And these go all the way up through  
3 2011, '12, '13, '14 and '15; is that right?

4 A Correct.

5 Q And do these still represent the only  
6 instances that you are aware of where the Department  
7 has made a change to the sex or gender marker on the  
8 birth record for reasons other than set forth in these  
9 two code provisions that you mentioned?

10 A To the best of our ability doing the search  
11 these are the only ones that we could find.

12 Q And what was the reason underlying these  
13 instances?

14 A Unless I looked at the court order I wouldn't  
15 know what the reason is.

16 Q Do you remember any reason for any of these  
17 instances?

18 A No.

19 Q Is there anyone that would know that  
20 information?

21 A Anyone would have to look at the court order  
22 and tell you because it's sealed.

23 Q In preparing this response how did you put  
24 this list together?

25 A These individuals as we were saying before,

1 although they have a court order, there was a legal  
2 name change most likely associated with it which made  
3 these documents public so it's not in the vault. So we  
4 would have to go to our legal name changes to find that  
5 there was also an additional change requested at the  
6 time of the legal name change.

7 If something is sealed unless I literally  
8 opened up 400,000 envelopes I wouldn't know the ones  
9 that were sealed.

10 Q Okay.

11 A So that's why I said electronically we can't  
12 search for the reason but these -- I'm going to call  
13 them children -- these individuals had a process by  
14 which the court order was not sealed because of their  
15 legal name change, so that's why we were able to find  
16 them.

17 Q Okay. And just to clarify a couple of  
18 things.

19 First of all, we don't know whether they're  
20 children or adults?

21 A Right. We call everyone children because  
22 they have a birth certificate. Sorry.

23 Q Okay. All right. So we can understand that  
24 when you say that you're not talking about children?

25 A No. A child's birth certificate you could be

1 85.

2 Q I see. I see.

3 A Sorry.

4 Q Oh, no. That's great. It's kind of sweet.

5 So then this doesn't reflect every instance  
6 that ODH is aware of where a change was made, rather it  
7 reflects every instance where this change was made  
8 along with a name change request?

9 MR. BLAKE: Objection.

10 Go ahead.

11 A Correct.

12 Q That you were able to find?

13 A Right, because these documents were not  
14 sealed in the vault.

15 Q And when someone's requested a name change  
16 and a gender change and as here the gender change is  
17 also performed, that part doesn't get sealed?

18 MR. BLAKE: Objection.

19 A No, because by law the statute indicates very  
20 specifically what we should and how we should process  
21 the legal name change.

22 A legal name change is never ever, ever  
23 sealed. We have to process it a certain way where it's  
24 noted on the certificate and that document remains  
25 public.

1 Q So because the gender change is also on that  
2 document it also becomes public in these instances?

3 A Yes.

4 Q Even though typically a gender change as an  
5 ordered correction independent from a name change would  
6 be sealed in the vault?

7 MR. BLAKE: Objection.

8 A Correct.

9 - - -

10 (Thereupon, Plaintiff's Exhibit 11 was marked  
11 for purposes of identification.)

12 - - -

13 BY MS. BONHAM:

14 Q I'm handing you Exhibit 11. Do you recognize  
15 this? You can take a look at it, obviously.

16 A Okay. Yeah.

17 Q Do you recognize this?

18 A This is the first time I've seen this email.

19 Q Okay. Can you tell who it's from?

20 A It was originally from a local registrar  
21 Carma Lee, C-A-R-M-A L-E-E, from Stark County to Rena  
22 Boler.

23 Q It's the same Rena we've been talking about  
24 with your office?

25 A Yes.

1 Q And can you tell the date on this?

2 A It is May 15, 2012.

3 Q And can you read the title of that email.

4 A May I? Yeah. Oh. Well, I think that's a  
5 response. It's not the title.

6 Q Okay. We can skip that.

7 A Okay.

8 Q So this is, as you said, an email from a  
9 local registrar. It looks like Stark County?

10 A Yes.

11 Q To your office --

12 A Yes.

13 Q -- asking a question. And does your office  
14 function as a resource for local offices to determine  
15 what the policies and practices are for recordkeeping?

16 MR. BLAKE: Objection.

17 A When this email was done in 2012 we didn't  
18 have a centralized system. This would have been a  
19 paper process. So changes to all birth records only  
20 occurred at the State, and we would make two copies.  
21 One stayed with us and one was to be mailed back to the  
22 local who initially had filed that birth record.

23 So this email I'm going to assume the local  
24 registrar at Stark County received a brand new birth  
25 certificate with a change on it, the process by which

1 they are to take whatever the current document is and  
2 switch it out with a new piece of paper, and she had a  
3 question regarding why she was receiving a new piece of  
4 paper for a child's certificate.

5 Q Okay. So she received a new corrected  
6 document in the mail from ODH?

7 A Yes, she did.

8 Q Because it's 2012?

9 A Yes, exactly.

10 Q And it was unusual for her so she had this  
11 question about it?

12 A Yes.

13 Q She wrote to you?

14 A Yes. And she wanted to make certain that she  
15 understood maybe a little bit more of the circumstances  
16 regarding the change of this record because now she  
17 could see the old record and the new one that was sent.

18 Q Okay. So would you mind just reading out  
19 what exactly she asked of your office.

20 A Sure. She asked, "Just wanted to make  
21 certain that this new change is correct. Is this due  
22 to an error or part of the filing physician back in  
23 1933 or is this due to a change in sex status?"

24 Q And can you just continue.

25 A Oh, sure.

1 "Previously local offices were told that the  
2 sex doesn't change on birth certificates even if the  
3 individual has actually undergone a sex change. I want  
4 to make certain that I know the rules as they stand  
5 now."

6 Q And then can you just read out what your  
7 office said in response.

8 A Sure. Rena responded back, "A court-ordered  
9 correction was performed changing the name and sex of  
10 the child."

11 Q So your office in 2012 told this local office  
12 in Stark County that that was the correct record that  
13 you sent?

14 A Correct.

15 Q And was this about during the time that you  
16 had mentioned where your office was doing gender marker  
17 changes if there was a court order?

18 A This was the time period that if we received  
19 a request as a court order we would have done the  
20 change through the sex marker on the certificate.

21 Q Okay.

22 - - -

23 (Thereupon, Plaintiff's Exhibit 12 was marked  
24 for purposes of identification.)

25 - - -

1 BY MS. BONHAM:

2 Q I'm going to hand you Exhibit 12. Have you  
3 seen this before?

4 A I have not.

5 Q Can you tell what this appears to be?

6 A This is an email correspondence between a  
7 local registrar, Rebekah, R-E-B-E-K-A-H, from Hamilton  
8 County to our offices to our staff regarding a court  
9 order with a name and gender change.

10 Q Okay. And so this is also correspondence  
11 from a local office, Hamilton County, at this time; is  
12 that right?

13 A Correct.

14 Q And so this would be, though, after the  
15 electronic system came into place in 2015, or no?

16 A I'm trying to think when my kids were born.  
17 Yeah, this would have been the electronic system.

18 Q Okay. And so this person is just asking  
19 about something a customer has asked her; is that  
20 right?

21 A Yes.

22 Q Can you see down at the bottom there -- can  
23 you summarize from the bottom what she's asking your  
24 office?

25 A The Hamilton County Registrar received a

1 phone call from a customer asking about the procedure  
2 to change the sex of the child on the birth record as  
3 well as changing the name and she wanted assistance  
4 regarding what the procedure was and what she should  
5 tell the customer.

6 Q And can you just read the second sentence of  
7 her email on the bottom there.

8 A Sure.

9 "I was always told for years that you have to  
10 and can change a name by going through the court but  
11 the sex of the child will never change on the birth  
12 certificate no matter what. Is that still true now?"

13 Q And then this gets obviously pushed up to  
14 Rena the person we've been discussing, and can you read  
15 out what she says in response when this gets kicked up  
16 to her.

17 A Sure. Rena responds back to Rebekah, "Thank  
18 you. And, yes, I did tell them to forward to ODH."  
19 Oh, that's Rebekah.

20 "Anyone who states that they have a court  
21 order with the name and gender change can send the  
22 documents to our office. We will then send it on to  
23 legal so it can be reviewed for acceptance. If  
24 approved by legal, we will amend the birth record."

25 Q So at this time you were in the space where

1 if your legal department approved a gender marker  
2 change then you would do it pursuant to a court order;  
3 is that right?

4 MR. BLAKE: Objection.

5 A We review all of the court orders ourselves  
6 not based on what hearsay is between the customer and  
7 the Hamilton County Registrar, not knowing if the  
8 registrar may have told us the right situation or the  
9 right problem. So, basically, regardless of what was  
10 sent we review all court-ordered paperwork. And not  
11 knowing whatever was sent I don't even know if it met  
12 this criteria.

13 Q Sure. Sure. But Rena's statement that you  
14 read off was that accurate at the time? "When there's  
15 a gender change request, if approved by legal we will  
16 amend the birth record"?

17 A Yes.

18 - - -

19 (Thereupon, Plaintiff's Exhibit 13 was marked  
20 for purposes of identification.)

21 - - -

22 BY MS. BONHAM:

23 Q I'm going to hand you Exhibit 13. Have you  
24 seen this before?

25 A No.

1 Q Can you identify it?

2 A This is from a staff member, Devon,  
3 D-E-V-O-N. She is the -- at that time she was the  
4 phone manager and one of her phone people received a  
5 request that he didn't know how to handle so was  
6 getting some assistance through Rena.

7 Q And at the bottom there Devon's email can you  
8 tell me what that says.

9 A Basically, Devon sent to Rena that Jon,  
10 J-O-N, our phone call customer service rep had a phone  
11 call from a gentleman who sent in a legal name change  
12 with a gender change and he wanted assistance regarding  
13 what to tell the customer if there was a gender change  
14 along with a legal name change because the customer was  
15 questioning that the name was changed but not the  
16 gender.

17 Q Okay. And can you see that he says, quote,  
18 "Maybe legal is still reviewing those or holding those  
19 as pending requests"?

20 A Yes.

21 Q Does that indicate that at that time when the  
22 Department received a request for a gender change the  
23 practice was for the legal department to review that?

24 A The practice was for any legal paperwork that  
25 we needed assistance with that we would get ODH's

1 advice as far as whether or not we could accept and  
2 process it.

3 Q Okay. And when he says, "Still reviewing or  
4 holding those as pending," does that indicate there was  
5 a period of time when the Department was just holding  
6 these requests?

7 MR. BLAKE: Objection.

8 A Through the mail log you could tell if a  
9 request was received but maybe not completed. So if he  
10 searched on the mail log he would see that date-wise it  
11 wasn't being processed timely, so he was assuming that  
12 it was pending or holding or there was an issue with  
13 the record.

14 Q Was there a period of time when the  
15 Department was determining what to do with requests for  
16 gender marker change and holding such requests during  
17 that determination?

18 A There are periods of time that we submit  
19 court orders or court documents for review and it may  
20 take a while before we get an answer, but we don't  
21 purposely hold anything for any other reason other than  
22 it's still under review.

23 Q Okay. So there was no period of time where  
24 the Department was considering what to do about this  
25 category of requests and holding the requests while it

1 considered what to do?

2 A If something is still under review it's under  
3 review for more consideration. So if you don't know  
4 how to proceed you still have it to review until you  
5 get a direction. So if you want to state that that's a  
6 hold, it's still under review.

7 Q Okay. So specifically as to this policy the  
8 determination that we discussed that the Health  
9 Department won't change the gender marker on the basis  
10 of gender change --

11 MR. BLAKE: Objection.

12 Q -- was there a time period specific to that  
13 policy where changes were coming in and being held  
14 while you made a determination about what to do?

15 MR. BLAKE: Objection.

16 Go ahead.

17 A When we received the court order from Ohio  
18 indicating a correction that someone wanted to do and  
19 also the legal name change, when we received similar  
20 documents because that one hadn't been processed, all  
21 of those ended up being reviewed together because it  
22 looked and appeared to be a similar request. So we  
23 wanted to ensure that we processed them all in a way  
24 that was consistent.

25 Q Okay. And that was that period about two or

1 three years ago when you were making this determination  
2 about what your stance is as a department?

3 A Yes.

4 - - -

5 (Thereupon, Plaintiff's Exhibit 14 was marked  
6 for purposes of identification.)

7 - - -

8 BY MS. BONHAM:

9 Q I'm handing you Exhibit 14. Do you recognize  
10 this document?

11 A Yes.

12 Q How do you recognize it?

13 A They're internal discussions. When certain  
14 things from our mail log are not being done within 30  
15 days that's how we like to close out a request that we  
16 receive that things that are not. We try to follow up  
17 and ensure that we are going to get assistance in  
18 closing out the request and processing that as fast as  
19 possible.

20 So we had some that were falling outside of  
21 the date range and Karen, K-A-R-E-N, the chief wanted  
22 to know if there were stuff outside of that processing  
23 range that weren't being done.

24 Q So this is an email between her and Rena in  
25 2016, and can you read what Karen had asked first which

1 is on the bottom.

2 A So Karen asked Rena to send her a summary of  
3 where we are on the gender change. She's compiling an  
4 email to Lance, L-A-N-C-E, who at the time was legal  
5 counsel.

6 Q And that's Lance Himes --

7 A Correct.

8 Q -- in 2016 who was legal counsel?

9 A Yes.

10 Q Do you know what the chief means by "Where we  
11 are on the gender change"?

12 A We noticed in our mail log that the requests  
13 that we had received had the same kind of category and  
14 that those were in a review process, that we were  
15 awaiting guidance as to how to process. So those that  
16 started to fall outside of 30 days we don't want to  
17 keep someone's money, we don't want to not get back  
18 with them, so we wanted to reach out and get some  
19 assistance to ensure that we could contact the  
20 customers and get ahold of them to make sure that they  
21 understood we received the request and that we were  
22 going to go ahead and whatever the answer was, do  
23 something. So Karen wanted to escalate that being the  
24 chief of the Department to other people in her level.

25 Q Sure.

1           So Karen as Department Chief is she the one  
2 that was developing that guidance?

3           A     We were as ODH developing guidance, but we  
4 were also asking other individuals from other areas to  
5 review and give their input as well.

6           Q     And who were those people, do you remember?

7           A     Well, mostly they would be legal counsel.  
8 And I'm sure we worked with the governor's office to  
9 keep them apprised of what we were working on and get  
10 some direction from them as well.

11          Q     Do you remember specific communications you  
12 had with the governor's office on this issue?

13               MR. BLAKE:  Objection.

14               To the extent you can -- and I'm not sure you  
15 can.  But there is an executive privilege to assert  
16 here between communications between the governor's  
17 office and the ODH.  So to the extent you can disclose  
18 any of the specific discussions, go ahead.

19 BY MS. BONHAM:

20          Q     I'm first asking whether you communicated  
21 with the governor's office?

22          A     I did not.

23          Q     Did anyone in ODH?

24               MR. BLAKE:  She's already testified to that.

25          A     I don't have that information.

1 Q It seems to me you indicated a moment ago  
2 that ODH did work with the governor's office on  
3 developing those guidance on this topic?

4 A I know that we reach out to the governor's  
5 office because we routinely send updates on issues that  
6 we have to keep them apprised of what we're reviewing  
7 in case someone reaches out at a different level to say  
8 I don't really believe that I'm getting good customer  
9 service, I think there is an issue. So the office  
10 would have been apprised that we were reviewing  
11 documents and that there was a category.

12 Q So it's actually your testimony that you on  
13 behalf of ODH know that the governor's office was  
14 apprised of this but you know nothing more about  
15 whether or how you communicated?

16 A I communicate upwards and how it's circulated  
17 and communicated above me I don't have any direct  
18 knowledge.

19 Q Did you ask anyone else about that to prepare  
20 for the deposition?

21 A No.

22 Q Besides the governor's office and other  
23 people in ODH, including legal counsel, was there  
24 anyone else involved in creating that guidance or  
25 making that determination about the gender markers?

1 A Not to my knowledge.

2 Q So the person to ask would be Karen Sorrell;  
3 is that right?

4 MR. BLAKE: Objection.

5 A Karen may have additional information but I  
6 don't know.

7 Q Okay. Are the people who made this guidance  
8 and this determination all in your legal department?

9 MR. BLAKE: Objection.

10 A ODH made the determination through a review  
11 from a variety of people and their input. So it wasn't  
12 necessarily one person.

13 Q Okay. And then can I ask you to just read  
14 out what Rena said back to the chief about where you  
15 were on the gender marker change at that time.

16 A Do you want the whole paragraph read?

17 Q Yes, please.

18 A "From October 2015 to now we have 11 gender  
19 change requests pending with some of them ordering name  
20 changes as well. They have all come from outside of  
21 Ohio. At least eight came with money and those  
22 applicants are awaiting for a changed birth record. A  
23 few years ago we had the same issue come up and it was  
24 determined that we could process the three that had  
25 been sent as court-ordered corrections. I am not sure

1 what has changed since then."

2 Q Okay. Thank you.

3 So does this summary from Rena to the chief  
4 appear to reflect the same timeline that you told me  
5 about where at one time in the past the Department  
6 wouldn't make changes to gender markers, then for about  
7 a five-year period it would, and then about two to  
8 three years ago you changed back?

9 MR. BLAKE: Objection.

10 A That seems to match the time period, yes.

11 Q And in this communication Rena is seeking to  
12 understand what has changed because you had some  
13 pending requests sort of in a group?

14 A Yes.

15 - - -

16 (Thereupon, Plaintiff's Exhibit 15 was marked  
17 for purposes of identification.)

18 - - -

19 BY MS. BONHAM:

20 Q Okay. I'm handing you Exhibit 15. Do you  
21 recognize this?

22 A This is the first time I've seen this email.

23 Q Okay. Can you tell me what it appears to be?

24 A Yeah. Flo, F-L-O, is a phone staff and she  
25 is emailing Rena regarding help with a customer that

1 emailed us for a response.

2 Q And it looks like Flo has forwarded the  
3 customer request and it's on this document. Does that  
4 seem right?

5 A Yes.

6 Q And this person is making this request in  
7 2015 and they say, "I was born intersex with mixed  
8 genitalia."

9 What does Rena direct Flo to do with that at  
10 the top?

11 A Rena directs Flo to send back a response that  
12 the individual who contacted us should contact the  
13 Probate Court in the county in which they were born and  
14 explain the situation and see if they can have a  
15 correction of birth record ordered.

16 Q Okay. So was that at the time the correct  
17 way to process a request to change the gender marker  
18 from someone who identified as intersex?

19 MR. BLAKE: Objection.

20 A According to the email the customer indicates  
21 that there's a genuine error. Errors can be corrected  
22 and the way to do that is through Probate to get a  
23 correction of birth record. So we're going to assume  
24 that there is an error and this would be the procedure  
25 to get that corrected.

1 Q Is it the Department's position that if  
2 someone says they're intersex and that's the reason  
3 that their gender marker isn't accurate that counts as  
4 an error and should be changed if there's a court  
5 order?

6 MR. BLAKE: Objection. Hypothetical.

7 A If someone states that there's an error on  
8 their certificate it's up to them to go to the court  
9 and respond to what the error is so a court-ordered  
10 correction can be issued for us to change the record.  
11 I can't respond to what that error is based on  
12 anything. If there's an error, then we can fix it for  
13 that person.

14 Q Okay. Are you aware of any instances like  
15 this one where someone has requested after obtaining a  
16 court order that ODH change their gender marker because  
17 they were intersex?

18 A Just the one hermaphrodite.

19 Q Are you aware of any instances where ODH has  
20 made such a change and changed the designation to  
21 either male or female rather than hermaphrodite?

22 A If it was deemed to be a mistake and the  
23 correction had to occur, we make the change. It  
24 doesn't matter who's requesting it.

25

- - -

1 (Thereupon, Plaintiff's Exhibit 16 was marked  
2 for purposes of identification.)

3 - - -

4 BY MS. BONHAM:

5 Q I'm handing you Exhibit 16.

6 A Okay.

7 Q And this is Bates 259 through 263.

8 Do you recognize this document?

9 A I have not seen this document before.

10 MS. BONHAM: This is a document you produced  
11 as one document, this multiple-paged file. It contains  
12 for the record a letter from someone who had an  
13 indeterminate gender indicated by the doctor at birth.  
14 It has a court order requiring a gender change from  
15 Arizona. Had sent previously gender changed other  
16 identity documents including a Social Security card and  
17 Arizona driver's license. And then the last page of  
18 the document is an Ohio birth certificate.

19 Q Can you tell based on this document whether  
20 the Department actually made the change ordered by the  
21 court here?

22 A The only way of knowing what is currently in  
23 the system is for me to search the system today to see  
24 if this record exists or it's been changed.

25 Q Okay. When it was produced, though --

1 obviously this document was accurate when you produced  
2 it, which was less than a year ago, right?

3 A It's accurate the day that we produced it.

4 Q Right. So can you tell from the face of this  
5 document whether the requested change was made?

6 A No.

7 Q You can't tell from what I just handed you?

8 A No.

9 Q So you don't know if you look at this  
10 together with either of the charts that you produced  
11 indicating when the changes were made if this person  
12 was one of the people on that chart?

13 A Not without researching it, no.

14 Q How would you go about researching it?

15 A A court order would seal down this record and  
16 it would be brought back with a new state file number.  
17 So if this record cannot be found we know it's been  
18 reproduced with a new state file number and a  
19 correction has been done.

20 Q Okay. So it's possible for you to do that?

21 A Uh-huh.

22 Q And what exact information would you need to  
23 find that out?

24 A We need to know the name of the individual of  
25 this record, their date of birth and the state file

1 number that's listed, and then we can verify if  
2 anything has been corrected on the record.

3 Q So for any person whose records you produced  
4 you can also go back and determine whether that change  
5 was made but only if you have these three items?

6 A Yes.

7 Q And we obviously don't have those items  
8 because they've all been redacted?

9 A Correct.

10 Q But since ODH established this policy like  
11 two or three years ago, you haven't done any gender  
12 marker corrections unless there was what you consider  
13 to be an error; is that right?

14 MR. BLAKE: Objection to the use of the word  
15 "policy."

16 A If a correction was court ordered because a  
17 mistake was made, we did process those. If it was not  
18 an error upon recording the birth, those were not  
19 processed.

20 Q All right. We are going to do just a few  
21 more records. I'll try to get you out of here. I'm  
22 trying to determine what else we need to do.

23 A That's fine.

24 MS. BONHAM: You know, to be honest, we're  
25 going to have to figure out how to deal with the

1 redaction issue. We might have to reopen the  
2 deposition. So I'd like to take a five-minute break  
3 and talk about it and see what's going to be beneficial  
4 to all parties today. Okay?

5 THE WITNESS: Okay. Sounds good.

6 (A recess was taken.)

7 MR. BLAKE: Back on the record.

8 So we've just spent the last few minutes  
9 discussing a dispute regarding various redactions to  
10 some of the records that have been produced in this  
11 case.

12 For now the parties have decided to table --  
13 while reserving their rights regarding the redaction  
14 table the dispute and have come up with a plan that  
15 perhaps will resolve the need to have the documents  
16 unredacted. And the plan as counsel for Defendants  
17 understands it is that Plaintiffs will identify by  
18 Bates number various requests that have been produced  
19 in this case and the requests are requests by customers  
20 of ODH requesting various changes to their birth  
21 certificate, including changes to the sex and/or gender  
22 identifier on the birth record.

23 Defendants once they receive those Bates  
24 ranges, those Bates-numbered requests will look at the  
25 requests and provide information related to three

1 topics. First, whether or not the request was denied  
2 or approved. If so, what date was the denial or  
3 approval processed. And, three, the reason for that  
4 denial or approval. A short reason such as, you know,  
5 no court order or court-ordered correction or court  
6 order that did not include a correction. Something to  
7 that effect.

8 The second aspect as Defense counsel  
9 understands it that will help to perhaps mitigate this  
10 redaction issue relates to Interrogatory No. 3 and  
11 Plaintiffs' counsel is in particular interested in  
12 verifying whether or not the documents or requests or  
13 records reflected with the approvals reflected in  
14 Interrogatory No. 3 were produced in this litigation.

15 Defense counsel has agreed to look at the  
16 records produced, the unredacted versions, to determine  
17 whether or not those requests were produced. If so,  
18 identify the Bates range for each entry. And if the  
19 documents were not produced, we'll attempt to locate  
20 them and produce them if they're available.

21 Is that a fair reflection of what the parties  
22 agreed, Plaintiffs' counsel? Elizabeth?

23 MS. BONHAM: That's right. Pending doing  
24 that we're going to reserve the right to reopen the  
25 deposition because we're not able to ask about the

1 documents that we have now. We need to be able to  
2 cross-reference these documents with the interrogatory  
3 responses and with the other documents so that we can  
4 understand when and for whom these changes were made  
5 and why, and we've learned through testimony that we  
6 can't do that without some help here.

7 So we can work on that between the parties  
8 and possibly have to reopen the deposition.

9 We're also going to reserve the possibility  
10 of reopening the deposition on the grounds that the  
11 30(b)(6) deponent wasn't adequately prepared on all the  
12 topics. I know everybody is going to disagree on that.

13 MR. BLAKE: Defense counsel reserves their  
14 rights to oppose any reopening the 30(b)(6).

15 MS. BONHAM: So I think pursuant to that  
16 we're going to scrap the rest of the exhibits and we  
17 have a few questions for you and I understand you guys  
18 are going to have Cross.

19 MR. BLAKE: Very good.

20 BY MS. BONHAM:

21 Q When you and others, including I know you  
22 said legal counsel and possibly the governor's office,  
23 were discussing how to treat requests for change on  
24 gender markers and you ultimately determined that  
25 you're not going to do that unless there was a mistake,

1 did you ever consider a policy like the one in Illinois  
2 which permits people to change that designation using  
3 documentation that they've received gender transition  
4 treatment?

5 A I am not aware of Illinois' policy and I  
6 didn't reach out and research what they did. So no.

7 Q Did you or anybody else discuss whether you  
8 should or could implement policies like the ones in any  
9 other states or like a model policy?

10 A We don't form policy. We review the law  
11 reflected as to whether or not this change could be  
12 processed and that was the decision.

13 Q And you testified that you don't know whose  
14 decision that was?

15 A ODH's decision.

16 Q It is ODH's official stance but you can't  
17 tell me the person or people that made that  
18 determination?

19 A (Shaking head in the negative.)

20 MR. BLAKE: Objection.

21 BY MS. BONHAM:

22 Q And you didn't attempt to find out before the  
23 deposition?

24 MR. BLAKE: Objection.

25 A No.

1 Q I hear you saying that that determination was  
2 made after reviewing the laws and after reviewing what  
3 you were doing in the past. What other considerations  
4 went into making that determination?

5 A That's about it.

6 Q Other than the documents that we've reviewed  
7 was that determination promulgated in writing in any  
8 way?

9 A No.

10 Q Was there ever any kind of training for ODH  
11 staff other than what we've already discussed about  
12 that?

13 A Training regarding how to process a document?

14 Q Training regarding that this is now how ODH  
15 is going to interpret this law, for example?

16 A There's a multi-process for review, so if the  
17 reviewer feels that it needs additional assistance,  
18 then there may be multiple people reviewing it to  
19 ensure that we're following the law correctly.

20 Q So there was never any kind of policy memo,  
21 legal memo, departmental memo, any kind of written  
22 documentation other than what we've already looked at  
23 indicating that after review this was ODH's  
24 determination about how to treat requests for gender  
25 marker change?

1 MR. BLAKE: Objection.

2 A I don't believe there was anything formally  
3 circulated to like the local health departments or  
4 anything. We tried to provide a standard response  
5 regarding who to contact, what to ask for, and then  
6 from there we just await a reply from the court.

7 Q What interest does this policy serve? What  
8 ODH or Vital Statistics interest does this policy  
9 serve?

10 MR. BLAKE: Objection.

11 A Can you define what "policy" means.

12 Q The current Department's stance as we've  
13 called it that you will not change the gender marker on  
14 a birth certificate for any reason other than what you  
15 consider to be error.

16 A From a statistics standpoint we collect  
17 information on vital events because of the public  
18 health need and something that we do because the CDC  
19 has given us direction and a form to collect specific  
20 information that we then send to them every year  
21 regarding the health of the mom, the health of the  
22 child, statistics about the birth.

23 One of the statistics that they ask us to  
24 collect is the sex marker of the child that is live  
25 born. So we go ahead and collect that information. We

1 get it certified by the hospital, the medical  
2 professional.

3 If there is errors in the certificate we try  
4 to have those corrected and resubmitted from a  
5 statistical standpoint so you know things like average  
6 birth weight of a child, most common name, how many  
7 boys and girls were born in Ohio.

8 So it is a statistical piece of information  
9 that we get paid to give to other people, as well as a  
10 piece of information that we provide to Social Security  
11 to enumerate a newborn, which is a requested field that  
12 they ask for.

13 We also can give that information to other  
14 parties like voter registration, banks, pension funds,  
15 et cetera, so they can do a roster match of their  
16 individuals that they're trying to eliminate. So it's  
17 an important field for us to collect.

18 Q Is it in similar vital statistics interest to  
19 count the incidence of transgender people in the  
20 population?

21 A If that is part of the birth event that  
22 happens when you're born. I would say that that's not  
23 information that is known at the time of birth and it's  
24 not something that the CDC has asked us to collect.

25 Q What about the incidence of intersex people?

1           A     We all have an ability as a state to put  
2     undetermined as to gender -- or, excuse me, the sex  
3     marker of an individual and send in that information.  
4     If and when it's ever updated we could resend that  
5     information for statistical purposes so they would  
6     know.

7           Q     In instances where you make corrections for  
8     what you consider to be error you update that  
9     statistical information, right?

10          A     Yes.

11          Q     Does ODH have any other interest in  
12     maintaining this policy besides the one that you've  
13     already discussed?

14          A     Not to my knowledge.

15          Q     Are you aware of Ohio's policy, practices or  
16     procedures for verifying the fact of an individual's  
17     death?

18          A     Yes.

19          Q     Can you briefly explain whether birth  
20     certificates play a role in that process?

21          A     Birth certificates do not play a role when an  
22     informant goes to a funeral home or crematory and works  
23     with that individual. It's actually the funeral  
24     director who will start a death certificate.

25                     We have an online verification to submit to

1 Social Security that this individual has been -- we're  
2 informing them that individual is deceased. They do  
3 their logarithm to try to match someone in their  
4 roster. We get back a verification code within  
5 seconds. The funeral director does. He has a couple  
6 of attempts to change the information to secure a  
7 verification.

8           If it doesn't verify, that's fine, we will  
9 have that person complete out the record. We then  
10 transmit a full file back to Social Security with  
11 additional information. And if they determine that  
12 they have found that person in their file, they will go  
13 ahead a mark their record accordingly.

14           Q     Could there ever be an instance where  
15 someone's birth certificate and their death certificate  
16 didn't match?

17           A     Absolutely.

18           Q     Can you give me an example of such an  
19 instance.

20           A     A very good instance is usually a single  
21 parent who is not married has a child. The child ends  
22 up dying. There are paternity issues or other things  
23 that never established the father on the birth record,  
24 but when that mother goes to the funeral home to do the  
25 death certificate with the funeral home she can name a

1 father. She can also change the name of the child at  
2 that time.

3 So there are many instances where especially  
4 a younger adult will not have a matching birth and  
5 death record even though there are other critical  
6 fields that we can use to match that child to know that  
7 that's the same person.

8 Q Can you at that time change the birth record  
9 or does it remain incongruent with the death record?

10 A Changes can still be made to a death record  
11 even though it's been matched to -- or a birth record  
12 even though it's been matched to a death. It's the  
13 same procedure.

14 If there are two parents listed, a person  
15 under 18 both persons would have to go with their proof  
16 to Probate Court. And we can still do the correction,  
17 absolutely.

18 Q Okay. So the same statutes, the same ODH  
19 procedures?

20 A Yes.

21 Q Do you agree that a birth certificate  
22 communicates information about the subject of the birth  
23 certificate?

24 MR. BLAKE: Objection.

25 A It communicates a vital event for public

1 health.

2 Q Does it communicate anything else?

3 A It could.

4 Q Like what?

5 A It depends on how you want to use it. And I  
6 don't know how everyone tries to use their birth record  
7 but the reason that we create it is for a public event.

8 MS. BONHAM: I think that's all we have.

9 Your first deposition. You deserve a beer.

10 THE WITNESS: Oh, my Lord.

11 MS. BELENKER: It's not over yet.

12 MR. BLAKE: I'll try to do this quickly. You  
13 would be surprised.

14 - - -

15 EXAMINATION

16 BY MR. BLAKE:

17 Q Real quickly.

18 Do you recall Plaintiffs' counsel's questions  
19 to you regarding ODH's knowledge of customers with  
20 intersex conditions?

21 A Pretty much.

22 Q Okay. Just because someone's sending in a  
23 request would ODH know or anyone else in the Department  
24 know whether the requestor was someone with intersex  
25 conditions?

1 A No. Not for correction, no.

2 Q Other than that person's birth certificate  
3 containing a U designation in the sex identifier, would  
4 ODH have any other way to determine the customer had  
5 intersex conditions?

6 A No.

7 Q And just because someone has M or F as a sex  
8 identifier on their birth certificate, does that mean  
9 that they do not have intersex conditions?

10 A No, it does not mean that.

11 Q It is possible that someone with an M or an F  
12 on their birth certificate would be intersex?

13 A It's possible.

14 Q And is it also possible that someone with a U  
15 on their birth certificate might not have intersex  
16 conditions?

17 A That's possible.

18 Q It's possible that the U was just entered  
19 incorrectly or as a mistake?

20 A It's possible.

21 Q Do you recall Plaintiffs' counsel's questions  
22 regarding what she referred to as snapshot questions  
23 talking about what the birth record reflects?

24 A Yes.

25 Q And if I recall she asked you about which

1 fields could be changed on a birth record. Do you  
2 remember that line of questioning?

3 A Yes.

4 Q Do you recall that you identified that the  
5 name could be changed and the parentage could be  
6 changed on the birth record?

7 A Yes.

8 Q And that was as you just indicated  
9 Plaintiff's Exhibit 3 when you were looking at that  
10 document. Do you recall looking at that exhibit?

11 A Yes.

12 Q So when you talked about name changes and  
13 parentage changes, are those corrections?

14 A There are specific statutes in the law that  
15 allows us to correct the birth record regarding the  
16 legal name of the child, the legal names of the  
17 parents, as well as other incorrectly data-entered  
18 information at the time of birth.

19 Q Do those specific statutes for name change or  
20 for the name allow you to change the name without a  
21 correction?

22 A We cannot change a name without a legal name  
23 change.

24 Q Right. But I guess my question is, does the  
25 name have to be an error before you change it on the

1 birth record?

2 A No.

3 Q And does the statute dealing with the name  
4 change explicitly deal with correction only type  
5 incidents?

6 A Yes.

7 Q Let me back up because maybe that question  
8 was bad.

9 When a customer seeks to change their name on  
10 the birth record there's a specific statute involved?

11 A Yes, there's a legal name change statute for  
12 changing your full name.

13 Q And you can change your name for reasons  
14 other than just correcting it if I understand the  
15 statute right. Is that your understanding?

16 A Yes, you can change your name to anything.

17 Q Okay. And is it also -- is that same thing  
18 true for parentage? It doesn't have to be a  
19 correction. Can you also change your parentage for  
20 other reasons besides a correction?

21 A You can only change your parents if you're  
22 going through a paternity process or an adoption.

23 Q Okay. Is that different than a correction?

24 A We consider that to be a correction.

25 Q Okay. How is that different than the

1 correction statutes under ORC 3707.15.22?

2 A There are specific correction statutes which  
3 allows us the ability to seal the original record and  
4 reproduce it in such a form that it looks like it  
5 should have been that way from day one.

6 So we have the ability to put a signature on  
7 it, we have the ability to give it a new state file  
8 number, and we have the ability to seal the original  
9 document as it was filed.

10 Those correction statutes are very specific  
11 to parentage, adoptions, and court-ordered corrections.

12 Q So those are the ones we talked about that  
13 relate to name changes and parenting changes?

14 A Right.

15 Q Okay. Is there a similar statute that deals  
16 with changes to the sex identifier on a birth record?

17 A There are no specific laws regarding changing  
18 a sex identifier.

19 MS. BONHAM: Objection to this line of  
20 questioning as it calls for legal conclusions.

21 BY MR. BLAKE:

22 Q Is it ODH's understanding that Ohio law does  
23 not provide for a sex identifier change in the same way  
24 that Ohio law provides for name changes of the  
25 parentage?

1 MS. BONHAM: The same objection.

2 A Yes.

3 Q In applying those statutes, the name change  
4 statutes, the parentage statutes, the correction only  
5 type statutes that we've discussed at length today,  
6 does ODH treat transgendered individuals any  
7 differently than any other customer?

8 A We wouldn't know a customer's sexual  
9 orientation when helping them through our system.

10 Q Or gender or any other category?

11 A No.

12 Q You don't know. Okay.

13 Okay. Does ODH collect information about a  
14 person's gender?

15 A We do not collect any field labeled gender.

16 Q Is that information available to your  
17 knowledge, the Department's knowledge at the time of  
18 birth?

19 MS. BONHAM: Objection. And I want to put on  
20 the record that we appear to have a continuing dispute  
21 over the difference between sex and gender. It will  
22 probably be better addressed in expert testimony.

23 MR. BLAKE: Noted.

24 Q Please answer the question.

25 A What was the question one more time?

1           Q     The question was whether or ODH -- whether  
2 information regarding an individual's gender is  
3 available at the time of birth?

4           MS. BONHAM:  Objection.

5           MR. BLAKE:  Noted.  And I'll grant you a  
6 standing objection.

7           A     It is medically not available at the time of  
8 birth.

9           Q     Do you know what an open records state is  
10 regarding birth records?

11          A     I do, yes.

12          Q     What is an open records state?

13          A     An open records state allows the ability for  
14 anyone to request a certified copy of a document when  
15 they are not listed on the record.

16          Q     Is Ohio an open records state?

17          A     Yes, we are.

18          Q     Does the fact that Ohio is an open records  
19 state play any role in concerns over fraud or  
20 fraudulent birth records being used for illegal  
21 purposes?

22          A     There's a higher potential that certified  
23 copies of birth records could be used because we do not  
24 request identifying information from the applicant, nor  
25 do we request how the certificate will be used.  So

1 we're not aware of exactly how these are being used in  
2 however capacity that someone obtains a certified copy.

3 Q What is your understanding regarding the, I  
4 guess, prevalence of this open records policy among  
5 states in the United States?

6 A From what I have read and the information  
7 provided through a couple of organizations regarding  
8 our records we have triple the amount of requests for  
9 birth certificates than the average size state of this  
10 size. We also have more copies in different variations  
11 than any other state. We also have more verifications  
12 from the certificate because they're so easily  
13 obtainable and can be altered.

14 Q Is ODH ever contacted by any law enforcement  
15 agencies regarding the accuracy or the veracity of  
16 birth certificates?

17 A On occasion there are some entities that may  
18 contact us to verify that the state file number and the  
19 name information seem to be correct with our database.

20 Q So Plaintiffs' counsel was asking you about  
21 interest that ODH has in maintaining the accuracy or  
22 maintaining these records. Would you also consider law  
23 enforcement as one of those potential interest?

24 A Yes.

25 MR. BLAKE: No further questions.

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## EXAMINATION

BY MS. BONHAM:

Q Your counsel was just asking you about the information that you learn about people, that ODH learns about people when they make requests to change their birth record. We've looked at several records and you produced many more that are compiled requests from people to change something on their birth record, relevant here the gender marker.

When we were looking at the exhibit examples of those did you see that those contained, for example, letters informing ODH of who these people were and why they needed this change to be made?

A I reviewed the letters, however, honestly, when we review the court paperwork we really just review the court paperwork.

Too many times people give us extraneous information: Social Security cards, driver's license. We don't review them. We don't want them and we don't review them.

Q And in the instance of Stacie Ray that you testified about, for example, you remember a conversation with her where she told you why she needed this, who she was, and you remember seeing that she was

1 distraught over it; is that right?

2 A I do remember that, yes.

3 Q So, in fact, ODH has and has produced records  
4 indicating why these people are making these requests,  
5 for example, if they're people with intersex conditions  
6 or if they're people who are transgender; isn't that  
7 right?

8 A I really don't have any personal knowledge of  
9 any of the requests other than the conversation I had  
10 with Ms. Ray.

11 Q But testifying on behalf of the Department as  
12 we've seen examples of the records that you produced  
13 the Department has this information?

14 A Yes, we do.

15 Q We've used a number of terms today including  
16 gender identify, transgender, sexual orientation,  
17 intersex. Was there any term that's been used in this  
18 deposition that you don't understand the meaning of?

19 A I don't believe so.

20 Q Okay. Were you comfortable with the meaning  
21 of these terms the whole time we were using them?

22 MR. BLAKE: Objection.

23 A I think I was, yeah.

24 Q Enough to speak about them with a  
25 colloquial knowledge at least?

1 MR. BLAKE: Objection.

2 A Yes.

3 Q Can you just explain for me what your  
4 understanding of the definition of sexual orientation  
5 is.

6 MR. BLAKE: Objection.

7 A Well, in my viewpoint sexual orientation  
8 would be an individual's preference for their lifestyle  
9 as far as what they prefer a spouse or a partner, how  
10 they would prefer that person to be.

11 Q Thank you.

12 Can you explain your general understanding of  
13 what being transgender means.

14 A I mean, not firsthand, but I can say that  
15 it's someone who is trying to live their life in a  
16 different sexual orientation whether it's by surgery or  
17 by other means that they feel comfortable with.

18 Q Okay. So when you received -- when we've  
19 been using the word "transgender," can we accept that  
20 generally this is someone who was designated to be a  
21 certain sex or gender at birth and is actually and is  
22 living as some other sex or gender?

23 In other words, if I'm designated to be male  
24 at birth but I'm actually a woman, I'm living as a  
25 woman, I may have undergone gender reassignment

1 surgery. We've been discussing transgender people as,  
2 for example, people in a situation such as this?

3 MR. BLAKE: Objection.

4 BY MS. BONHAM:

5 Q Is that right?

6 MR. BLAKE: Objection.

7 A Right.

8 Q Okay. Thank you.

9 And then finally. Your counsel has been  
10 asking you about intersex conditions. Can you briefly  
11 describe what you understand people with intersex  
12 conditions to mean.

13 A We receive very few questions regarding  
14 intersex because that condition upon birth is something  
15 that is identified by a medical professional.

16 If there is a question about how to document  
17 that condition on the birth record as part of the vital  
18 event, we may get that question from the hospital. But  
19 generally speaking I think in 19 years I've received  
20 that question twice. So it isn't -- it's a very  
21 exceptional case.

22 So as far as I know we don't have a lot of  
23 prevalence of intersex children being born in Ohio that  
24 may or may not be documented correctly as their sex  
25 marker on their birth record at the time of birth.

1 Q Can you just give me your general  
2 understanding of what that means.

3 A It should be an individual that shows  
4 biologically two sets of genitalia.

5 Q Your counsel also asked you about the Ohio  
6 Health Department applying the statutes that we've been  
7 discussing. Is that what the Ohio Health Department  
8 does?

9 A Can you specify?

10 Q It applies the statutes of the State of Ohio  
11 regarding vital statistics?

12 A Well, we execute the law as how it's been  
13 defined, yes.

14 Q And you determine how the Department is going  
15 to go about construing and doing that?

16 MR. BLAKE: Objection.

17 A Well, the law hopefully defines what we can  
18 and cannot do once an event has been filed. So we look  
19 to the law to help maintain that process and to make  
20 sure that we do it consistently.

21 Q And as we've discussed, based on a number of  
22 people in the community, transgender customers that you  
23 have as well as advocates that you've talked to asking  
24 the Health Department to change the gender markers on  
25 birth certificates for these folks, you made a review

1 of this law and determined that the Ohio Health  
2 Department was not going to do this anymore; is that  
3 right?

4 MR. BLAKE: Objection.

5 A We determined that the correction that was  
6 requested was not a mistake and thereby did not fall  
7 underneath the correction guidelines and the law.

8 Q In those circumstances?

9 A If it's a mistake we will correct it for  
10 anyone.

11 Q And since making that determination you  
12 haven't done it for anyone since?

13 MR. BLAKE: Objection.

14 A To my knowledge if it's a correction we have  
15 done the correction. And if it's not a correction we  
16 don't do it.

17 MS. BONHAM: Okay. I think that's all we  
18 have.

19 MR. BLAKE: Okay.

20 MS. INGELHART: We just want to make sure  
21 that this transcript is confidential and remind you the  
22 parts that should be marked as attorneys' eyes only.

23 MR. BLAKE: And we'll read.

24 (Signature not waived.)

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(Thereupon, at 3:51 p.m. on Friday,  
August 2, 2019, the deposition was concluded.)

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C E R T I F I C A T E

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THE STATE OF OHIO:  
SS:  
COUNTY OF FRANKLIN:

I, Diane L. Schad, a Professional Reporter and Notary Public in and for the State of Ohio, do hereby certify that before the taking of her said deposition, the said JUDITH NAGY was first duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken in all respects pursuant to the stipulations of counsel heretofore set forth;

That the foregoing is the deposition given at the said time and place by the said JUDITH NAGY;

That I am not an attorney for or relative of either party and have no interest whatsoever in the event of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 14th day of August, 2019.



*Diane L. Schad*  
/S/ Diane L. Schad,  
Notary Public, State of Ohio

My Commission Expires: June 1, 2020.

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