

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

At the heart of liberty lies a person’s ability “to define and express their identity.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593 (2015). A birth certificate is the quintessential, primary identity document routinely used to verify a person’s identity. It influences a person’s ability to go through most of aspects of life in our society, as it affects access to employment, education, housing, health care, banking, travel, and government services.

For Tennessee-born transgender people, the sex designation (*i.e.*, gender marker) on their original birth certificate is inaccurate because they were assigned the incorrect sex at birth. Correcting this designation is critically important for transgender people. While Tennessee provides cisgender people born in the state with accurate birth certificates reflecting their sex, consistent with their gender identity, it categorically bars transgender people born in the state from obtaining birth certificates that reflect their sex, consistent with their gender identity (the “Birth Certificate Policy” or “Policy”). This is undisputed. Tennessee permits cisgender persons to correct the sex listed on their birth certificates to reflect who they are, but specifically prohibits transgender persons from doing so. Thus, while Tennessee recognizes the need to correct inaccurate sex designations on birth certificates, it denies that ability to transgender people.

The Policy violates Plaintiffs’ constitutional rights to due process, equal protection, and freedom of expression. Because Defendants cannot articulate any adequate justification for the Policy, the Court should grant summary judgment to Plaintiffs.

II. FACTUAL BACKGROUND

A. Sex and Gender Identity

Multiple factors determine a person’s sex, including hormones, external and internal morphological features, external and internal reproductive organs, chromosomes, and gender identity. Decl. of Randi Ettner, Ph.D. ¶ 18 (**Exh 1**); Decl. of Shayne Sebold Taylor, M.D. ¶ 19 (**Exh**

2). These factors may not always be in alignment. Ettner Decl. ¶ 16; Taylor Decl. ¶ 20. Gender identity—a person’s internal sense of their own gender—is the primary factor in determining a person’s sex. Ettner Decl. ¶ 20; Taylor Decl. ¶ 30. It is a deeply felt and core component of human identity. Ettner Decl. ¶ 19; Taylor Decl. ¶ 21. The medical consensus is that gender identity is innate and attempts to change a person’s gender identity are unethical and harmful to the person’s health and well-being. Ettner Decl. ¶ 25; Taylor Decl. ¶ 29. Biological factors, including neurodevelopmental characteristics of a person’s brain with respect to sex, play an immutable role in gender identity development. Ettner Decl. ¶ 24; Taylor Decl. ¶¶ 21-22.

The phrase “sex assigned at birth” refers to the sex recorded on a birth certificate at the time of birth. Ettner Decl. ¶ 16; Taylor Decl. ¶ 18. Typically, individuals are assigned a sex based solely on the appearance of external genitalia at the time of birth. Ettner Decl. ¶ 16; Taylor Decl. ¶ 18. A cisgender person is someone whose gender identity aligns with the sex they were assigned at birth. Ettner Decl. ¶ 22; Taylor Decl. ¶ 54. A transgender person is someone whose gender identity diverges from the sex they were assigned at birth. Ettner Decl. ¶ 16; Taylor Decl. ¶ 26.

B. The Parties

Plaintiffs are transgender persons born in Tennessee. Decl. of Kayla Gore ¶¶ 2, 4-5 (**Exh 3**); Decl. of Jaime Combs ¶¶ 3, 5-6 (**Exh 4**); Decl. of L.G. ¶¶ 2, 6-7 (**Exh 5**); Decl. of K.N. ¶¶ 2, 4-5 (**Exh 6**). They are women. Gore Decl. ¶ 4; Combs Decl. ¶ 5; L.G. Decl. ¶ 6; K.N. Decl. ¶ 4. Their gender identity and expression are female, but they were each incorrectly assigned the sex of male at birth. Gore Decl. ¶ 5; Combs Decl. ¶ 6; L.G. Decl. ¶ 7; K.N. Decl. ¶ 5. Each of them has undergone appropriate, necessary steps to better align their body, appearance, and lived experience with their female gender identity. Gore Decl. ¶ 9; Combs Decl. ¶ 10; L.G. Decl. ¶¶ 10-12; K.N. Decl. ¶¶ 7-9.

Like many transgender persons, Plaintiffs have successfully corrected some of their other identity documents in Tennessee and elsewhere (*e.g.*, driver’s licenses and passports) to accurately

reflect who they are, consistent with their gender identity. Gore Decl. ¶ 12; Combs Decl. ¶ 11; L.G. Decl. ¶¶ 14-16; K.N. Decl. ¶ 11. Unsurprisingly, they also wish to correct their Tennessee birth certificates to accurately reflect their gender identity and name. Gore Decl. ¶ 23; Combs Decl. ¶ 22; L.G. Decl. ¶ 25; K.N. Decl. ¶ 22. But the Policy prohibits them from correcting their birth certificates in a manner that does not disclose their transgender status. Gore Decl. ¶¶ 13, 15; Combs Decl. ¶ 12; L.G. Decl. ¶ 15; K.N. Decl. ¶¶ 12, 14.

William Byron Lee, the Governor of the State of Tennessee, and Lisa Piercey, the Commissioner of the Tennessee Department of Health, are responsible for enforcing the Vital Records Act, Tenn. Code Ann. § 68-3-101 *et seq.*, and are sued in their official capacities.

C. Tennessee’s Birth Certificate Policy

Tennessee’s Vital Records Act (the “Act”) provides that all birth certificates must include, *inter alia*, a newborn’s date of birth, place of birth, sex, given name and surnames, and parents’ names. *See, e.g.*, Tenn. Code Ann. § 68-3-311(b)(2). It is the practice of the State of Tennessee, for purposes of determining the sex designation on birth certificates, to rely solely on the observations by third parties about the external genitalia of newborns. *See* Defs.’ Mem. Mot. to Dismiss (ECF No. 29) at 11-12 & n.6; *cf.* Decl. of Omar Gonzalez-Pagan, Ex. B (RFA No. 21).¹

Recognizing that information on a birth certificate may sometimes be inaccurate or need updating, the Act, and the regulations promulgated and enforced by Defendants, permit the correction of errors and updating of birth certificate records. *See* Tenn. Code Ann. § 68-3-203; Tenn. Comp. R. & Regs. 1200-07-01-.10. For example, according to Regulation 1200-07-01-.10 and the public website for the Office of Vital Records, the sex listed on a person’s birth certificate may be

¹ Except where otherwise specified, exhibit numbers herein (*e.g.*, Ex. __) refer to exhibits to the Declaration of Omar Gonzalez-Pagan, filed separately.

corrected if the change is substantiated by a signed and notarized affidavit showing the full name, date of birth, the sex as it is shown on the certificate and the sex as it should be correctly listed, as well as documentary evidence showing the correct sex of the individual. Ex. C at 3.

The Act, though, provides, “[t]he sex of an individual shall not be changed on the original certificate of birth as a result of sex change surgery.” Tenn. Code Ann. § 68-3-203(d). Based on this, Defendants enforce a policy, custom, or practice that categorically prohibits Tennessee-born transgender persons from correcting the sex listed on their birth certificates to match their sex, consistent with their gender identity, regardless of what steps they have taken to live in a manner consistent with their gender identity. *See, e.g.*, Tenn. Op. Att’y Gen. No. 14-70, 2014 WL 3700672 (July 16, 2014) (designation of sex on police booking sheets, warrants and other court records must match birth certificate, regardless of gender-confirming surgery); Tenn. Op. Att’y Gen. No. 88-43, 1988 WL 410159 (Feb. 29, 1988) (person’s sex determined at birth for purposes of obtaining Tennessee marriage license). This is the Birth Certificate Policy challenged here.

Further, under Regulation 1200-07-01-.10(11)(a)(2), Defendants typically require drawing a single line through an item to be amended on a birth certificate. Enforcing this requirement with respect to transgender persons, who commonly change their names to better match their gender identity (and, if successful here, to correct the sex designation), discloses their transgender status on the face of the birth certificate and exposes them to harm. Any corrections to the name or sex designation of a transgender person’s birth certificate should instead follow the procedure outlined by Tenn. Code Ann. § 68-3-203(f): “[N]o record of the amendment shall appear upon the face of the certificate; provided, that a record of all evidence submitted relative to the amendment, along with the registrar’s analysis of the evidence, shall be maintained by the office of vital records.”

D. How the Birth Certificate Policy Harms Transgender Persons, Including Plaintiffs

Tennessee’s Policy erects a barrier to full engagement in society by transgender persons and subjects them to invasions of privacy, prejudice, discrimination, humiliation, harassment, stigma, and even violence. Gore Decl. ¶¶ 17, 19-20; Combs Decl. ¶¶ 15-19; L.G. Decl. ¶¶ 16, 19-20; K.N. Decl. ¶¶ 19-20; Ettner Decl. ¶¶ 40-47; Taylor Decl. ¶¶ 48-64. These concerns are particularly acute in Tennessee. Ex. D; *cf.* Taylor Decl. ¶ 54. Tennessee’s Policy forces the disclosure of highly personal and sensitive information, such as a person’s transgender status and medical condition, to anyone demanding the document, including individuals who one might not trust or wish to know such information. *Cf.* Ettner Decl. ¶ 15, 40, 47; Taylor Decl. ¶¶ 50-52.

For transgender persons who experience gender dysphoria,² being denied the ability to correct the gender marker on their birth certificates interferes with their medical treatment and increases their dysphoria and distress. Ettner Decl. ¶ 42-43; Taylor Decl. ¶¶ 52, 58. Moreover, transgender persons, whether or not they experience gender dysphoria, are harmed when prevented from aligning their lived experience with their sex, as determined by the gender identity. Taylor Decl. ¶ 31. The bar to having identification documents—in this case, birth certificates—that accurately reflect who they are stigmatizes transgender people and places them at personal risk and contributes to negative health care outcomes.

III. ARGUMENT

A. Tennessee’s Birth Certificate Policy Violates the Right to Privacy and Constitutionally-Protected Liberty Interests of Transgender Persons.

No state may “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. Besides “requiring fair procedures,” the Due Process Clause “includes

² Gender dysphoria is the clinical distress caused by the discordance between a person’s gender identity and the sex to which they were assigned at birth. Ettner Decl. ¶ 26; Taylor Decl. ¶¶ 34-35.

‘heightened protection against government interference with certain fundamental rights and liberty interests,’ including the right to privacy.” *Ray v. Himes*, No. 2:18-cv-272, slip op. at 13 (S.D. Ohio Sept. 12, 2019) (Ex. A) (quoting *Does v. Muñoz*, 507 F.3d 961, 964 (6th Cir. 2007)). There are two types of interests “protected by the right to privacy.” *Lambert v. Hartman*, 517 F.3d 433, 440 (6th Cir. 2008). The first “is the interest in ‘independence in making certain kinds of important decisions.’” *Id.* (quoting *Whalen v. Roe*, 429 U.S. 589, 599–600 (1977)). The second “is the ‘interest in avoiding disclosure of personal matters.’” *Id.* (quoting *Whalen*, 429 U.S. at 599).

Any state policy that implicates a fundamental right or constitutionally protected liberty interests is reviewed with strict scrutiny and can be upheld only if it is narrowly tailored to a compelling governmental interest. *See Seal v. Morgan*, 229 F.3d 567, 574 (6th Cir. 2000). Here, the Policy implicates Plaintiffs’ interests protected by the fundamental right to privacy, as well as their constitutionally protected liberty interests in individual dignity and autonomy.

1. Tennessee’s Birth Certificate Policy infringes on Plaintiffs’ fundamental rights and liberty interests to decisional privacy, individual dignity, and autonomy.

Among the fundamental rights and liberty interests protected by the Due Process Clause are “‘certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs.’” *Hartwell v. Houghton Lake Cmty. Sch.*, 755 F. App’x 474, 477 (6th Cir. 2018) (quoting *Obergefell*, 135 S. Ct. at 2597). Transgender persons possess this liberty and right in equal measure with all others. “Our sexuality and choices about sex ... are interests of an intimate nature which define significant portions of our personhood.” *Bloch v. Ribar*, 156 F.3d 673, 685 (6th Cir. 1998). And “[m]uch like matters relating to marriage, procreation, contraception, family relationships, and child rearing, there are few areas which more closely intimate facts of a personal nature than one’s transgender status.” *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018) (quotation omitted).

Few decisions are as deeply personal and integral to any individual's own concept of personhood as their decision to live consistent with their own gender identity and choose whether and to whom to disclose their transgender status. The Constitution promises all persons the liberty "to define and express their identity." *Obergefell*, 135 S. Ct. at 2593; *see also Lawrence v. Texas*, 539 U.S. 558, 574 (2003) ("At the heart of liberty is the right to define one's own concept of existence") (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992)). It protects the right of every individual to possess and control their own person and to define and express their own personal identity. *Obergefell*, 135 S. Ct. at 2597.

The ability to live in accord with, to express, and to have legal recognition of one's identity and sex, as defined by one's gender identity, is therefore entitled to protection under the Due Process Clause. A person's core internal sense of their gender is profoundly central to their personal identity in ways the Constitution protects: "[T]he liberty interest recognized by the court in *Lawrence*—the right 'to define one's own concept of existence'—is an interest that speaks directly ... to the efforts of transgender people to define their gender identity and expression." Chai R. Feldblum, *The Right to Define One's Own Concept of Existence: What Lawrence Can Mean for Intersex and Transgender People*, 7 *Geo. J. Gender & L.* 115, 116 (2006) (quoting *Lawrence*, 539 U.S. at 574). This is as true for a transgender person as it is for a cisgender person. And to be sure, the ability to define one's identity is "fundamental to our concept of constitutionally ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 727 (1997); *see Roberts v. U.S. Jaycees*, 468 U.S. 609, 619 (1984) ("ability independently to define one's identity ... is central to any concept of liberty").

A person's liberty interest in their core personal identity, and living in accordance with that identity, is severely infringed if the government denies recognition of and acts to thwart it. Just as requiring a cisgender woman to mis-identify herself as a man on government-issued documents would be an inconceivable intrusion on individual liberty, so too does the Policy impermissibly

intrude on the liberty of Tennessee-born transgender persons to identify themselves in a manner consistent with their gender identity. The ability to live in accord with and express one’s sex, as determined by one’s gender identity, is “so fundamentally important ... that the government may not, absent satisfying a heightened level of scrutiny, infringe or burden an individual’s autonomy or freedom to make [such a] decision[.]” Scott Skinner-Thompson, *Outing Privacy*, 110 Nw. U. L. Rev. 159, 171-72 (2015); *see also Arroyo Gonzalez*, 305 F. Supp. 3d at 333-34.

The conclusion that a birth certificate must accurately reflect a transgender person’s sex is further bolstered by the fact that, like sexual orientation, gender identity is recognized by the courts—as well as medical and scientific experts—as immutable. *See Ettner Decl.* ¶¶ 24-25; *Taylor Decl.* ¶¶ 21, 28. Because Plaintiffs—like other transgender persons—have no choice in their gender identity, the Policy improperly interferes with transgender persons’ personal dignity and autonomy. Here, Plaintiffs “only real path” to the full and correct recognition of their true selves, consistent with their gender identity, along with access to government services and participation in public life, is the ability to correct their birth certificates to properly identify who they are. *See Obergefell*, 135 S. Ct. at 2594. Defendants, who alone can confer on Tennessee-born Plaintiffs accurate birth certificates, deprive them of far more than a piece of paper. They deprive Plaintiffs of the dignity and autonomy to identify as who they are and to live with the security and protection of accurate government identity documentation on which others can rely.

Because the forcible disclosure of a person’s transgender status interferes with deeply personal decisions, Tennessee’s Policy implicates and infringes upon transgender persons’ fundamental rights to decisional privacy, liberty, dignity, and individual autonomy.

2. The Birth Certificate Policy infringes upon the fundamental right to informational privacy of transgender persons.

The right to informational privacy extends “to the interests that implicate a fundamental

liberty interest,” *Bloch*, 156 F.3d at 684, or where such “interest[s] at stake ... implicate either a fundamental right or one implicit in the concept of ordered liberty,” *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1061 (1998). An informational-privacy interest of constitutional dimension exists “(1) where the release of personal information could lead to bodily harm (*Kallstrom*), and (2) where the information released was of a sexual, personal, and humiliating nature (*Bloch*).” *Lambert*, 517 F.3d at 440; *see also Ray*, slip op. at 14; *Love v. Johnson*, 146 F. Supp. 3d 848, 853 (E.D. Mich. 2015).

The Policy forces the disclosure of protected information—namely, a person’s transgender status. Such disclosure arises from both the prohibition against gender marker corrections and the required display of corrections, as provided by Regulation 1200-07-01-.10. Both indicate the birth certificate-holder is transgender. In doing so, the Policy violates Plaintiffs’ constitutionally protected right to informational privacy. As articulated above, the disclosure relates to “interests that implicate a fundamental liberty interest,” *Bloch*, 156 F.3d at 684, “or one implicit in the concept of ordered liberty,” *Kallstrom*, 136 F.3d at 1061. And, as shown below, the disclosure relates to the informational-privacy interests recognized in *Bloch* and *Kallstrom*. *See Arroyo Gonzalez*, 305 F. Supp. 3d at 333; *Love*, 146 F. Supp. 3d at 856; *see also Ray*, slip op. at 23-24 (“The Court finds that under both *Kallstrom* and *Bloch*, Plaintiffs have adequately alleged that Defendants’ Policy of refusing to change birth certificates to reflect gender identity implicates a release of personal information that is of a ‘sexual, personal, and humiliating nature’ and ‘could lead to bodily harm,’ resulting in a violation of Plaintiffs’ informational right to privacy.” (citations omitted)).

- a. Plaintiffs’ transgender status is of an intimate and sensitive nature, and defines significant portions of their personhood.

Informational privacy includes “interests of an intimate nature which define significant portions of our personhood.” *Bloch*, 156 F.3d at 685; *cf. Casey*, 505 U.S. at 851. Every federal court

to consider the question has agreed that information about a person's transgender status and gender identity is intimate and involves core aspects of personhood. *See Ray*, slip op. at 23; *Arroyo Gonzalez*, 305 F. Supp. 3d. at 334; *Love*, 146 F. Supp. 3d at 855; *K.L. v. State Dept. of Admin. Div. of Motor Vehicles*, 3 AN-11-05431-CI, 2012 WL 2685183, at *6 (Alaska Super. Mar. 12, 2012); *Doe v. Blue Cross & Blue Shield of Rhode Island*, 794 F. Supp. 72, 74 (D.R.I. 1992); *Darnell v. Lloyd*, 395 F. Supp. 1210, 1214 (D. Conn. 1975). Indeed, per the Sixth Circuit, a person's "sexuality and choices about sex ... are interests of an intimate nature which define significant portions of our personhood ... that we regard as highly personal and private." *Bloch*, 156 F.3d at 685; *cf. Sterling v. Borough of Minersville*, 232 F.3d 190, 196 n.4 (3d Cir. 2000) ("disclosure of one's sexual orientation" is "protected by the right to privacy," as "such information is intrinsically private"). In sum, a person's transgender status is particularly private, intimate, personal information. *See, e.g., Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999); *Ray*, slip op. at 23; *Foster v. Andersen*, No. 18-2552-DDC-KGG, 2019 WL 329548, at *2 (D. Kan. Jan. 25, 2019); *Arroyo Gonzalez*, 305 F. Supp. 3d at 333; *see also Ettner Decl.* ¶¶ 14-15; *Taylor Decl.* ¶¶ 58-60.

"Disclosing that one is transgender involves a deep personal choice which the government cannot compel, unless disclosure furthers a valid public interest." *Arroyo Gonzalez*, 305 F. Supp. 3d at 333. The *forced* disclosure of a person's transgender status through the government's refusal to issue accurate identity documents thus violates the constitutionally protected right to informational privacy. *See id.*; *Love*, 146 F. Supp. 3d at 856; *K.L.*, 2012 WL 2685183, at *8. By prohibiting correction of the inaccurate sex designation on the birth certificates of transgender persons born in Tennessee, the Policy infringes upon Plaintiffs' fundamental right to privacy with regards to intimately personal and sensitive information.

b. Disclosure of Plaintiffs' transgender status places their personal safety and bodily integrity in jeopardy.

In addition, forced disclosure of a person's transgender status places their personal safety and bodily integrity in jeopardy. *See Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (2017); *Phillips v. Cane*, No. C13-596 RSM, 2013 WL 4049047, at *6 (W.D. Wash. Aug. 9, 2013); *In re E.P.L.*, 891 N.Y.S.2d 619, 621 (Sup. Ct. 2009). Being transgender "is likely to provoke ... hostility and intolerance from others." *Powell*, 175 F.3d at 111-12. "The forced disclosure of the transgender status of plaintiffs and other transgender persons by way of inaccurate birth certificates exposes them to prejudice, discrimination, distress, harassment, and violence," as well as "to a substantial risk of stigma, ... intimidation, ... and danger." *Arroyo Gonzalez*, 305 F. Supp. 3d at 332, 333; *see also Ray*, slip op. at 15-16; *Foster*, 2019 WL 329548, at *2; *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1137 (D. Idaho 2018) ("Transgender people who present mismatched identification are verbally harassed, physically assaulted, denied service or benefits, or asked to leave the premises."); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139-40 (2015). These fears are borne out by transgender people's experiences, including those of Plaintiffs. Gore Decl. ¶ 20; Combs Decl. ¶¶ 15, 17; L.G. Decl. ¶¶ 13, 16, 20; K.N. Decl. ¶ 20; Ettner Decl. ¶¶ 40, 43; Taylor Decl. ¶¶ 50-54. According to a 2015 study, nearly a third of transgender people who show an identification document with a name or gender that does not match their gender presentation are verbally harassed, denied benefits or service, asked to leave, or assaulted. Ex. F at 7; *see also* Ettner Decl. ¶¶ 44-45; Taylor Decl. ¶¶ 50-51.

Like *Love* and *Kallstrom*, this case involves the risk of serious bodily harm: "Similar to *Kallstrom*, the Court finds no reason to doubt that where disclosure of this highly intimate information may fall into the hands of persons harboring such negative feelings, the Policy creates a very real threat to Plaintiffs' personal security and bodily integrity." *Love*, 146 F. Supp. 3d at 856.

“[T]he *Kallstrom* court unambiguously identified the right to personal security and bodily integrity ‘from a perceived likely threat.’” *Id.* at 854 (quoting *Kallstrom*, 136 F.3d at 1064). “*Kallstrom* does not require courts to wait until plaintiffs are actually assaulted, or worse, to recognize a very real threat to transgender individuals[’] personal security and bodily integrity upon disclosure of their status.” *Ray*, slip op. at 19 (cleaned up). Here, Plaintiffs have offered a plethora of evidence demonstrating that the Policy poses a serious threat to their personal security and bodily integrity. *Cf. Ray*, slip op. at 19-20; *Love*, 146 F. Supp. 3d at 855.

In addition to the well-documented history of discrimination, harassment, and violence transgender people experience when they must present inaccurate identification documents, Plaintiffs point to their own first-hand experiences and knowledge. The Policy has instigated hostility, discrimination, and even threats of violence against Plaintiffs. Gore Decl. ¶¶ 16, 20; Combs Decl. ¶¶ 15, 17; L.G. Decl. ¶¶ 13, 16, 20, 22; K.N. Decl. ¶¶ 17, 20. As a result, Plaintiffs fear future violence if they cannot control whether and when to disclose their transgender identity. Gore Decl. ¶¶ 17, 19, 22; Combs Decl. ¶¶ 19, 21; L.G. Decl. ¶¶ 19, 21, 24; K.N. Decl. ¶¶ 19, 21.

B. Tennessee’s Birth Certificate Policy Deprives Tennessee-born Transgender Persons of Equal Protection, in Violation of the Fourteenth Amendment.

The Equal Protection Clause “protects against invidious discrimination among similarly situated individuals or implicating fundamental rights.” *Scarborough v. Morgan Cty. Bd. of Educ.*, 470 F.3d 250, 260 (6th Cir. 2006). “Equal protection requirements restrict state legislative action that is inconsistent with bedrock constitutional guarantees, such as equality in treatment.” *F.V.*, 286 F. Supp. 3d at 1140.

“The threshold element of an equal protection claim is disparate treatment; once disparate treatment is shown, the equal protection analysis to be applied is determined by the classification used by government decision-makers.” *Scarborough*, 470 F.3d at 260. Here, because of the Policy,

transgender persons born in Tennessee, including Plaintiffs, “are being distinguished by governmental action from those whose gender identities are congruent with their assigned sex.” *Evancho v. Pine-Richland Sch. Dist.*, 37 F. Supp. 3d 267, 285 (W.D. Pa. 2017).³ The Policy prohibits *only* transgender persons, including Plaintiffs, from having birth certificates that accurately reflect their sex, as determined by their gender identity. It treats transgender persons born in Tennessee differently from similarly situated cisgender persons based on impermissible considerations, specifically sex and transgender status, and it impermissibly infringes upon transgender persons’ exercise of their fundamental rights to privacy, liberty, autonomy, and free speech. Plaintiffs thus do not seek special treatment in desiring to correct the sex designation on their birth certificates. Rather, they seek the same remedy that cisgender people enjoy: the ability to correct the sex designation on their birth certificates in manner consistent with their gender identity. *See* Ex. C.

The Birth Certificate Policy therefore creates a permanent underclass of people who are singled out and denied an accurate government-issued birth certificate based simply on their constitutionally protected personal characteristics. This second-class status cannot be squared with the basic dictates of the equal protection guarantee, which “withdraws from [the] Government the power to degrade or demean” any person in the way the Policy does. *See United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013).

1. The Birth Certificate Policy is subject to heightened scrutiny because it impermissibly discriminates against transgender people based on sex.

It is incontrovertible that “all gender-based classifications ... warrant heightened scrutiny.” *United States v. Virginia*, 518 U.S. 515, 555 (1996) (quotation omitted). Here, the Policy requires

³ Requiring a strike-out line for the corrections it allows, as delineated in Regulation 1200-07-01-.10, similarly violates the equal protection guarantee as applied to transgender individuals, because it results in disclosure of a person’s transgender status on the face of the birth certificate, inflicting harms not imposed on similarly situated cisgender persons.

heightened scrutiny because (1) on its face, it is a classification based on sex, as Defendants admit, Ex. B (RFA Nos. 22 and 23), and (2) any policy that treats transgender people differently “is inherently based upon a sex-classification.” *Whitaker*, 858 F.3d at 1051.

At minimum, the Policy warrants heightened scrutiny because “discrimination on the basis of transgender and transitioning status is necessarily discrimination based on sex.” *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 571 (6th Cir. 2018), *cert. granted in part*, 139 S. Ct. 1599 (2019); *see also Barnes v. City of Cincinnati*, 401 F.3d 729, 739 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 573-75 (6th Cir. 2004); *Karnoski v. Trump*, 926 F.3d 1180, 1201 (9th Cir. 2019); *Whitaker*, 858 F.3d at 1051; *Glenn v. Brumby*, 663 F.3d 1312, 1319-20 (11th Cir. 2011); *Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213 (1st Cir. 2000).⁴

Refusing to treat a transgender woman like other women is necessarily based on “notions of how sexual organs and gender identity ought to align,” which is impermissible sex stereotyping. *Harris Funeral Homes*, 884 F.3d at 576. Discrimination based on sex “is not only discrimination because of maleness and discrimination because of femaleness,” but also “discrimination because of the properties or characteristics by which individuals may be classified as male or female.” *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 526 (D. Conn. 2016).

Sex “is not a cut-and-dried matter of chromosomes,” *Schroer v. Billington*, 424 F. Supp. 2d 203, 211 (D.D.C 2016), or external genitalia. *See Ettner Decl.* ¶ 18; *Taylor Decl.* ¶ 19; *see also Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.*, 318 F. Supp. 3d 1293, 1298 (M.D. Fla. 2018); *Evancho*, 237 F. Supp. 3d at 278 (noting expert testimony “that external sex organs are one (but by no means the only or most accurate) indicia of a person’s sex and gender”). To the

⁴ *Cf.* Tenn. Op. Att’y Gen. No. 19-01, 2019 WL 845668 (Feb. 8, 2019) (concluding “a crime committed against a person because he or she is transgender [is] necessarily committed because of, at least in part, the person’s gender”).

contrary, a robust body of case law has held that gender identity is a critical determinant of sex itself. *See, e.g., Adams*, 318 F. Supp. 3d at 1298 (“neurological sex and related gender identity are the most important and determinative factors”); *F.V.*, 286 F. Supp. 3d at 1144 (“[T]here is medical consensus that gender identity plays a role in an individual’s determination of their own sex.”); *Evancho*, 237 F. Supp. 3d at 288-89; *see also* Ettner Decl. ¶¶ 19-20; Taylor Decl. ¶¶ 28-30. Indeed, the Sixth Circuit held in *Harris Funeral Homes* that existing precedent “preclude[s]” a reading of “‘sex’ to mean only individuals’ chromosomally driven physiology and reproductive function.” 884 F.3d at 575.

Defendants urge the same “preclude[d]” understanding of “sex” in defense of the Policy. “The policy at issue uses some ... factors to define sex and ignores others.” *Grimm v. Gloucester Cty. Sch. Bd.*, 400 F. Supp. 3d 444, 457 (E.D. Va. 2019). “In determining the physical characteristics that define male and female and the characteristics that are disregarded, the Board has crafted a policy that is based on stereotypes about gender.” *Id.*

Put simply, the Policy impermissibly discriminates based on sex, whether it is based on the sex classification on its face or its operation discriminating based on transgender status.

2. Discrimination based on transgender status is subject to heightened scrutiny.

In identifying whether a classification is suspect or quasi-suspect, courts consider whether: (a) the class has historically been “subjected to discrimination,” *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987); (b) the class’s defining characteristic “bears [any] relation to ability to perform or contribute to society,” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985); (c) the class exhibits “obvious, immutable, or distinguishing characteristics that define them as a discrete group,” *Gilliard*, 483 U.S. at 602; and (d) the class is “a minority or politically powerless,” *id.*; *see also Windsor v. United States*, 699 F.3d 169, 181 (2d Cir. 2012).

While all four considerations need not be met to warrant heightened scrutiny, *see Golinski v. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 983 (N.D. Cal. 2012), all indicia are present for transgender people. “[T]ransgender people as a class have historically been subject to discrimination or differentiation; ... they have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society; ... as a class they exhibit immutable or distinguishing characteristics that define them as a discrete group; and ... as a class, they are a minority with relatively little political power.” *Evancho*, 237 F. Supp. 3d at 288; *see also Flack v. Wis. Dep’t of Health Servs.*, 328 F. Supp. 3d 931, 953 (W.D. Wis. 2018); *F.V.*, 286 F. Supp. 3d at 1145; *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dept. of Educ.*, 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016).

The record here demonstrates that transgender people have historically been subjected to discrimination, Ettner Decl. ¶¶ 44-45; Taylor Decl. ¶¶ 50-51, 53-56; Ex. D; Ex. F; Ex. G; Ex. H; exhibit immutable or distinguishing characteristics that define them as a discrete group, Ettner Decl. ¶¶ 19, 21-22, 24-25; Taylor Decl. ¶¶ 26, 28-29; which bear no relation to ability to perform or contribute to society, Ettner Decl. ¶¶ 22, 29; Taylor Decl. ¶¶ 29, 40; Ex. I at 4; and are a minority with relatively little political power, Taylor Decl. ¶ 27; Ex. J, Ex. K.

Furthermore, the Policy is not facially neutral. It *specifically* targets transgender people for discrimination: “The sex of an individual shall not be changed on the original certificate of birth as a result of sex change surgery.” Tenn. Code Ann. § 68-3-203(d). “Sex change surgery,” more appropriately called gender affirming surgery, is a step some transgender people undertake to align their bodies, appearance, and lived experiences with their gender identity. Ettner Decl. ¶ 33; Taylor Decl. ¶ 46. By definition, cisgender people have no need to undergo gender affirming surgery.

The legislative history includes proof of the State’s intentional discrimination. The original bills for the Vital Records Act of 1977 (House Bill 425 and Senate Bill 162)—consistent with the

current practice of over 95% of the states and with the Model State Vital Statistics Act (the “Model Act”) published by the National Center for Health Statistics—*expressly authorized* the amendment of the sex designation on Tennessee-issued birth certificates following gender affirming treatment. Ex. L; Ex. M; Ex. Q. But the bills were amended on the floor to *expressly prohibit* these amendments in response to “controversy” at the time. Ex. N at 6-7; *see also* Ex. O at 5; Ex. M. This included press coverage of Renee Richards’s participation in the professional women’s tennis circuit, including a match held in Tennessee, Ex. R; Ex. S, as well as press coverage of the provision of gender affirming treatment, with doctors even then noting that sex was more than genitalia or chromosomes. Ex. T.

Defendants’ Policy clearly prohibits *all* transgender people from obtaining accurate birth certificates, consistent with their gender identity, regardless of any care they have received or any steps they have taken to live in accordance with their gender identity.

C. Tennessee’s Birth Certificate Policy Violates Tennessee-born Transgender Persons’ First Amendment Rights to Free Speech.

The State of Tennessee may not make any “law abridging the freedom of speech.” U.S. Const. Amend. I. Tennessee’s refusal to correct transgender persons’ birth certificates to accurately reflect their sex, consistent with their gender identity, violates the First Amendment. Not only does the Policy deprive transgender persons of the right and ability to choose *whether* to speak publicly about their gender identity, but it also compels them to make *particular* speech endorsing a state-favored view concerning the nature of sex. The Policy thus strikes at the heart of the First Amendment, denying transgender persons the freedom to “decide for [themselves] the ideas and beliefs deserving of expression, consideration, and adherence,” and instead “requir[ing] the utterance of a particular message favored by the Government.” *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994); *see also* *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

Summary judgment for Plaintiffs is warranted because Tennessee raises no factual dispute as to Plaintiffs' characterization of the face or application of its Policy, and because the Policy is a broad affront to the freedoms protected by the First Amendment.

1. Tennessee's Policy impermissibly compels transgender persons to speak and identify with a sex and identity contrary to who they are.

The First Amendment protects Plaintiffs' freedom to decide *not* to speak, and which ideas, facts, or even earnestly held beliefs they may wish to disclose. *See Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of California*, 475 U.S. 1, 11 (1986) ("There is necessarily ... a concomitant freedom not to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect." (quoting *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 559 (1985))); *see also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 254 (1974). The autonomy to control one's speech—specifically, the discretion to withhold "statements of fact the speaker would rather avoid"—has special value because it empowers the speaker not to publicize "content that in someone's eyes [is] misguided, or even hurtful." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 574 (1995).

The Policy, as applied, robs Tennessee-born transgender people of their "freedom not to speak publicly" and to withhold "fact[s] the speaker would rather avoid." *Pac. Gas & Elec. Co.*, 475 U.S. at 11; *Hurley*, 515 U.S. at 574 (1995). All Tennessee-born persons are required, in a variety of contexts, to produce their birth certificates to access and enjoy a host of government benefits and to participate in public and private life. *See, e.g.,* Tenn. Comp. R. & Regs. 0450-01-.05 (requiring presentation of birth certificate for application as licensed clinical counselor); *see also* Ex. B (RFA No. 11) ("Defendants admit that some Tennessee statutes and regulations may contemplate the use of birth certificates as personal identification documents."). Yet for transgender Tennesseans, producing a birth certificate that conflicts with their gender identity (and, in many cases, one that

conflicts with other identification documents, as well as their gender expression and appearance), results in the public disclosure of their transgender status.

The First Amendment operates to protect transgender Tennesseans' rights to choose whether to disclose their transgender status, not just in the traditional spirit of protecting free expression of ideas, but also in recognition of the harms that may result from some private or especially personal disclosures. *Hurley*, 515 U.S. at 574. The First Amendment has long protected the need for people to keep their memberships in vulnerable groups anonymous because of fear of bodily harm. *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958). And the harm caused by compelled speech “takes on an added dimension” where, as here, the privacy of *intimate* information is at stake—“[f]or also fundamental is the right to be free ... from unwanted governmental intrusions into one’s privacy.” *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

The intrusion causes Plaintiffs harm at each disclosure and chills their participation in public life. Transgender Americans, including Plaintiffs, are and have been subject to all manner of discrimination, threats, and serious physical violence because of their transgender status. Gore Decl. ¶ 20; Combs Decl. ¶¶ 15, 17; L.G. Decl. ¶¶ 13, 16, 20; K.N. Decl. ¶ 20. “Forcing disclosure of transgender identity chills speech and restrains engagement in the democratic process in order for transgender[] [people] to protect themselves from the real possibility of harm and humiliation.” *Arroyo Gonzalez*, 305 F. Supp. 3d at 333. Transgender people’s right to control when and if they disclose their transgender status is essential to both a robust democratic ideal of free expression and to their personal safety and security.

2. Tennessee’s Birth Certificate Policy impermissibly compels Plaintiffs to endorse a government-preferred view about sex.

The First Amendment prohibits the government from “compel[ling] a private party to express a view with which the private party disagrees.” *Walker v. Texas Div., Sons of Confederate*

Veterans, Inc., 135 S. Ct. 2239, 2253 (2015). Therefore, the state may not make private citizens the “couriers” of a message the state favors. *Wooley*, 430 U.S. at 717; *New Doe Child #1 v. Cong. of United States*, 891 F.3d 578, 593 (6th Cir. 2018). Yet Tennessee’s Birth Certificate Policy unconstitutionally forces Plaintiffs to act in a manner that endorses the State’s viewpoint that the sex printed on Plaintiffs’ birth certificates is, or was at any time, accurate.

Birth certificates are often necessary to confirm identity. *See, e.g.*, Tenn. Comp. R. & Regs. § 0450-01-.05; Ex. B (RFA No. 11). When presenting their birth certificates for identification purposes, Plaintiffs have no choice but to endorse the state’s view that the sex designation on their birth certificate is, or was at some point, accurate. Plaintiffs disagree with Tennessee that sex is an externally presenting binary, determined exclusively by a person’s genitalia and observable at birth. Instead, they endorse the modern understanding—one shared by most medical professionals—that sex is multi-factorial and primarily determined by gender identity. Ettner Decl. ¶¶ 18-20; Taylor Decl. ¶¶ 19, 30. The Policy forces Plaintiffs to silence that speech and disagreement and to agree with the accuracy of the sex designation on their uncorrected birth certificates.

When transgender persons present their birth certificates and indicate, as they must, that they are the person named on the certificate, they “appear to endorse the government message” as to the accuracy of the sex designation on the certificate. *Wooley*, 430 U.S. at 717. Because this is Tennessee’s chosen message, and decidedly not one that Plaintiffs wish to promote, the State’s refusal to correct transgender persons’ birth certificates unconstitutionally compels speech.

3. The speech at issue belongs to, and is naturally attributed to, Plaintiffs.

When Plaintiffs, or any persons, present their birth certificates for identification, any recipient of the certificate would reasonably infer the message—that the gender marker and other information printed thereon is accurate—is an expression of the presenter, not of the government. The “key analysis” for concluding when speech would be attributed to the presenter rather than the

government asks whether “the private parties are closely linked with the expression in a way that makes them appear to endorse the government message.” *New Doe Child #1*, 891 F.3d at 593 (quotation omitted). That association resolves the important question of “whether observers would attribute, or actually have attributed [the speech at issue] to Plaintiffs rather than to the Government.” *Id.*

Unlike the speech at issue in *New Doe Child #1*, where Plaintiffs objected to a government motto appearing on widely circulated currency, here, Plaintiffs are certain to be intimately associated with the speech at issue. And unlike the monuments in *Summum* that were displayed by the government, birth certificates are routinely presented by private citizens for identification purposes. Any person handed a birth certificate would reasonably assume that the presenter of the certificate is endorsing its accuracy and authenticity, and that the speech associated with that message belongs to the presenter.

D. The Birth Certificate Policy Fails Any Level of Scrutiny.

Tennessee’s Policy infringes upon Plaintiffs’ constitutionally protected rights to privacy, autonomy, dignity, and free speech. *See* Parts III.A & III.C, *supra*. It is therefore subject to strict scrutiny and presumed to be unconstitutional. *See Seal*, 229 F.3d at 574; *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (noting laws “compelling individuals to speak a particular message” “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”); *see also Dillinger v. Schweiker*, 762 F.2d 506, 508 (6th Cir. 1985).

Tennessee’s Policy also impermissibly discriminates against Plaintiffs based on sex and transgender status. *See* Part III.B, *supra*. Therefore, the Policy is subject to heightened (at minimum, intermediate) scrutiny, and Defendants must justify it by showing it “serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement

of those objectives.” *Virginia*, 518 U.S. at 533 (cleaned up); *see also Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017) (same).

But even if the Policy were subject only to rational basis review, it would still fail. “[E]ven in the ordinary equal protection case calling for the most deferential of standards, [courts] insist on knowing the relation between the classification adopted and the object to be obtained.” *Romer v. Evans*, 517 U.S. 620, 632 (1996). The justifications offered must have a “footing in the realities of the subject addressed by the legislation.” *Heller v. Doe*, 509 U.S. 312, 321 (1993); *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 533-38 (1973). And even when the government offers an ostensibly legitimate purpose, “[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *Cleburne*, 473 U.S. at 446. “Moreover, the classification must substantially serve an ... interest *today*, for in interpreting the equal protection guarantee, we have recognized that new insights and societal understandings can reveal unjustified inequality ... that once passed unnoticed and unchallenged.” *Morales-Santana*, 137 S. Ct. at 1690 (cleaned up).

Several courts have held that policies barring transgender people from obtaining identity documents matching their gender identity lack any adequate governmental justification. *See, e.g., Arroyo Gonzalez*, 305 F. Supp. 3d at 333; *F.V.*, 286 F. Supp. 3d at 1142; *Love*, 146 F. Supp. 3d at 856; *K.L.*, WL 2685183, at *7. And a federal court approved a consent judgment decreeing Kansas’s policy barring transgender people from correcting the gender marker on their birth certificates to violate the Fourteenth Amendment. *See Foster v. Anderson*, No. 18-2552-DDC-KGG, ECF No. 33 (D. Kan. June 21, 2019) (Ex. E).

The Policy cannot be justified by an interest in the integrity or accuracy of birth certificates. If anything, the Policy, as applied to transgender persons, undermines such a goal by purporting to certify plainly inaccurate information with respect to transgender persons’ sex. Just like the “absence

of any procedure for changing the sex designation on an individual's license does not bear a close and substantial relationship to the furtherance of the state's interest in accurate documentation and identification," *K.L.*, 2012 WL 2685183, at *7, the same is true with regard to birth certificates. By "not allowing transgender[] individuals to change their sex designation," their certificates "will inaccurately describe the discernable appearance of the [] holder by not reflecting the holder's lived gender expression of identity." *Id.* Tennessee disregards this salient fact and instead arbitrarily compels transgender persons to present themselves with an inaccurate sex designation. There is no rational connection between forcing a person to be dishonest about their sex and any interest in maintaining the integrity and accuracy of birth certificates.

Similarly, the Policy cannot be justified as necessary to capture some purportedly objective, enduring "fact" of a person's sex. The sex designation on an uncorrected birth certificate does not account for any sex-related characteristics other than a person's external genitalia at the time of birth. *See Whitaker*, 858 F.3d at 1053 ("[I]t is unclear that the sex marker on a birth certificate can even be used as a true proxy for an individual's biological sex," because it "does not take into account [either] an individual's chromosomal makeup," or whether "an individual is born with the external genitalia of two sexes, or genitalia that is ambiguous in nature."); *see also* Ettner Decl. ¶¶ 16-17; Taylor Decl. ¶ 18. Indeed, it does not account for a person's gender identity, which is the primary determinant of a person's sex. Ettner Decl. ¶¶ 17, 20; Taylor Decl. ¶¶ 30, 65.

In addition, Defendants cannot claim the Policy is somehow rational because a birth certificate is a record of the holder's assigned sex at a particular moment in time, *i.e.*, birth. Tennessee permits all sorts of amendments to birth certificates, including name changes, Tenn. Comp. R. & Regs. 1200-07-01-.10, and changes to the parents listed on a birth certificate after an adoption, Tenn. Comp. R. & Regs. 1200-07-01-.04. Thus, Tennessee law makes birth certificates more than just biology or historical facts. *See Pavan v. Smith*, 137 S. Ct. 2075, 2078 (2017). Indeed,

the fact these amendments are allowed in order to correct for information that has changed or has been discovered after the “moment in time” of birth demonstrates there is no rational basis for the Policy with respect to sex. *See Ray*, slip op. at 30; *see also Eisenstadt v. Baird*, 405 U.S. 438, 449 (1972) (no rational basis where law was “riddled with exceptions”).

Moreover, 48 states, D.C., and Puerto Rico provide procedures for transgender persons born within their jurisdiction to correct the sex designation on their birth certificates. *See Ray*, slip op. at 30. There is no reason to believe “these states have any less interest in ensuring an accurate record-keeping system.” *Love*, 146 F. Supp. 3d at 857; *see also Ray*, slip op. at 30.

The Policy cannot be justified by an interest in preventing fraud. Defendants cannot “articulate how the State’s interest in preventing fraud provides for laws that allow amendments to some parts of birth certificates but not others or permits changes to driver’s licenses and state identification cards and not birth certificates.” *Ray*, slip op. at 30-31. Many transgender persons, including Plaintiffs, manage to obtain other identity documents that do accurately reflect their sex, including U.S. passports and, most notably, driver’s licenses issued by Tennessee itself. *See, e.g., Gore Decl.* ¶ 12; *Combs Decl.* ¶¶ 11, 17; *L.G. Decl.* ¶ 16; *K.N. Decl.* ¶ 11; Ex. B (RFA No. 5); *Tenn. Comp. R. & Regs.* 1340-01-13-.12(6). There is no rational basis for treating these types of identification documents differently. *See K.L.*, 2012 WL 2685183, at *7 (“the absence of any procedure for changing the sex designation on an individual’s license can create discrepancies and inaccuracies between Alaska driver’s licenses [and] other forms of government issued identification”); *Love*, 146 F. Supp. 3d at 856-57; *see also Arroyo Gonzalez*, 305 F. Supp. 3d at 333.

Defendants cannot claim an interest in promoting and maintaining nationwide uniformity in the system of vital records, when they admit the Policy is *inconsistent* with the Model Act and Regulations published in 1992. Ex. B (RFA Nos. 7, 9). Indeed, the Model Act provides for corrections to the sex designation on a person’s birth certificate following gender affirming medical

treatment. Ex. Q at 10. And as previously noted, Tennessee’s Policy represents an *extreme outlier* in the nationwide system of vital records.

Defendants cannot claim an interest in collecting and disclosing accurate information for public health and research purposes justifies the Policy. All jurisdictions that permit these corrections share that same interest. Taylor Decl. ¶ 63. Also, to the extent Tennessee needs data regarding the sex assigned at birth to persons born in the state, such data can easily be preserved by maintaining such records under seal and without requiring transgender people born in Tennessee to have birth certificates that are inconsistent with their gender identity. Taylor Decl. ¶ 64. This is something Defendants admittedly can do: “When such an amendment is made, no record of the amendment shall appear upon the face of the certificate; provided, that a record of all evidence submitted relative to the amendment, along with the registrar’s analysis of the evidence, shall be maintained by the office of vital records.” Tenn. Code Ann. § 68-3-203(f).

Put simply, the Birth Certificate Policy is not rationally related to any of the interests identified by Defendants. The Policy therefore cannot substantially further those interests, let alone be narrowly tailored to achieve them.

IV. CONCLUSION

Based on the foregoing, the Court should grant Plaintiffs’ Motion for Summary Judgment.

Dated: March 9, 2020

Respectfully submitted,

s/John T. Winemiller

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system, which provides electronic notice of the filing to all counsel of record, including:

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This 9th day of March, 2020.

s/John T. Winemiller
John T. Winemiller

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

Case No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

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

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

1. I submit this expert declaration based on my personal knowledge.
2. I have been retained by counsel for Plaintiffs as an expert in connection with the above-mentioned litigation. Specifically, I have been asked by Plaintiffs' counsel to provide my expert opinion on how Tennessee's policy prohibiting transgender persons born in Tennessee from obtaining accurate birth certificates reflecting their true sex and gender identity affects transgender individuals.
3. I have actual knowledge of the matters stated herein. If called to testify in this matter, I would testify truthfully and based on my expert opinion.

I. BACKGROUND AND QUALIFICATIONS

4. I am a licensed clinical and forensic psychologist with expertise concerning the diagnosis and treatment of gender dysphoria. I received my doctorate in psychology from

Northwestern University in 1979. I was the chief psychologist at the Chicago Gender Center from 2005 to 2016, when it moved to the Weiss Memorial Hospital. Since that time, I have held the sole psychologist position at the Center for Gender Confirmation Surgery at Weiss Memorial Hospital. The center specializes in the treatment of individuals with gender dysphoria. I have been involved in the treatment of patients with gender dysphoria since 1977, when I was an intern at Cook County Hospital in Chicago.

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

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

7. I am the Secretary and member of the Executive Board of Directors of the World Professional Association for Transgender Health (“WPATH”) (formerly the Harry Benjamin Gender Dysphoria Association) and an author of the *WPATH Standards of Care for the Health of Transsexual, Transgender and Gender-nonconforming People* (7th version), published in 2011. The WPATH promulgated *Standards of Care* (“Standards of Care”) are the internationally recognized guidelines for the treatment of persons with gender dysphoria and serve to inform medical treatment in the United States and throughout the world.

8. I have lectured throughout North America, South America, Europe, and Asia on topics related to gender dysphoria, and on numerous occasions I have presented grand rounds on

gender dysphoria at medical hospitals. I am the honoree of the externally-funded *Randi and Fred Ettner Fellowship in Transgender Health* at the University of Minnesota. I have been an invited guest at the National Institute of Health to participate in developing a strategic research plan to advance the health of sexual and gender minorities, and in November 2017 was invited to address the Director of the Office of Civil Rights of the United States Department of Health and Human Services regarding the medical treatment of gender dysphoria. I received a commendation from the United States Congress House of Representatives on February 5, 2019 recognizing my work for WPATH and Gender Dysphoria in Illinois.

9. I have been retained as an expert regarding gender dysphoria and its treatment in multiple court cases in both state and federal courts, as well as administrative proceedings, and have repeatedly qualified as an expert. I have also been a consultant to policy makers regarding appropriate care for transgender inmates and for the Centers for Medicare and Medicaid in the state of Illinois.

10. A true and accurate copy of my Curriculum Vitae is attached hereto as Exhibit A. It documents my education, training, research, and years of experience in this field and includes a list of publications. A bibliography of the materials reviewed in connection with this declaration is attached hereto as Exhibit B. The sources cited therein are authoritative, scientific peer-reviewed publications. I generally rely on these materials when I provide expert testimony, and they include the documents specifically cited as supportive examples in particular sections of this declaration. The materials I have relied on in preparing this declaration are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

11. I have not met or spoken with the Plaintiffs for purposes of this declaration. My opinions are based solely on the information I have been provided by Plaintiffs' attorneys, the

materials referenced in the Bibliography as Exhibit B and cited herein, and my extensive experience studying gender dysphoria and in treating transgender patients.

Previous Testimony

12. In the last four years, I have testified as an expert at trial or by deposition in the following cases: *Eller v. Prince George's Cty. Public Sch.*, No. 8:18-cv-03649-TDC (D. Md. 2020); *Ray v. Acton*, No. 2:18-cv-00272 (S.D. Ohio 2019); *Monroe v. Jeffreys*, No. 3:18-cv-00156-NJR-MAB (S.D. Ill. 2019); *Soneeya v. Turco*, No. 07-12325-DPW (D. Mass. 2019); *Edmo v. Idaho Dep't of Correction*, No. 1:17-CV-00151-BLW, 2018 WL 2745898 (D. Idaho 2018); *Carillo v U.S. Dep't of Justice Exec. Office of Immig. Rev.* (2017); *Broussard v. First Tower Loan, LLC*, 135 F. Supp. 3d 540 (E.D. La. 2016); *Faiella v. American Medical Response of Conn., Inc.*, No. HHD-CV15-6061263-S (Conn. Super. Ct.).

Compensation

13. I am being compensated for my work on this matter at a rate of \$375.00 per hour for preparation of declarations and expert reports. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I may provide.

II. SUMMARY OF OPINIONS

14. Medical management of gender dysphoria includes the alignment of appearance, presentation, expression, and often, the body, to reflect a person's true sex as determined by their gender identity. Correcting the gender marker on identification documents confers social and legal recognition of identity and is crucial to this process. The necessity and importance of privacy is universal, and exists even in animals. A wide range of species avoid predators by managing information about internal states and future intentions, for purposes of survival. Privacy enables normal psychological functioning, the ability to have experiences that promote healthy personal

growth and interpersonal relationships, and allows for measured self-disclosure. It is the basis for the development of individuality and autonomy.

15. For a transgender person, a birth certificate bearing an incorrect gender marker invades privacy, releases confidential medical information, and places the individual at risk for grave psychological and physical harm.

III. EXPERT OPINIONS

a. Sex and Gender Identity

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

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

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

19. Gender identity is a person's inner sense of belonging to a particular sex, such as male or female. It is a deeply felt and core component of human identity. It is detectible by self-disclosure in adolescents and adults.

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

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

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

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

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

25. The evidence demonstrating that gender identity cannot be altered, either for transgender or for non-transgender individuals, further underscores the innate and immutable nature of gender identity. Past attempts to "cure" transgender individuals by means of psychotherapy, aversion treatments or electroshock therapy, in order to change their gender identity to match their birth-assigned sex, have proven ineffective and caused extreme

psychological damage. All major associations of medical and mental health providers, such as the American Medical Association, the American Psychiatric Association, the American Psychological Association, and WPATH's Standards of Care, consider such efforts unethical.

b. Gender Dysphoria and Its Treatment

26. Gender dysphoria is the clinically significant distress or impairment of functioning that can result from the incongruence between a person's gender identity and the sex assigned to them at birth. Gender dysphoria is a serious medical condition associated with severe and unremitting emotional pain from the incongruity between various aspects of one's sex. It is codified in the *International Classification of Diseases* (10th revision: World Health Organization), the diagnostic and coding compendia for mental health and medical professionals, and the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* Fifth Edition (DSM-5). People diagnosed with gender dysphoria have an intense and persistent discomfort with their assigned sex.

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

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

- a. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least six months' duration, as manifested by at least two of the following:

- i. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
 - ii. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated sex characteristics).
 - iii. A strong desire for the primary and/or secondary sex characteristics of the other gender.
 - iv. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
 - v. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
 - vi. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- b. The condition is associated with clinically significant distress or impairment in social, occupational or other important areas of functioning.

29. Once a diagnosis of gender dysphoria is established, individualized treatment should be initiated. Without treatment, individuals with gender dysphoria experience anxiety, depression, suicidality and other attendant mental health issues and are often unable to adequately function in occupational, social, or other areas of life.

30. Although rates of suicide are higher amongst the transgender community than the general population, a 2015 study identified several factors that were associated with large

reductions in suicide risk. The study reported that having an identity document with a gender marker notation that matched their lived gender was associated with a large reduction in suicidal ideation and attempts. The study noted that having one or more of these concordant identity documents has the potential to prevent suicidal ideation and suicide attempts—demonstrating that in a hypothetical sampling of 1,000 transgender people who were permitted to change an identity document gender marker, 90 cases of ideation could be prevented, and, in a hypothetical sampling of 1,000 transgender people with suicidal ideation who were permitted to change an identity document gender marker, 230 suicide attempts could be prevented.

31. The medically accepted standards of care for treatment of gender dysphoria are set forth in the *WPATH Standards of Care* (7th version, 2011), first published in 1979. The WPATH-promulgated Standards of Care are the internationally recognized guidelines for the treatment of persons with gender dysphoria, and inform medical treatment throughout the world.

32. The *American Medical Association*, the *Endocrine Society*, the *American Psychological Association*, the *American Psychiatric Association*, the *World Health Organization*, the *American Academy of Family Physicians*, the *National Commission of Correctional Health Care*, the *American Public Health Association*, the *National Association of Social Workers*, the *American College of Obstetrics and Gynecology*, the *American Society of Plastic Surgeons*, and *The American Society of Gender Surgeons* all endorse protocols in accordance with the WPATH standards. (See, e.g., American Medical Association (2008) Resolution 122 (A-08); Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline (2009); American Psychological Association Policy Statement on Transgender, Gender Identity and Gender Expression Nondiscrimination (2009).)

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

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

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

c. The Process of Gender Transition

35. Gender transition is the process through which a person begins bringing their outer appearance and lived experience into alignment with their core gender. Transition may or may not include medical or legal aspects such as taking hormones, having surgeries, or correcting the sex designation on identity documents. Social transition—which often includes correcting one's identity documents to accurately reflect one's sex—is the most important, and sometimes the only,

aspect of transition that transgender people undertake. Changes often associated with a social transition include changes in clothing, name, pronouns, and hairstyle.

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

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

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

39. The goal of proper treatment is to align the person’s body and lived experience with the person’s fixed identity as male or female, which already exists. Treatment creates more alignment between the person’s identity and the person’s appearance, attenuating the dysphoria, and allowing the person’s actual sex to be seen and recognized by others. Treatments fall below

the accepted *Standards of Care* if they fail to recognize that a person's affirmed gender identity is not how they feel, but rather essentially who they are.

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

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

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

42. Through this process, the shame of growing up living as a "false self" and the grief of being born into the "wrong body" are ameliorated. Being socially and legally recognized with correct identification is essential to successful treatment. The WPATH *Standards of Care* explicitly state that changing the gender marker on identity documents greatly assists in alleviating gender dysphoria. Uncorrected identity documents serve as constant reminders that one's identity is perceived by society and government as "illegitimate." Individuals who desire and require surgery must, as a prerequisite, undergo social role transition, which can be thwarted or upended by inaccurate identification documents.

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

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

45. Until recently, it was not understood that these experiences of humiliation and discrimination have serious and enduring consequences. It is now well documented that stigmatization and victimization are the most powerful predictors of current and future mental health problems. The presentation of a birth certificate is required in numerous situations. For the transgender individual, an inaccurate birth certificate can transform a mundane interaction into a

traumatic experience. Repeated negative experiences inevitably erode resilience, creating an ingravescient course of gender dysphoria and attendant psychiatric disorders.

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

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

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

Dated this 29 day of February, 2020.

Dr. Randi C. Ettner
Dr. Randi C. Ettner

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

EXPERT DECLARATION OF DR. SHAYNE SEBOLD TAYLOR, M.D.

I, Dr. Shayne Sebold Taylor, declare as follows:

1. I submit this expert declaration based on my personal knowledge.
2. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation.
3. I have actual knowledge of the matters stated herein. If called to testify in this matter, I would testify truthfully and based on my expert opinion.

QUALIFICATIONS AND BASIS OF OPINION

4. I am an Assistant Professor of Internal Medicine and Pediatrics at Vanderbilt University Medical Center and the Monroe Carrol Jr. Children's Hospital at Vanderbilt in Nashville, Tennessee.
5. I am licensed in the state of Tennessee to practice medicine (TN License #55151).

6. I am board certified in both Internal Medicine and Pediatrics by the American Board of Internal Medicine and the American Board of Pediatrics, respectively.

7. I obtained my undergraduate degree at Emory University with a BS in Biology and a BA in Women and Gender Studies. I received my medical degree from Drexel University College of Medicine and completed my Internal Medicine and Pediatrics residencies at Vanderbilt University Medical Center.

8. I have lived and practiced medicine in state of Tennessee since 2014.

9. Additional information about my professional background and experience is outlined in my curriculum vitae, a true and accurate copy of which is attached as Exhibit A to this declaration.

10. In conjunction with serving as an Assistant Professor of Internal Medicine and Pediatrics at Vanderbilt, I am the creator and Lead Clinician of the Vanderbilt Clinic for Transgender Health, a multi-disciplinary patient-centered medical home for transgender adults. My clinical duties include providing primary care and transition-related care (particularly hormone therapy), as well as providing care navigation with specialists across the Vanderbilt medical community.

11. I have over 300 transgender patients under my care with a 3-6 month waitlist to be seen for services. The majority of my patients reside in Middle Tennessee, however I have patients traveling 3-4 hours to come to the clinic spanning from Memphis to the west and Kingsport to the east. Additionally, I estimate that about 15% of my patients are traveling from neighboring states, including Kentucky, Alabama and even Indiana.

12. In addition to my clinical work, I provide guidance to physicians throughout Vanderbilt and Middle Tennessee who care for transgender patients. I do this by giving grand

rounds, presentations to medical students and residents, and training to various community providers on the importance of culturally competent care for the transgender patient.

13. As part of my practice, I stay current on medical research and literature relating to the care of transgender persons and patients suffering with gender dysphoria.

14. I am a member of the World Professional Association of Transgender Health (WPATH), American Academy of Pediatrics (AAP), American College of Physicians (ACP), the Alpha Omega Alpha (AOA) medical honor's society, and the Gay and Lesbian Medical Association (GLMA).

15. This declaration sets forth my opinions in this case and the basis for my opinions. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I have not examined the Plaintiffs in this case. In preparing this declaration, I have reviewed the materials listed in the bibliography attached as Exhibit B to this declaration. I also rely on my years of clinical experience caring for transgender adults and children, and my professional knowledge.

16. I have not met or spoken with the Plaintiffs for purposes of this declaration. My opinions are based solely on the information I have been provided by Plaintiffs' attorneys, the materials referenced in the Bibliography as Exhibit B, and my experience studying gender dysphoria and in treating transgender patients.

17. I am being compensated \$350/hour for my time preparing this testimony. My compensation does not depend on the outcome of the litigation, the opinions I express, or the testimony I provide.

EXPERT OPINIONS

A. Sex and Gender Identity

18. The sex of a child is often determined after delivery based on the visual appearance of an infant's external genitals. Prenatal determination of sex is determined again by visualization of the fetus' external genitals on ultrasound. These methods are successful in assigning sex in an overwhelming majority of individuals. In transgender individuals, however, the sex determined at birth by these above methods does not accurately reflect the patient's sex.

19. Research has identified that determination of sex is far more complex than what is seen on genital exam. Instead, sex is a complex compilation of multiple factors including one's chromosomal make up (XX or XY, for example), gonadal sex (presence of ovaries or testes), fetal hormonal sex (production of sex hormones *by* the fetus or exogenous exposure of sex hormones *to* the developing fetus), pubertal hormonal sex (the change in hormonal milieu that results in the development of secondary sexual characteristics, such as facial hair and deep voice for those assigned male at birth, or breasts and menstrual cycles for those assigned female at birth), hypothalamic sex (variations in brain structure and function as a result of embryonal exposure of sex hormones), and gender identity.

20. For each of the above factors that contribute to the development of sex, there can be variations. Sex related characteristics do not always align as either completely male or completely female. For example, many children are born with ambiguous genitalia, and as a result it is difficult to assign these infants as either male or female at birth. These children often see multiple specialists throughout their lifespan for this Disorder of Sex Development (DSD). Other examples of DSDs are those of chromosomal differences. The typical human chromosomal make up includes 46XY for males and 46XX for females. However, in male patients with Klinefelter's

syndrome their chromosomal makeup is 47XXY. These chromosomal male individuals have an extra X chromosome. The results include breast development and small testes, in addition to other physical findings. Patients with Turner Syndrome are 45XO. These female individuals are missing an X chromosome, and as such many of them do not develop normal female puberty and are often infertile. These variations are common. The Monroe Carrell Children's Hospital at Vanderbilt has an entire clinic to cater to the medical needs of this patient population.

21. Gender identity is a person's inner sense of belonging to a particular gender. Identifying as male or female is a core component of one's overall identity. Every person has a gender identity. Research has shown that children begin to develop and express their gender identity during their toddler years, at around the age of 3 years old. It has a strong biological basis and cannot be changed.

22. A leading explanation for the biological basis of gender identity is the fact that a fetus' sexual organs develop in the first two months of pregnancy, while the sexual differentiation of the brain occurs in the second half of pregnancy. Rarely, this can result in situations where the sexual organs do not match the brain's sexual differentiation

23. The testes (male gonad) develop under the influence of a cascade of genes that begin with expression of the SRY gene present on the Y chromosome. Prior to this, the fetus has an "indifferent" gonad, one with the potential to develop into either a teste or an ovary. The presence of the SRY gene on the Y chromosome begins the differentiation for that indifferent gonad to become a teste. Soon after, the testes begin to produce testosterone that results in the formation of the scrotum and penis. Female gonads conversely develop in the absence of the SRY gene and that testosterone. This happens at around 7-8 weeks gestation.

24. Later, in the second half of pregnancy there is a testosterone surge that masculinizes the brain. The absence of this testosterone surge results in a feminine brain. The intrauterine spike in testosterone results in permanent organizing effects of the developing brain. Since this occurs at a time much later in gestation, it is possible that these two process (the differentiation of sexual organs and the sexual differentiation of the brain) occur independently of one another. During puberty, those circuits that have been developed in the womb, will then be activated by sex hormones.

25. One example of the effect of prenatal testosterone exposure is in the condition Congenital Adrenal Hyperplasia (CAH). Due to an enzyme deficiency, fetuses with typically female genitalia with CAH are exposed to high levels of intrauterine testosterone. These children tend of choose boy playmates, prefer boy's toys and exhibit behaviors more commonly associated with male children. It is no surprise that children with typically female genitalia born with CAH have a much higher chance of developing gender dysphoria when compared to children with typically female genitalia born without CAH (3% vs 0.003%).

26. Most people have a gender identity that matches the sex assigned at birth. Transgender people, however, have a gender identity that does not match the sex that they were assigned at birth.

27. According to a Williams Institute study in 2016, there are approximately 1.6 million people in the United States that identify as transgender. In this same study, it was revealed that an estimated 31,000 transgender people (or 0.6% of the state's population) live in the state of Tennessee. Tennessee is ranked 10th in the nation for its percentage of transgender individuals (Hawaii being the highest and North Dakota with the lowest).

28. Gender identity is innate, and cannot be voluntarily altered. Experts agree that being transgender is a normal variation of human development.

29. Moreover, given that gender identity is permanent and cannot be changed, attempts at changing one's gender identity have severe and often life threatening repercussions including major depression, anxiety, psychotic disorders and suicide. Therefore, the medical community at large believe this to be a futile and unethical treatment approach.

30. From a medical perspective, in the event that one's gender identity does not match their sex assigned at birth, i.e. in transgender people, one's gender identity should be the determining factor of their sex. The medical consensus recognizes that when one's sex-related characteristics are not in alignment, a person's gender identity is the determining factor, more important than the presence of their genitals, their chromosomal analysis, or their hormone levels.

31. It would be extremely harmful for a patient with ambiguous genitalia whose sex was incorrectly assigned at birth to be forced to maintain that incorrect determination legally and socially for the rest of that person's life. As such, since being transgender is a normal variation of development, one where sex is also incorrectly assigned at birth, it would be equally harmful and dangerous to force a person to legally remain encumbered by this incorrect assignment.

32. Therefore, from a social perspective, the appropriate determinant of a person's sex is that person's gender identity.

B. Gender Dysphoria and its Treatment

33. Transgender people have a gender identity that differs from the sex that was assigned to them at birth.

34. This lack of alignment of assigned sex and gender identity can result in severe distress, depression, and anxiety. This constellation of symptoms is termed gender dysphoria.

35. Gender dysphoria is the medical diagnosis for the significant distress and/or problems functioning that result from the incongruity between various aspects of one's sex. It is a serious medical condition and it is codified in both the American Psychiatric Association's *Diagnostic and Statistical Manual*, Fifth Edition (DSM-5) and the World Health Organization's *International Classification of Diseases*, the diagnostic and coding compendia for mental health and medical professionals. People diagnosed with gender dysphoria have an intense and persistent discomfort with their birth-assigned sex.

36. The diagnostic criteria for Gender Dysphoria in the DSM-5 for adults and adolescents are twofold:

- a. A marked incongruence between one's experiences/expressed gender and assigned gender, of at least six months' duration, as manifested by at least two of the following:
 - i. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in younger adolescents, the anticipated secondary sex characteristics).
 - ii. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in younger adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
 - iii. A strong desire for the primary and/or secondary sex characteristics of the other gender.
 - iv. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).

- v. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
 - vi. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- b. The condition is associated with clinically significant distress or impairment in social, occupational or other important areas of functioning.

37. The World Professional Association for Transgender Health (WPATH) is an international multi-specialty professional organization that publishes the widely adopted medical *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (“WPATH Standards of Care”).

38. The protocols and policies set forth by the WPATH Standards of Care are endorsed and cited as authoritative by many professional medical associations including the American Medical Association, the Endocrine Society, the American Psychological Association, the American Psychiatric Association, the American College of Obstetrics and Gynecology, the American Academy of Family Physicians, the American College of Physicians, and the World Medical Association, to name a few.

39. The WPATH Standards of Care highlight best practices in treating transgender persons or people suffering from gender dysphoria. As mentioned above, trying to change someone's gender identity through counseling, medications, or institutionalization is considered unethical and futile. Therefore, health care providers in both the mental health arena and medical arena work to bring a patient's body, appearance and lived experience into alignment with their

gender identity. The WPATH Standards of Care provides a framework or roadmap to help guide clinicians in this important work.

40. Treating gender dysphoria results in significant improvement in the quality of life, mental and physical health of transgender persons. Transgender people undergoing treatment for their gender dysphoria can live long, happy, productive and meaningful lives.

41. Gender transition for those that suffer from gender dysphoria is a lengthy process with multiple components. These components include social transition, medical transition, and surgical transition. Each transgender individual approaches transition differently, as the decision to undergo any aspect of transition is deeply personal and depends on the degree and type of dysphoria the patient is experiencing.

42. Notably, these treatments do not change a transgender person's sex, which is already determined by their gender identity.

43. The social transition is a formative aspect of a transgender person's experience. Social transition can include going by a different name, using different pronouns, or changing one's haircut, or clothing to match one's gender identity. Some transgender people opt to solely transition socially as there may be medical contraindications to medications or surgeries, or they may find that their gender dysphoria is treated with social transition alone.

44. One central aspect of social transition includes having one's personal documentation match their gender identity. To accomplish this, many transgender people legally change their names as part of this transition. Additionally, social transition includes having one's driver's license, passport, birth certificate, school or employee ID have the gender marker of the sex with which they identify. This allows the transgender individual to be legally recognized by their gender identity in all aspects of their life.

45. In addition to social transition, transgender individuals often interface with a healthcare setting for medical or surgical intervention. Medical transition often includes the prescription of hormones so that the transgender person can develop secondary sexual characteristics of the sex with which they identify. For example, a transgender woman (an individual assigned male at birth but who has a female gender identity) may be prescribed estrogen. This can result in breast development, softening of the skin, and changes in fat distribution from a more typically male pattern to a more typically female pattern. Alternatively, a transgender man (or someone assigned female at birth with a male gender identity) may be prescribed testosterone. This could result in a deeper voice, facial and body hair growth. This process is generally monitored under close supervision with medical professionals, including office visits and laboratory monitoring.

46. Some transgender patients seek surgical transition. Surgical treatment can include facial plastic surgery to allow for more traditionally feminine features, breast augmentation, or the creation of a vagina (procedure referred to as vaginoplasty) for transgender women. Transgender men are often interested in a mastectomy for the removal of breast tissue for a more masculine appearing chest. Genital surgery for men include the creation of a penis, often created from tissue from the patient's forearm or thigh. Not all transgender patients obtain surgery. Specifically, a small minority of transgender patients pursue genital surgeries. This is for a variety of reasons. For example, some patients may have chronic medical problems that would otherwise preclude them from having surgery, such as cancer, heart disease, poorly controlled diabetes, or advanced HIV to name a few. Some patients are financially unable to obtain surgery as they are either uninsured or have insurance policies that refuse to pay for gender affirming surgeries. Lastly, surgical

intervention may not be medically indicated for some patients, as their gender dysphoria is appropriately treated with social or hormonal transition alone.

47. Given that many transgender individuals do not undergo a surgical sex reassignment procedure, this should not be a determining factor in an individual's pursuit to change their legal documentation to reflect their true sex, consistent with their gender identity, such as on their driver's license or birth certificate.

C. The Importance of Accurate Identity Documentation for the Transgender Individual

48. Identity documentation is required in all aspects of our lives. From applying for health insurance, to enrolling our children in school, to getting on an airplane, to applying for a credit card or a marriage license. Our documentation allows us to move through this world safely and legally.

49. Transgender people often desire to change their names legally and the gender markers on their legal documentation as part of their social transition.

50. When a transgender person's legal documentation does not accurately reflect their identity, that transgender person is at risk for workplace discrimination, housing discrimination, voting discrimination, health care discrimination and even violence.

51. For example, according to a 2015 study, approximately one-third of individuals who have shown identification documents with a name or gender that did not match their gender presentation reported negative experiences, such as being harassed, denied services, and/or attacked. More specifically, as a result of showing an identification document with a name or gender that did not match their gender presentation, 25% of people were verbally harassed, 16% were denied services or benefits, 9% were asked to leave a location or establishment, and 2% were assaulted or attacked.

52. In addition, a person's gender dysphoria can worsen if the person legally cannot complete their social transition. Gender dysphoria can worsen if a transgender person has discordant documentation, where some documents accurately reflect their gender identity and others do not.

53. This can affect patients in a variety of ways, and my patients have reported several negative downstream ramifications from incorrect documentation. For example, a student applying to college may not get assigned appropriate and safe housing if their legal documentation is incorrect or incongruent. This could lead to significant anxiety about changing, bathing, and even safety, so much so that transgender youth may opt out of applying to college altogether. A transgender woman with incorrect documentation may be unable to stay in a women's homeless shelter forcing her to feel unsafe and at risk for violence in an all men's shelter or, worse, on the street.

54. My patients frequently report the challenges they face at the pharmacy filling prescriptions, going to the DMV, or talking to their health insurance companies. All of these are daily examples of how an ordinarily routine task for a non-transgender person (also called cisgender) can be anxiety provoking and isolating for a transgender individual.

55. Transgender people may feel that they are unable to participate in their communities, neighborhoods, schools or jobs without having documentation that reflects their gender identity. This can further lead to social isolation and worsening gender dysphoria.

56. A 2015 Canadian study demonstrated that having one or more identity documents concordant with gender identity was statistically significantly associated with reduced suicidal ideations and attempts. Based on this study's results, for every 1,000 people whose identity

documents are correct, 90 episodes of suicidal ideation and 20 suicide attempts would be prevented over the course of one year. (Bauer, G.R. et al).

57. As mentioned above, the World Professional Association for Transgender Health is the leading professional body with which almost all other professional medical bodies align.

58. In the WPATH Identity Recognition Statement published in 2017, it is written:

“The World Professional Association for Transgender Health (WPATH) recognizes that, for optimal physical and mental health, persons must be able to freely express their gender identity, whether that identity conforms to the expectations of others. WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status. Such documents are essential to the ability of all people to enjoy rights and opportunities equal to those available to others; access accommodation, education, employment, and health care; travel; navigate everyday transactions; and to enjoy safety. Transgender people, regardless of how they identify or appear, should enjoy the gender recognition all persons expect and deserve. Medical and other barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents. These include requirements for diagnosis, counseling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors Further, court and judicial hearings can produce psychological, financial and logistical barriers to legal gender change, and may also violate personal privacy rights or needs.”

59. As a member of WPATH, and as a physician that cares for transgender individuals every day, I agree with the above statement.

60. A patient’s right to privacy includes what they choose to do with their own documentation.

61. Having inconsistent or gender incongruent documentation can worsen the severity of gender dysphoria by limiting an individual’s ability to enjoy the rights and opportunities equal to those around them.

62. Aside from intentionally trying to discriminate against transgender people and infringing on their rights to privacy, I can think of no other plausible reason why the State of

Tennessee would refuse to change a person's gender marker on their birth certificate. As estimated by the Williams Institute, there are roughly 31,000 transgender people living in the state of Tennessee which is composed of 6.77 million people (United States Census Bureau). Even if every transgender Tennessean took advantage of changing their birth certificates, the likelihood that it would have any statistically relevant impact on the state's vital statistics is slim to nonexistent.

63. Additionally, there are 48 states in the United States (as well as DC and Puerto Rico) that allow transgender individuals to correct their birth certificates in a manner consistent with their gender identity. These states and other jurisdictions have the same interests in ensuring accurate vital statistics records as Tennessee, and yet they have determined that the overall impact of allowing transgender people to correct the sex designation on their birth certificates was insignificant for the state and did not negatively affect the states' interests in ensuring accurate and useful vital statistics records.

64. Moreover, to the extent the State of Tennessee needs data regarding the sex assigned at birth to persons born in the state, such data can easily be preserved by maintaining such records under seal and without requiring transgender people born in Tennessee to have birth certificates (an identification) that are inconsistent with their gender identity.

CONCLUSIONS

65. From a purely medical and scientific understanding, gender identity is the appropriate, determinative factor for selecting male or female gender markers on identity documents. Moreover, there is also a clinical imperative that gender identity be used to make that determination.

66. Transgender men are men and therefore should be identified as men for the purposes of all identity documents including their birth certificate. Transgender women are women

and therefore should be identified as women for the purposes of their identity documents including their birth certificate. This intervention improves the lives of transgender people, decreasing their risk of suicide.

67. Allowing a transgender person the right to change their documentations has very little impact on the state of Tennessee; however, it has an extremely significant impact in the lives of transgender Tennesseans. The decision, therefore, is a simple one.

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

Dated this 29 day of February, 2020.

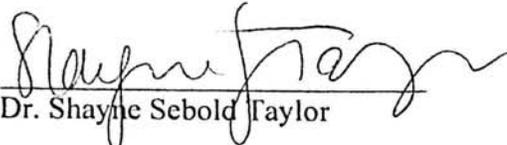

Dr. Shayne Sebold Taylor MB

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

Case No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

**DECLARATION OF KAYLA GORE IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Kayla Gore, being of legal age and sound mind, do hereby declare and state as follows:

1. I am a Plaintiff in the above-captioned case. I have actual knowledge of the matters stated in this declaration.
2. I am 34 years old. I was born and currently reside in Memphis, Tennessee.
3. I have dedicated my professional life to serving lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people in Tennessee. I am currently the Southern Regional Organizer with TLC@SONG, which seeks to lift the barriers and break the isolation that prevents LGBTQ people in the South, particularly people of color, from participating fully in our economic, social, and political life. I am also a co-founder and serve on the board of My Sistah's House, a nonprofit that provides resources and emergency shelter to transgender and gender nonconforming people in the Memphis area. I served on the Tri-State Black Pride Board as the Transgender and Gender Nonconforming Chair from 2016 to 2018, and I was Chair of the Tennessee Transgender Task

Force with Tennessee Department of Health from 2018-2019, and am still a member of the Task Force.

4. I am a woman.

5. I am also transgender. I was designated “male” on my birth certificate, even though I am, in fact, a woman.

6. Below is a picture of me:



7. Though I was raised as a boy, by the age of five or six I was very interested in female clothes, makeup, and high heels. My exploration was not encouraged, so I avoided expressing myself in that way.

8. In my early twenties, I began expressing my female gender again and, soon after, began identifying as a female. By 2012, I was living openly as a woman.

9. I have taken steps to bring all aspects of my life into conformity with my female gender identity, including steps to socially and medically transition.

10. I have undergone clinically appropriate medical treatment for gender dysphoria, including hormone replacement therapy. I have received electrolysis and recently had sex

reassignment surgery. The steps I have taken in my transition have brought my body characteristics and outside appearance into alignment with my female gender identity.

11. In 2017, I legally changed my name from the traditionally male name I was given at birth to my current traditionally female name.

12. I have changed my identification documents, including my state identification card and Social Security records, to reflect my identity and true sex as female.

13. I am aware that the State of Tennessee has a policy and practice that categorically prohibits transgender persons, like me, from correcting the gender marker on their birth certificates so that the birth certificates may accurately reflect their sex, as determined by their gender identity (hereinafter the “Birth Certificate Policy”).

14. As a result, my birth certificate still incorrectly identifies my sex as male, despite my being a woman and despite the gender marker on all my other government identification documents correctly identifying me as female.

15. Because of Tennessee’s Birth Certificate Policy, it is impossible for me to correct the gender marker on my birth certificate, and I have thus considered it futile to correct my name on my birth certificate. As a result, my birth certificate and other identification documents are incongruent with each other.

16. I am personally aware of the high incidence of violence and harassment directed at transgender persons as well as the high rates of employment and housing discrimination faced by transgender persons. As a transgender woman of color, I am also aware of the high incidence of violence and harassment directed at transgender women of color.

17. I reasonably fear that possessing a birth certificate that fails to match my gender identity increases the chances that I will be subjected to invasions of privacy, prejudice,

discrimination, distress, harassment, or violence and I have taken steps to try to reduce those risks.

18. I am harmed by Tennessee's Birth Certificate Policy. I need my identity documents to be congruent with the woman that I am, and I believe that my gender identity should be recognized and respected by Tennessee.

19. I reasonably fear that possessing a birth certificate that fails to accurately reflect my sex, as determined by my gender identity, increases the chances that I will be subjected to discrimination, harassment, or violence.

20. For example, I have been outed as a transgender woman to several employers to whom I have had to present my birth certificate with the incorrect gender marker and asked invasive personal questions. Knowing I would have to present my inaccurate birth certificate has dissuaded me at times from applying for jobs. I also wish to resume my education, but I have been hesitant to do so because I will be forced to disclose my transgender status during the enrollment process.

21. As a result of Tennessee's Birth Certificate Policy, my current Tennessee birth certificate reflects the sex I was incorrectly assigned at birth solely based on external reproductive organs, erroneously stating that I am male.

22. Being denied a birth certificate that accurately reflects my sex, as determined by my gender identity, is psychologically and emotionally harmful to me. My birth certificate is a persistent reminder that the State of Tennessee does not respect me for who I am, and I remain in fear of what may happen the next time I have to show my birth certificate to a stranger. Tennessee's Birth Certificate Policy also subjects me to potential physical harm, particularly as a transgender woman of color.

23. I wish to correct my birth certificate, which currently indicates that my sex is male, to accurately reflect my sex as female, as determined by my gender identity.

Signed under penalty of perjury under the laws of the United States this 15th day of February 2020.



Kayla Gore

EXHIBIT 4

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

Case No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

**DECLARATION OF JAIME COMBS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Jaime Combs, being of legal age and sound mind, do hereby declare and state as follows:

1. I am a Plaintiff in the above-captioned case.
2. I have actual knowledge of the matters stated in the declaration.
3. I am 51 years old. I was born and raised in Elizabethton, Tennessee. I currently reside in Nashville, Tennessee with my wife.
4. I obtained a degree in cosmetology and pursued a career in the beauty industry. I owned my own salon for several years. Now retired, I currently serve on the boards of Nashville Pride and Connectus Health.
5. I am a woman.
6. I am also transgender. I was designated "male" on my birth certificate, even though I am, in fact, a woman.

7. Below is a picture of me:



8. From the age of five, I knew I was female despite being forced to live as male. I did not know that it was possible to live as my true female self.

9. On or about 1996, I legally changed my name from the traditionally male name I was given at birth to my current traditionally female name. In 1996, I corrected my name on my driver's license, Social Security records and passport.

10. In consultation with my medical and mental health professionals, in 1999, I began to undergo medically necessary treatment, specifically gender affirming surgery, to bring my body into alignment with my gender identity. The steps I have taken in my transition have brought my outside appearance into alignment with my female identity so that the general public sees me as the woman I am.

11. After undergoing surgery in 1999, I corrected the gender marker on my driver's license, Social Security records, and passport.

12. I am aware that the State of Tennessee has a policy and practice that categorically prohibits transgender persons, like me, from correcting the gender marker in their birth certificates so that the birth certificates may accurately reflect their sex, as determined by their gender identity (hereinafter the “Birth Certificate Policy”).

13. Because of Tennessee’s Birth Certificate Policy, I am prohibited from correcting the gender maker on my birth certificate. As a result, my birth certificate and other identification documents are incongruent with each other.

14. I am stigmatized and harmed by Tennessee’s Birth Certificate Policy. I need my identity documents to be congruent with who I am—a woman—and I believe that my identity should be recognized and respected by the state.

15. For example, because my birth certificate incorrectly identifies me as male, my first marriage to a man was not recognized as legal and our divorce was, therefore, complicated. Although living as a woman at that time, I was not open to the public, including my clientele at the salon, about my transgender status. In order to prevent public disclosure of my gender identity and resulting harm to my business, I was forced to agree to an uncontested divorce in which my former husband retained control of our joint assets.

16. My experience stands in contrast to that of my transgender friends who were able to correct the gender marker on their birth certificates in the 1970s before the State Tennessee enacted its Birth Certificate Policy. For example, prior to the legalization of marriage for same-sex couples, a transgender female friend was able to legally marry and divorce a man without the same complications I experienced.

17. I also had a difficult time obtaining a passport because of inconsistent identity documents. The application required that I submit my birth certificate alongside my driver’s

license, on which my gender marker had already been corrected. In order to explain the discrepancy among my identity documents, I had to submit medical documentation stating the results of a physical examination by a gynecologist. Only after my first two applications were rejected was I able to obtain a passport.

18. The inconsistency among my identity documents continues to function as a barrier. I recently completed training to participate in the Trans Buddy Program at Vanderbilt University Medical Center. All program participants are required to submit immunization records. I experienced difficulty correcting my immunization records, many of which are recorded under an incorrect name and gender marker. As a result of this barrier, it was harder for me to pursue this volunteer opportunity, and my participation in it was delayed.

19. I reasonably fear that possessing a birth certificate that fails to accurately reflect my sex, consistent with my gender identity, increases the chances that I will be subjected to invasions of privacy, prejudice, discrimination, distress, harassment, or violence.

20. As a result of Tennessee's Birth Certificate Policy, my current Tennessee birth certificate reflects the sex I was incorrectly assigned at birth, erroneously stating that I am male.

21. Being denied a birth certificate that accurately reflects my sex, consistent with my gender identity, is psychologically and emotionally harmful for me. I am faced with the persistent reminder that the State of Tennessee does not respect me for who I am and I am kept in fear of what may happen the next time I have to show my birth certificate to a stranger. Tennessee's Birth Certificate Policy also subjects me to potential physical harm.

22. I wish to correct my birth certificate, which currently indicates that my sex is male, to accurately reflect my sex as female, as determined by my gender identity.

Signed under penalty of perjury under the laws of the United States this 28 day of
February, 2020.



Jaime Combs

EXHIBIT 5

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

Case No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

**DECLARATION OF L.G. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, L.G., being of legal age and sound mind, do hereby declare and state as follows:

1. I am a Plaintiff in the above-captioned case. I have actual knowledge of the matters stated in this declaration.
2. I am 31 years old. I was born in Knoxville, Tennessee and currently reside in Louisville, Kentucky.
3. I attended and graduated from college in Georgia. Upon graduating, I returned to Knoxville where I lived until about six years ago when I moved to Kentucky for a job.
4. I was a professional herbalist and retail manager. I have a background in herbalism and worked with a chain of natural food stores as the Natural Living Director.
5. I am currently attending graduate school in Theology and work part time as a private contractor.
6. I am a woman.

7. I am also transgender. I was designated “male” on my birth certificate, even though I am, in fact, a woman.

8. I tried to come out as a woman in high school but was met with rejection. In college, I was denied support and medical care, which led to my first suicide attempt. While in college, I continued to struggle with my gender identity and lack of support; as a result, I continued to experience thoughts of self-harm.

9. I came out to my parents again around the age of 24. Although they initially had a difficult time understanding my being transgender, both of my parents made efforts to support me and eventually became strong allies of the LGBT community.

10. Around the same time, I began to socially and medically transition in order to align my lived experience and body characteristics with my female gender identity.

11. I have received a diagnosis for gender dysphoria. In 2013, I began to undergo hormone replacement therapy to relieve my gender dysphoria and bring my body into alignment with my gender identity. In 2017, I had an orchiectomy. The steps I have taken in my transition have brought my outside appearance into alignment with my female identity so that the general public sees me as the woman I am.

12. In addition to undergoing medical treatment for my gender dysphoria, I have sought to align my whole lived experience with my gender identity.

13. As I started aligning my lived experience with my true self, I faced discrimination and harassment, including in the workplace. Because of that, I am not “out” as transgender at work. None of my co-workers know that I am transgender.

14. In 2014, I began the process to correct the name and gender marker on my identity documents, including my driver's license, Social Security records, and birth certificate, so that my identity documents accurately reflect my identity and true sex as a female.

15. I am aware that the State of Tennessee has a policy and practice that categorically prohibits transgender persons, like me, from correcting the gender marker on their birth certificates so that the birth certificates may accurately reflect their sex, consistent with their gender identity (hereinafter the "Birth Certificate Policy").

16. In March 2014, I obtained a court order changing my name, but was informed that the State of Tennessee does not permit gender marker corrections on birth certificates. I also tried several times to correct the gender marker on my Tennessee driver's license. Following multiple instances of invasive questioning and humiliation at the Tennessee Department of Motor Vehicles (DMV), the DMV denied my requests to correct the gender marker on my driver's license. When I moved to Kentucky, I visited the DMV there to request a driver's license with a female gender marker; my request was denied there as well. I then obtained a passport with a female gender marker. Only after producing proof of surgery was I able to obtain a Kentucky driver's license that accurately reflects my female gender identity. The process of correcting the gender marker on my driver's license was painful, humiliating, and traumatizing. I believe that were I permitted to have an accurate birth certificate, the process of correcting my driver's license would have been straightforward, and would not have subjected me to this kind of humiliation and harassment.

17. Because of Tennessee's Birth Certificate Policy, I am still prohibited from correcting the gender marker on my birth certificate. As a result, my birth certificate and my other identification documents are incongruent with each other.

18. I am stigmatized and harmed by Tennessee's Birth Certificate Policy. I need my identity documents to be congruent with who I am—a woman—and I believe that my identity should be recognized and respected by Tennessee.

19. I reasonably fear that possessing a birth certificate that fails to accurately reflect my sex, consistent with my gender identity, increases the likelihood that I will be subjected to discrimination, invasions of privacy, prejudice, harassment, or physical violence.

20. For example, I was harassed and asked invasive questions about my genitals when I presented inconsistent identity documentation at the DMV. Before I was permitted to correct the gender marker on my driver's license, I was also inappropriately touched and questioned by a doctor when I tried to obtain routine medical services. I have also faced discrimination at work because of my gender identity.

21. Additionally, I have gone to great lengths to ensure that my birth certificate will not inadvertently be discovered. I keep my Tennessee birth certificate with the incorrect gender marker in a safety deposit box at my bank. On my death, the contents of the safety deposit box will be turned over to my mother whom I have directed to destroy my Tennessee birth certificate. I have done this to ensure, to the best of my ability, that my Tennessee birth certificate with the incorrect gender marker will not be public.

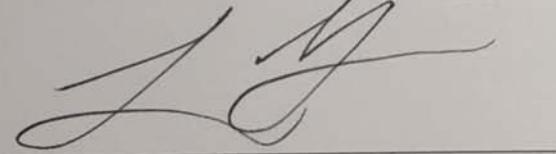
22. I am personally aware of the high incidence of violence and harassment directed at transgender persons as well as the high rates of employment and housing discrimination faced by transgender persons.

23. As a result of Tennessee's Birth Certificate Policy, my current Tennessee birth certificate reflects the sex that I was incorrectly assigned at birth, erroneously stating that I am male.

24. Being denied a birth certificate that accurately reflects my sex, consistent with my gender identity, is psychologically and emotionally harmful to me. I am faced with the persistent reminder that the State of Tennessee does not respect me for who I am, and I am kept in fear of what may happen the next time I have to show my birth certificate to a stranger.

25. I wish to correct my birth certificate, which currently indicates that my sex is male, to accurately reflect my sex as female, as determined by my gender identity.

Signed under penalty of perjury under the laws of the United States this 4th day of March, 2020.



L.G.

EXHIBIT 6

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

Case No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

**DECLARATION OF K.N. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, K.N., being of legal age and sound mind, do hereby declare and state as follows:

1. I am a Plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.
2. I am 32 years old. I was born and raised in Oak Ridge, Tennessee. I currently reside in San Francisco, California.
3. I attended the University of Chicago where I studied computer science, and I now work as a software engineer.
4. I am a woman.
5. I am also transgender. I was incorrectly designated "male" on my birth certificate, even though I am, in fact, a woman.
6. I have always been transgender. Although I did not identify as transgender until my adulthood, I was always uncomfortable with my assigned gender at birth. Following a lengthy

internal process of accepting my gender identity, I fully recognized to myself in 2016 that I am transgender.

7. Around the same time, in 2016, my mental health provider diagnosed me with gender dysphoria. Then, in consultation with my medical and mental health professionals, I began to undergo medically necessary treatment, specifically hormone therapy, to relieve my gender dysphoria and bring my body into alignment with my gender identity. I also had facial feminization surgery and went to a speech pathologist.

8. More recently, I had gender affirming surgery (also known as sex reassignment surgery). The steps I have taken in my transition have brought my outside appearance into alignment with my female identity so that the general public sees me as the woman I am.

9. In addition to undergoing medical treatment for my gender dysphoria, I have sought to align my whole lived experience with my gender identity. I have come out as a transgender woman to all of my family and friends.

10. In 2017, I legally changed my name from the traditionally male name I was given at birth to my current traditionally female name.

11. I also updated my identity documents, including my driver's license, Social Security records, and passport, so that my identity documents accurately reflect my identity and true sex as female.

12. I did not apply to correct my name on my Tennessee birth certificate, because I am aware that Tennessee only allows cross out name changes meaning my old name would still appear on my birth certificate.

13. I ensure that my passport is valid even though I do not use my passport for travel purposes. I keep my passport valid because I need an identity document with my correct gender

marker that also serves as proof of my U.S. citizenship and Tennessee will not allow me to change the gender marker on my birth certificate.

14. I am aware that the State of Tennessee has a policy and practice that categorically prohibits transgender persons, like me, from correcting the gender marker on their birth certificates so that the birth certificates may accurately reflect their sex, consistent with their gender identity (hereinafter the “Birth Certificate Policy”).

15. I am aware that Tennessee’s policy is an outlier and that other states allow for correction. I am aware if I were born elsewhere, I would have the ability to change the gender marker on my birth certification.

16. Because of Tennessee’s Birth Certificate Policy, I am prohibited from correcting the gender marker on my birth certificate. As a result, my current Tennessee birth certificate reflects the sex I was incorrectly assigned at birth solely based on external reproductive organs, erroneously stating that I am male. My birth certificate and other identification documents are also incongruent with one another.

17. I am personally aware of the high incidence of violence and harassment directed at transgender persons, as well as the high rates of employment and housing discrimination faced by transgender persons across the United States.

18. I need my identity documents to be congruent with the woman that I am, and I believe that my gender identity should be recognized and respected by the State of Tennessee.

19. I reasonably fear that possessing a birth certificate that fails to match my gender identity increases the chances that I will be subjected to invasions of privacy, prejudice, discrimination, distress, harassment, or violence, and I have taken steps to reduce those risks.

20. I have, for example, faced invasive questioning when updating my driver's license and passport because I had to present my Tennessee birth certificate, which incorrectly identifies my sex as male.

21. I am harmed by Tennessee's Birth Certificate Policy. Being denied a birth certificate that accurately reflects my sex, consistent with my gender identity, is psychologically and emotionally harmful to me, as I am faced with the persistent reminder that the State of Tennessee does not respect me for who I am and I am kept in fear of what may happen the next time I have to show my birth certificate to a stranger. Tennessee's Birth Certificate Policy also subjects me to an increased risk of physical harm.

22. I wish to correct my birth certificate, which currently indicates that my sex is male, to accurately reflect my sex as female, as determined by my gender identity.

Signed under penalty of perjury under the laws of the United States this 27 day of February, 2020.

K. N.

K.N.