

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

KAYLA GORE; JASON SCOTT; 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

Judge Eli J. Richardson
Magistrate Judge Barbara D. Holmes

DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants respectfully request that this Court dismiss all claims raised by Plaintiffs in this case. As set forth below and more fully discussed in the accompanying Memorandum of Law, the Amended Complaint fails to state a claim for which relief can be granted. Plaintiffs have not stated cognizable claims under the Equal Protection Clause, Due Process Clause, or the First Amendment to the United States Constitution. Plaintiffs' claims must be dismissed.

1. Plaintiffs' Equal Protection claim fails as a matter of law.
 - A. Plaintiffs have failed to allege disparate treatment.
 - B. Tennessee's law is facially neutral and is without discriminatory intent.
 - C. Tennessee's law survives the applicable level of scrutiny.

2. Plaintiffs' substantive due process claims fail as a matter of law.
 - A. The informational privacy claim fails because Defendants have not disclosed Plaintiffs' transgender status and because Plaintiffs have not alleged any facts which implicate a fundamental right.
 - B. Plaintiffs' personal autonomy claim fails as a matter of law because neither the Supreme Court nor the Sixth Circuit has recognized a fundamental right to choose one's gender identity or to dictate which sex is listed on one's birth certificate.

3. Plaintiffs' First Amendment claim fails as a matter of law.
 - A. The sex designation on birth certificates is government speech. Because it is not Plaintiffs' private speech, their compelled speech claim necessarily fails.
 - B. Even if the sex designation on birth certificates is private speech, Plaintiffs have made no plausible allegation that they have been forced to present their birth certificates to any third party.
 - C. Finally, since the sex designation on birth certificates is government speech, not private speech, Plaintiffs lack any First Amendment right to express their own views through that medium. Denying Plaintiffs the ability to amend their birth certificates to reflect their current gender identities thus does not infringe on their First Amendment rights.

For all of these reasons, all claims in the Amended Complaint should be dismissed.

Respectfully Submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/ Dianna Baker Shew

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March 2020 I filed the foregoing electronically through the Court's CM/ECF System and thereby served the following:

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