

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Emani Love, Tina Seitz, Codie
Stone, E.B.,¹ A.M., & K.S.,

Plaintiffs,

v.

RUTH JOHNSON, in her official
capacity as the Secretary of State of
Michigan,

Defendant.

Case No.

Hon.

Mag.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Emani Love, Tina Seitz, Codie Stone, E.B., A.M., and K.S., by
and through their undersigned attorneys, complain against Defendant Ruth Johnson,
in her official capacity as the Secretary of State of Michigan, as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are all transgender Michiganders who live their lives
consistent with their innate understanding of themselves as male or female (their
“gender identity”), rather than the sex they were assigned at birth. This lawsuit
challenges the State of Michigan’s refusal to recognize and respect the gender of

¹ Plaintiffs “E.B.,” “A.M.,” and “K.S.” will be filing a motion to proceed using
initials, rather than their full names, to protect their privacy in their transgender
status and medical conditions and treatment.

Plaintiffs and other transgender people by denying them the ability to obtain a driver's license or state identification card that accurately reflects their gender.

2. In 2011, Michigan Secretary of State Ruth Johnson implemented a restrictive policy for correcting transgender persons' driver's licenses and state identification cards to properly reflect their gender (the "Driver's License Policy" or "Policy"), and she has enforced it ever since.

3. Under the Policy, the State of Michigan will not correct "the gender² on a driver's license" or state identification card unless the person requesting the correction produces an amended birth certificate showing the correct gender.

4. State laws in the United States vary in terms of whether and how individuals can amend the gender on their birth certificates: (1) some states refuse to amend the gender on a birth certificate without a court order; (2) some states, like Michigan, refuse to change the gender on a birth certificate unless an individual has undergone gender confirmation surgery; (3) some states allow the gender to be changed on a birth certificate without requiring either surgery or a court order; and (4) some states do not allow the gender on a birth certificate to be corrected under any circumstances.

² Defendant used the word "gender" to describe her policy, even though Mich. Comp. Laws § 257.305(a) uses the word "sex" for the designation of male or female on a Michigan driver's license. Like the Defendant, Plaintiffs believe that "gender" and "sex" are often used interchangeably for purposes of identifying a person as male or female on various legal documents.

5. Because the Driver's License Policy requires an amended birth certificate with a corrected gender to change a Michigan driver's license or state identification (or "ID") card, Plaintiffs and other transgender persons in Michigan are unable to secure driver's licenses or state ID cards that accurately reflect their gender.

- a. Plaintiffs Tina Seitz, Codie Stone, and E.B. *cannot* obtain an accurate driver's license *under any circumstances* because their state of birth does not allow them to amend the gender on their birth certificate.
- b. Plaintiff K.S. faces the burden of obtaining a court order in order to change the gender on his driver's license, as his birth state requires a court order to change the gender on his birth certificate.
- c. Plaintiffs Emani Love and A.M. were born in Michigan and thus, cannot secure a driver's license or state ID card reflecting their correct gender because amending their birth certificate requires them to complete surgery, for which they have no current medical need and which they cannot afford.

6. In contrast, Michigan residents born in states, such as California³ or Washington,⁴ that do not require surgery or a court order to amend the gender on

³ See Cal. Health & Safety Code § 103426; Dep't of Public Health, *Obtaining a New Birth Certificate After Gender Reassignment*, available at

birth certificates are able to correct the gender designation on their Michigan driver's licenses without being forced to have surgery and without securing a court order. Rather, persons from those states need only obtain confirmation of their change of gender from their physician. Moreover, on information and belief, Michigan residents obtaining a driver's license or state ID for the first time are not required to present a birth certificate at all in order to obtain a driver's license or state ID listing the correct gender.

7. Due to the Driver's License Policy, Plaintiffs and other transgender individuals in Michigan are forced to carry a driver's license or state ID card that reflects the incorrect gender, causing them significant psychological and emotional harm and placing them at risk of bodily harm. They are forced to carry and show to others a basic identity document that fails to reflect an essential aspect of personhood – their gender. Denying Plaintiffs and other transgender people a driver's license that matches their gender identity and lived gender results in the routine disclosure of their transgender status, as well as their medical condition and treatment, to complete strangers. Indeed, every time Plaintiffs are asked to present

[http://www.cdph.ca.gov/certlic/birthdeathmar/Documents/GenderReassignmentPAMPHLET-\(01-15\)-MERGED.pdf](http://www.cdph.ca.gov/certlic/birthdeathmar/Documents/GenderReassignmentPAMPHLET-(01-15)-MERGED.pdf) (last visited May 15, 2015).

⁴ See Washington State Dep't of Health, *Gender Change on a Birth Certificate*, available at <http://www.doh.wa.gov/LicensesPermitsandCertificates/BirthDeathMarriageandDivorce/GenderChange> (last visited May 15, 2015).

their Michigan driver's license or state ID card, they necessarily divulge private information about themselves, which places them at serious risk of physical harm, discrimination, embarrassment, and hostility. Further, denying Plaintiffs a driver's license or state ID card that properly reflects their gender informs Plaintiffs that the State of Michigan does not acknowledge and respect their core identities.

8. Defendant's Driver's License Policy is unconstitutional, as it has either made it impossible or unduly burdensome for Plaintiffs and others like them to have their driver's licenses or state ID cards reflect their gender in violation of: (1) the right to privacy (U.S. Const. amend. 14, §1); (2) the First Amendment (U.S. Const. amend. 1); (3) the right to equal protection (U.S. Const. amend. 14, §1); (4) the right to interstate travel (U.S. Const. art. IV, § 2, cl. 1 and U.S. Const. amend. 14, §1); and (5) the right to independence in making important medical decisions (U.S. Const. amend. 14, §1).

9. Defendant's unconstitutional Driver's License Policy has made it more difficult in comparison to previous policies of the Michigan Secretary of State for transgender individuals to change their driver's license or state ID cards to correctly reflect their gender. As discussed in more detail below, prior to 2011, transgender individuals did not have to show an amended birth certificate to change the gender on their driver's license or state ID card.

10. In stark contrast to Michigan, where the Defendant has put in place a more restrictive policy than what existed in the past, the federal government and a number of other states have modernized their policies for correcting the gender on identity documents, such as driver's licenses and passports. They have done so by eliminating surgical and other burdensome requirements in favor of policies that allow a gender correction based on a sworn statement or letter from a medical provider confirming the transgender individual's change of gender.

11. By this Complaint, Plaintiffs seek declaratory and injunctive relief from Defendant's unconstitutional Driver's License Policy so that they and other transgender Michigan residents can obtain Michigan ID documents that accurately reflect their gender identity.

JURISDICTION AND VENUE

12. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1343 because Plaintiffs seek redress for the deprivation of rights secured by the Constitution of the United States. Plaintiffs' federal claims are brought pursuant to 42 U.S.C. § 1983.

13. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202, Fed. R. Civ. P. 57 and 65, and the legal and equitable powers of this Court.

14. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391(b)(2) because this is a judicial district in which a substantial part of the events or omissions giving rise to Plaintiffs' claims have occurred.

PARTIES

15. Plaintiff Emani Love was born and raised in Detroit, Michigan, where she currently resides. She wishes to correct her Michigan ID card to accurately reflect her identity as female.

16. Plaintiff A.M. was born and raised in Michigan and currently resides in Livingston County. She wishes to correct her Michigan driver's license to accurately reflect her identity as female.

17. Plaintiff Tina Seitz was born in Ohio and moved to Michigan in 1999. She currently resides in Macomb County. She wishes to correct her Michigan driver's license to accurately reflect her identity as female.

18. Plaintiff Codie Stone was born in Ohio and moved to Michigan in 2007. He currently resides in Kalamazoo County. He wishes to correct his Michigan driver's license to accurately reflect his identity as male.

19. Plaintiff E.B. was born in Twin Falls, Idaho, and moved to Michigan in 2012. He currently resides in Washtenaw County. He wishes to correct his Michigan driver's license to accurately reflect his identity as male.

20. Plaintiff K.S. was born in South Carolina and moved with his family to Michigan when he was two years old. He currently resides in Kalamazoo County. He wishes to correct his Michigan driver's license to reflect his identity as male.

21. Defendant Ruth Johnson is the Secretary of State of Michigan. As the Secretary of State, Defendant directs the state agency with the authority to issue driver's licenses and state ID cards. Defendant designed, implemented, and controls the Driver's License Policy. She is being sued in her official capacity.

FACTS

Transgender Persons, Gender, and Gender Dysphoria

22. At birth, each person is generally designated as male or female based on the appearance of external genitalia.

23. "Gender identity," on the other hand, is a person's innate self-identification as male or female and does not necessarily match a person's assigned sex.

24. Gender identity differs from sexual orientation, which refers to a person's physical and emotional attractions towards persons of the same or a different sex.

25. Transgender people are persons whose gender identity does not conform to the sex they were assigned at birth.

26. There is a well-established medical consensus that the most important determinant of a person's sex is a person's gender identity, not the sex they were assigned at birth. Gender identity develops in early childhood and is believed to be firmly established by the age of four. The medical literature establishes that a person's gender identity is an immutable characteristic and cannot be changed.

27. Based on contemporary medical knowledge and practice, attempts to change a person's core gender identity are considered to be futile and unethical.

28. Gender dysphoria is a medically-recognized condition defined by a marked incongruence between a person's gender identity and the sex they were assigned at birth and clinically significant distress or impairment in social, occupational, or other important areas of functioning. Symptoms of gender dysphoria include a strong desire to eliminate primary and secondary physical characteristics associated with a male or female, the belief that an individual was improperly assigned the wrong sex at birth, and the desire to be a male or female, despite what is reflected on a person's birth certificate. If untreated, gender dysphoria can have serious consequences for transgender people, including depression, anxiety, inability to focus, suicidality, as well as difficulties functioning at work, with family, and in other social roles.

29. Treatment of gender dysphoria is guided by the Standards of Care ("SOC") set forth by the World Professional Association for Transgender Health

(“WPATH”), which was initially published in 1979 and is now in its seventh version. These guidelines are widely accepted and respected, and they reflect the professional consensus about the psychological, psychiatric, hormonal, and surgical management of gender dysphoria.

30. It is the recognized standard of care to treat gender dysphoria with gender “reassignment.” Gender reassignment is not the same for every transgender person, but instead is determined by the exercise of individualized medical judgment to achieve the goal of reducing a patient’s gender dysphoria. An individualized treatment plan is developed after an assessment by a mental health professional with expertise in the treatment of gender dysphoria.

31. Gender reassignment does not “change” a person’s gender, which is instead determined by that person’s gender identity. Instead, it brings a person’s appearance and body into alignment with the person’s core gender identity, which helps to alleviate the distress associated with gender dysphoria. Gender reassignment generally consists of one or more of the following three components: (1) social transition; (2) hormone therapy; and/or (3) gender confirmation surgery or surgeries.

32. Social transition involves the adoption of a gender role and gender presentation that is congruent with the person’s gender identity. For example, a female transgender individual will act and present herself as female in all aspects

of her life. A legal name change to one that is traditionally associated with a person's gender identity and the subsequent updating of ID documents to reflect the appropriate gender are parts of that process.

33. Hormone therapy involves taking hormones associated with one's gender identity.

34. Gender confirmation surgeries may include breast augmentation or chest reconstruction surgery, genital reconstruction surgery, and other surgeries to feminize or masculinize a person's body or appearance. However, gender confirmation surgery is not medically necessary for many transgender individuals or even in their best interests. Additionally, for many, surgery is cost-prohibitive and many insurance policies do not cover gender confirmation surgery. Thus, only about one-third of transgender individuals report having had gender confirmation surgery.⁵

The Importance of Accurate Identity Documents

35. Changing the name and gender on a person's identity documents is an important aspect of gender reassignment. ID documents are crucial to a person's ability to function successfully in the correct gender, and a driver's license or state

⁵ Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center For Transgender Equality And National Gay And Lesbian Task Force (2011), at 26, *available at* http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf (last visited May 15, 2015).

ID card is a critically important form of ID. A driver's license serves a crucial function for many individuals in making it possible for them to secure and maintain a job and otherwise care for their needs and the needs of their family. Recognizing the importance of ID documents, the American Medical Association has adopted a policy urging states to eliminate any requirement that transgender individuals have surgery in order to amend their birth certificates.

36. A person repeatedly needs a driver's license or state ID card to verify his or her identity. A driver's license that fails to match one's gender leads to the disclosure of private, intimate information about one's transgender status, and it often leads to physical harm, harassment, discrimination, or groundless accusations of fraud.

37. Additionally, for persons who have struggled for years to live life in the correct gender identity, the knowledge that one's identity documents label her or him with the wrong gender can, by itself, cause serious psychological injury.

Michigan's Driver's License Policy

38. Michigan law gives Defendant, as the Secretary of State, the authority to decide which documents must be shown in order for the state to supply a driver's license or state ID card. *See Mich. Comp. Laws § 257.307(1)*.

39. Pursuant to that authority, Defendant established a Driver's License Policy that prohibits transgender individuals from correcting their driver's license

or state ID card to correctly reflect their gender unless they present an amended birth certificate with the correct gender. Upon information and belief, there is no similar policy applicable to transgender individuals obtaining a Michigan driver's license or ID card for the first time.

40. No Michigan statute requires individuals to provide an amended birth certificate to change a Michigan driver's license or state ID card to reflect a person's correct gender. Nor is there a Michigan statute that requires gender confirmation surgery for this purpose.

41. In 1996, the Michigan legislature passed a law requiring gender confirmation surgery to correct the gender on a person's Michigan birth certificate, Mich. Comp. Laws § 333.2831, but that statute does not apply to driver's licenses and state ID cards. It is likewise inapplicable to persons born outside of the State of Michigan who wish to correct the gender on their birth certificates, even if they now reside in Michigan.

42. The current Driver's License Policy is the latest version of Michigan's gender change policies for driver's licenses and state ID cards, which have become more restrictive over time.

- a. Prior to 2003, transgender individuals could correct the gender on their Michigan driver's licenses or state ID cards without showing an amended birth certificate or undergoing gender confirmation surgery.

b. Then, in 2003, under previous Secretary of State Terri Lynn Land, the policy to correct gender on a Michigan driver's license or state ID card was changed to require proof of gender confirmation surgery.

For a few weeks in 2005, the surgical policy was ended, but then quickly reinstated.

c. In 2011, Defendant took office and implemented the Driver's License Policy, which, for the first time, required an amended birth certificate to correct the gender on a person's driver's license or state ID card.

43. No legitimate governmental interest is furthered by the Driver's License Policy. Instead, the history leading up to the Driver's License Policy indicates that it was motivated by animus towards transgender people.

a. The Defendant announced her position on the issue of changing gender on Michigan driver's licenses in the midst of her primary campaign for the Republican Party Secretary of State nomination in 2010.⁶

⁶ See Michael Hiltzik, *The Last Frontier in Sexual Bigotry: Transgender Rights*, L.A. TIMES, Mar. 6, 2015, available at <http://www.latimes.com/business/hiltzik/la-fi-mh-the-last-frontier-of-sexual-bigotry-20150306-column.html> (last visited May 20, 2015); Susan J. Demas, *The Republican Wave Hits Jocelyn Benson*, MLIVE (Oct. 29, 2010), http://blog.mlive.com/capitolchronicles/2010/10/post_20.html (last visited May 20, 2015).

- b. During the primary election, Defendant Ruth Johnson ran against candidate Paul Scott. Mr. Scott criticized the 2005 policy change under Secretary Land allowing changes without surgery and stated that if he were elected, transgender individuals would not be allowed to change the gender on their Michigan driver's license under any circumstance.⁷ He characterized his position on prohibiting gender changes on identification documents as "a social values issue."⁸
- c. Defendant thereafter stated that she does "not support allowing people to change their gender on their license as a result of surgery or lifestyle."⁹
44. Upon becoming the Secretary of State of Michigan, Defendant

implemented the Driver's License Policy, which makes it extremely difficult, if not

⁷ Troy Reimink, *Secretary of State Candidate Paul Scott Campaigns Against Changes on ID for Transgender Individuals* (Jan. 21, 2010), available at http://www.mlive.com/news/grand-rapids/index.ssf/2010/01/secretary_of_state_candidate_p.html (last visited May 20, 2015).

⁸ Iowa State Daily Editorial Board, *EDITORIAL: Scott's Priority Ignores Both Progress, Values* (Feb. 3, 2010), available at http://www.iowastatedaily.com/opinion/article_667ace88-d11a-589e-acf1-1b2565a0c13c.html (last visited May 20, 2015).

⁹ See *Secretary of State Race: Ruth Johnson Joins Rep. Paul Scott in Opposing Sex Change on Driver's License*, (Aug. 20, 2010), available at http://afamichigan.org/pipermail/e-news_afamichigan.org/2010-August/000301.html (last visited May 20, 2015).

impossible, for transgender persons to correct the gender on their driver's license or state ID document.

45. Defendant's Driver's License Policy, by placing onerous, and in some cases insurmountable, obstacles to prevent transgender persons from correcting the gender on driver's licenses and state ID cards, stands in contrast with the decisions of the federal government and numerous states to ease restrictions on changing gender on identity documents to conform policies to current scientific knowledge and research regarding transgender individuals and the medical standard of care for treating persons diagnosed with gender dysphoria.

- a. The U.S. Department of State requires only that a doctor certify that a person seeking a gender change on a driver's license "has had appropriate clinical treatment for gender transition to the new gender" in order to obtain a passport with the correct gender.¹⁰
- b. The U.S. Office of Personnel Management, the Veterans Health Administration, the United States Citizenship and Immigration Services, and the Social Security Administration have similar requirements for a medical certification of appropriate clinical treatment for gender transition, not surgery.

¹⁰ See U.S. Dep't of State, *Gender Reassignment Applicants*, available at <http://travel.state.gov/content/passports/english/passports/information/gender.html> (last visited May 20, 2015).

- c. At least 25 of the states and the District of Columbia do not require a transgender person to undergo surgery to change the gender on his or her driver's license or state ID card. In addition, at least 13 states have implemented policies only requiring a medical provider's certification that "the applicant's gender identity is . . . [male or female] and can reasonably be expected to continue as such for the foreseeable future"¹¹ in order for individuals to change the gender on ID documents.

The Driver's License Policy's Impact on Plaintiffs

Plaintiffs Born in Michigan Who Have Not Had Gender Confirmation Surgery

Emani Love

46. Plaintiff Emani Love is a 22-year-old transgender woman who was born in and has lived her entire life in Detroit, Michigan. She works as an outreach worker for the Ruth Ellis Center, a social service agency for homeless and disenfranchised LGBT youth. Her responsibilities include facilitating support groups for transgender youth.

¹¹ See, e.g., Pennsylvania Dep't of Transportation, *Form DL-32 (Request for Gender Change on Driver's License/Identification Card)*, available at http://www.dmv.state.pa.us/pdotforms/dl_forms/DL-32.pdf (last visited May 20, 2015).

47. Ms. Love was designated male at birth. However, she has identified as a transgender woman since she was approximately fourteen years of age.

48. Ms. Love socially transitioned to living as female when she was approximately fifteen years of age and has lived and presented full time as a woman since then.

49. Ms. Love has taken steps to correct her identity documents so that they reflect that she is female. She changed her name to one that affirmed her female gender in February 2014, and then obtained a new Social Security card with her legal name on it.

50. In or about March 2014, Ms. Love visited in a Secretary of State branch office in Detroit, where she secured a change of her name on her state ID document. However, she was unable to have the gender changed because of the Driver's License Policy, as she has not had the gender confirmation surgery required to correct the gender on her Michigan birth certificate.

51. Gender confirmation surgery is not something Ms. Love has any interest in pursuing, nor does she believe that it is medically necessary for her at this point. In addition, Ms. Love does not have health insurance coverage for gender confirmation surgery and cannot afford to pay the substantial out-of-pocket cost of the surgery.

52. As a result of Defendant's Policy, Ms. Love's current Michigan state ID card reflects her traditionally female name and appearance in her photograph, but erroneously states that she is male.

A.M.

53. Plaintiff A.M. is a transgender woman in her thirties who is a lifelong Michigander and currently lives in Livingston County. A.M. earned her bachelor's degree in 1999 and has worked at a computer consulting company since 2001. She is also the mother of two young daughters and is a leader in her church community.

54. A.M. was designated male at birth. However, her gender identity is female.

55. A.M. has undergone gender reassignment treatment under the care of medical professionals.

56. A.M. is not planning on having gender confirmation surgery at this time because the surgery is not covered by her health insurance and she cannot afford to pay the substantial out-of-pocket cost for it. In addition, A.M.'s medical providers have not determined that surgery is medically necessary for her.

57. Plaintiff A.M. has taken actions to correct her identity documents so that they conform to her female gender identity. Around October 2013, A.M. legally changed her name to a traditionally female one and also changed the name on her driver's license to reflect her female name.

58. Around November or December of 2013, A.M. corrected the name and gender on her social security records and her passport so that they are consistent with her female gender identity. Additionally, her automobile insurance, medical records, and health insurance documents all include her legal name and show her gender as female. During this process, A.M. received an amended birth certificate with her correct name on it, but the wrong gender, because she has not had gender confirmation surgery.

59. A.M. visited the Milford Secretary of State's office in Oakland County and the Howell Secretary of State's office in Livingston County to ask whether she could change the gender on her driver's license. She was informed that she could not correct the gender on her license without first amending her birth certificate. However, A.M. cannot amend her birth certificate because she has not had gender confirmation surgery, as is required for individuals born in Michigan.

60. As a result of Defendant's Policy, A.M.'s Michigan driver's license reflects her traditionally female name and appearance in her photograph, but erroneously states that she is male.

*Plaintiffs Born in States That Do Not
Correct Gender on Birth Certificates*

Tina Seitz

61. Plaintiff Tina Seitz is a 56-year-old transgender woman who lives in the Detroit area. Ms. Seitz was born in Ohio, but moved to Michigan in 1999 to work as an engineer for General Motors.

62. Ms. Seitz was designated male when she was born. However, she later came to understand that she is female.

63. Ms. Seitz has undergone gender reassignment treatment for gender dysphoria in consultation with a medical professional.

64. As part of her treatment, Ms. Seitz has taken steps to conform her identity documents to reflect her female identity. In particular, she legally changed her name to Tina and corrected her name on her Michigan driver's license. She also corrected her name and gender on her passport and Social Security records.

65. In September 2007—before Defendant's Driver's License Policy was established—Ms. Seitz was able to change the gender on her driver's license to female after providing the Michigan Secretary of State with a letter from her physician documenting her change of gender.

66. In or around early 2011, Ms. Seitz's driver's license was held by the court pending the outcome of a court proceeding. Ms. Seitz needed a state-issued picture ID in order to apply for a passport, so she went to a branch Secretary of

State's office in Chesterfield Township, Macomb County, to apply for a state ID card. Even though Seitz offered medical evidence of her gender transition, the Secretary of State's office refused to give her a new state ID card correctly reflecting that she is female. When she returned after the disposition of her court case to get her license, the office once again refused to correct the driver's license to reflect her male gender.

67. The Secretary of State's office in Chesterfield Township informed Seitz that under the Driver's License Policy she would have to produce an amended birth certificate in order to once again have a license with the correct gender on it. Ms. Seitz therefore telephoned the Probate Court of Cuyahoga County, Ohio—where she was born—to ascertain whether her birth certificate could be amended.

68. The Chief Magistrate for the Probate Court of Cuyahoga County informed Ms. Seitz that the court would not change the gender on her birth certificate. Ohio law does not permit the amendment of birth certificates. *See In The Matter of The Application For A Marriage License For Jacob B. Nash and Erin A. Barr*, Nos. 2002-T-0149, 2002-T-0179, 2003 WL 23097095 (Ohio Ct. App. Dec. 31, 2003).

69. Because of the Driver's License Policy and because Seitz was born in a state where she cannot amend the gender on her birth certificate, Seitz can never obtain a driver's license that reflects that she is female.

70. Therefore, Ms. Seitz's current Michigan driver's license reflects her traditionally female name and appearance in her photograph, but erroneously states that she is male.

Codie Stone

71. Plaintiff Codie Stone is a 30-year-old transgender man who was born in Ohio and now lives in Kalamazoo, Michigan, where he is completing his doctorate in sociology at Western Michigan University.

72. Mr. Stone was designated female when he was born. However, his gender identity is male. Since he was a teenager, he has presented in a stereotypically masculine way, and since 2009, he has lived full time as a man.

73. Mr. Stone was diagnosed with gender dysphoria, and in consultation with a medical professional, he has had gender reassignment treatment.

74. Mr. Stone has taken steps to conform his identity documents to his male identity. He had his name legally changed in 2011 and then corrected the name on his driver's license.

75. In 2011, Mr. Stone sought to change his driver's license to correctly reflect that he is male. However, the Secretary of State's office told him that he

would have to change the gender on his Ohio birth certificate if he wanted the gender changed on his Michigan license. Mr. Stone learned, however, that Ohio does not allow persons born there to change the gender on their birth certificates.

76. Because of the Driver's License Policy and because Stone was born in a state where he cannot amend the gender on his birth certificate, he can never obtain a Michigan driver's license that accurately documents that he is male.

77. As a result of Defendant's Policy, Mr. Stone's Michigan driver's license reflects his traditionally male name and appearance in his photograph, but erroneously states that he is female.

E.B.

78. Plaintiff E.B. is a 24-year-old transgender man who was born in Idaho and currently lives in Washtenaw County. E.B. has lived in Michigan since he moved to complete his Masters in Social Work at the University of Michigan. E.B. currently works as a social worker with at-risk children, youth, and families.

79. E.B. was designated female when he was born. However, he began to identify as male at a young age. In particular, he remembers knowing that he was male when he was just four or five years old.

80. With the advice of medical professionals, E.B. has pursued gender reassignment treatment.

81. E.B. has taken steps to correct his identity documents so that they reflect his male identity. For example, he had his name legally changed to a traditionally male name in January 2015 and obtained a Michigan driver's license reflecting his legal name.

82. E.B. asked the Howell Secretary of State's office in Livingston County to change the gender on his Michigan driver's license to show that he is male.

83. The Secretary of State's office told E.B. that he would have to produce a birth certificate with the gender amended in order to amend his Michigan driver's license to correctly reflect his gender. However, Idaho is a state that does not allow persons to amend the gender on their birth certificates.

84. Because of the Driver's License Policy and because E.B. was born in a state where he cannot amend the gender on his birth certificate, E.B. can never obtain a driver's license that accurately documents that he is male.

85. Therefore, E.B.'s current Michigan driver's license reflects his traditionally male name and appearance in his photograph, but erroneously states that he is female.

*Plaintiff Born In a State That Requires a Court Order
to Change the Gender on a Birth Certificate*

K.S.

86. Plaintiff K.S. is a transgender man in his twenties who lives in Kalamazoo, Michigan. He was born in South Carolina, and he and his family moved to Michigan when he was two years old. K.S. has never been back to South Carolina.

87. K.S. was designated female when he was born. However, by middle school, K.S. understood that his identity was male.

88. K.S. has undergone gender reassignment treatment in consultation with a medical professional.

89. K.S. has made efforts to conform his identity documents to his gender identity. For example, he changed his name in 2010 to a traditionally male name and then corrected his Michigan driver's license to reflect his male name.

90. At the same time, K.S. asked an employee at the Secretary of State's office to correct his driver's license to state that he is male and provided the employee with a note from his doctor to support the change. The Secretary of State employee told him that he could not make the requested change in his driver's license.

91. K.S. later learned that the only way to correct the gender on his license was to first correct the gender on his birth certificate. However, South

Carolina, where K.S. was born, requires a court order before it will change the gender on a person's birth certificate.

92. As a result of Defendant's Policy, K.S.'s Michigan driver's license reflects his traditionally male name and appearance in his photograph, but erroneously states that he is female.

Harm to Plaintiffs Caused by the Driver's License Policy

93. Defendant's Driver's License Policy has seriously harmed and continues to harm Plaintiffs and other transgender people in Michigan. Michigan residents show their driver's licenses and state ID cards when voting, going through security at an airport, entering a bar or nightclub, buying liquor at a restaurant, or purchasing food at the grocery store with a credit card, and verifying their identity with an employer—just to name a few examples. Thus, under the Driver's License Policy, Plaintiffs and other transgender individuals are forced to show employers, government officials, grocery store employees, and many others an ID document which conflicts with their gender identity, their appearance and behavior, the gender associated with their name, and the other ways in which they express their gender (their "gender expression"). Doing so reveals their transgender status, their transition, and/or their medical condition to all who see the licenses, including complete strangers.

94. A 2011 national study of transgender Americans shows the high risks of harassment and discrimination Plaintiffs and other transgender people have faced and continue to face because they are unable to obtain driver's licenses and state ID documents that accurately identify their gender. Forty percent of the survey respondents who presented ID that did not match their gender identity and expression reported being harassed, while 15% reported being asked to leave the premises.¹² Three percent of all respondents and 9% of those who are African-American or Latino/a reported being attacked or assaulted when they showed an ID document that failed to match their identity and expression.¹³ The report also found higher reported rates of employment and housing discrimination among those whose driver's license failed to match their gender identity and expression.¹⁴

95. Additional data regarding the high incidence of hate crimes among transgender individuals shows the serious risks of bodily injury that Plaintiffs and other transgender Michiganders face when their transgender status is revealed.¹⁵

¹² *Injustice at Every Turn*, *supra* note 5, at 153.

¹³ *Id.*

¹⁴ *Id.* at 154.

¹⁵ Osman Ahmed, et al., *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013*, National Coalition of Anti-Violence Programs (2014) at 8, available at http://www.avp.org/storage/documents/2013_ncavp_hvreport_final.pdf (last visited May 15, 2015).

While transgender individuals only make up a small minority of the population, transgender persons are subjected to extremely high numbers of hate crimes in the United States.¹⁶ For that reason alone, Plaintiffs and other transgender individuals rightly fear adverse and dangerous reactions from persons who see a driver's license or a state ID card listing a gender that fails to match their gender expression. Survey data indicating a high incidence of discrimination and harassment by police officers,¹⁷ Transportation Security Administration ("TSA") and other airport staff,¹⁸ and retail store employees¹⁹ provide additional reasons why Plaintiffs and other transgender persons are rightfully concerned about having an ID document listing the wrong gender on it.

96. Data showing the high incidence of employment and housing discrimination experienced by transgender people show additional risks faced by Plaintiffs and other transgender Michiganders from producing an ID document that

¹⁶ *See id.*

¹⁷ *Injustice at Every Turn*, *supra* note 5, at 158-59 (29% of transgender individuals reported police harassment or disrespect, and 6% reported being physically assaulted by law enforcement).

¹⁸ *Id.* at 132 (17% of transgender individuals reported being harassed or disrespected by TSA agents or other airport staff, and others even reported being physically assaulted by them).

¹⁹ *Id.* at 129 (37% of transgender individuals reported being subjected to verbal harassment or disrespect; 3% even reported being physical assaulted by retail store employees).

discloses their transgender status. In the 2011 national report cited above, 90% of respondents reported being harassed at work or taking actions to avoid harassment while 26% reported being fired because they are transgender.²⁰ Forty-seven percent reported some form of employment discrimination because they are transgender, including not being hired, not being promoted, or being fired.²¹ With respect to housing discrimination, 19% of the survey respondents reported being denied an apartment based upon their transgender status, while 11% reported being evicted.²²

97. The Plaintiffs in this case are each 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 individuals. All fear that possessing a driver's license that fails to match their gender expression increases their chances that they will be subjected to discrimination, harassment, or violence and most have taken steps to try to reduce those risks. Each Plaintiff has experienced first-hand the embarrassing questions and harassing conduct that transgender persons often live through when forced to produce an ID document that fails to match their lived gender.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.* at 4.

98. Codie Stone is frightened about how a police officer would react to seeing his driver's license with the incorrect gender and, as a result, drives under, not at, the speed limit. Due to the same concerns, Plaintiff A.M. does her best to avoid driving late at night.

99. Some of the Plaintiffs are apprehensive about or avoid flying because their driver's licenses fail to match their lived gender. Codie Stone drives or takes the train where possible to avoid the embarrassment he has faced in the past when his Michigan driver's license revealed to TSA employees that he is transgender. In the last few years, K.S. has chosen to drive rather than fly on trips to the east coast because of his fear about how TSA staff will react to his ID. Ms. Seitz has experienced hostile treatment from airport staff after they saw her driver's license and is extremely anxious, almost to the point of panic, when flying due to her fears about how TSA employees may react to her license, which incorrectly states that she is male.

100. Having the wrong gender on their licenses has heightened some of the Plaintiffs' concerns about securing a job in the future and limited the choice of jobs for which they are willing to apply. Codie Stone, for example, worries that having the wrong gender on his driver's license will impact his chances of getting a future job. And although he needs to find a part-time job this summer to supplement his academic funding, Codie Stone has put off applying for jobs with the types of

employers he believes are likely to react adversely to learning that he is transgender when they see his driver's license. E.B. works full-time as a social worker, but in the past he has worked on the weekends to supplement his income. However, after the difficult experience he had when he revealed he was transgender to his former employer, he stopped applying for weekend jobs because of his fears about how employers would react to seeing his Michigan driver's license listing him as female. There have been job opportunities in the last few years that K.S. was interested in applying for because they paid more than his current position. However, he did not apply because he was worried how these employers would react to learning that he is transgender when they saw his license. Instead, K.S. has taken on free-lance work to supplement his income.

101. Because of their inaccurate driver's licenses, Plaintiffs have concerns about or have faced problems voting, obtaining medical care, visiting restaurants and other social establishments where they will have to show their licenses, and making retail purchases. Emani Love was publicly embarrassed when she went to vote and a precinct worker outed her as transgender after looking at her state I.D. which incorrectly lists her gender as male. Tina Seitz fears that she will be denied the ability to vote because the gender on her license fails to match her appearance. K.S. suffers significant discomfort when he goes to the medical office for blood

work because of the reactions the front desk staff give him when they see his Michigan driver's license with the incorrect gender on it.

102. E.B. felt awkward and embarrassed when he was asked for an I.D. to order a drink at a bar and after seeing the ID, the server started calling him "ma'am."

103. Codie Stone had a hostile experience at a hardware store where the clerk was extremely friendly to him before he produced his license after which the clerk's tone and demeanor changed completely when he provided his license listing the incorrect gender. Due in part to his concerns about having to show his license, Codie Stone avoids stopping at gas stations and other retail establishments in certain towns and areas in Michigan for fear of embarrassing questions, harassment, or even assault. When Tina Seitz had to show her driver's license at a retail store to pay with a check, the clerk looked at her license and said, "that's not you." The clerk eventually dropped it, but the experience took place in front of other customers and was therefore very humiliating for her. K.S. has experienced the distress of having store clerks give him a puzzled look or take an unduly long amount of time reviewing his driver's license before returning it to him.

104. Being denied a driver's license or state ID card that matches their gender identity and lived gender is psychologically and emotionally harmful for Plaintiffs, who are faced with a constant reminder that the State of Michigan does

not respect them for who they are and are kept in fear of what may happen the next time they have to show their license to a stranger.

CAUSES OF ACTION
42 U.S.C. § 1983

COUNT NO. 1:
THE DRIVER'S LICENSE POLICY VIOLATES
PLAINTIFFS' RIGHT TO PRIVACY

105. Plaintiffs re-allege paragraphs 1 through 104 as if fully set forth herein.

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

107. Substantive protections of the Due Process Clause include the right to avoid disclosure of sensitive, personal information.

108. Plaintiffs have a fundamental right of privacy in preventing the release of, and in deciding in what circumstances to release: (1) personal information whose release could subject them to bodily harm; and (2) information of a highly personal and intimate nature.

109. The Driver's License Policy discloses highly personal information regarding Plaintiffs to each person who sees the license. This disclosure places Plaintiffs at risk of bodily harm.

110. There is no compelling state interest that is furthered by the Driver's License Policy, nor is the Policy narrowly tailored or the least restrictive

alternative for promoting a state interest. The Policy is not even rationally related to a legitimate state interest.

111. In addition, Plaintiffs' privacy interests outweigh any purported interest the Defendant could assert.

**COUNT NO. 2:
THE DRIVER'S LICENSE POLICY
VIOLATES THE FIRST AMENDMENT**

112. Plaintiffs re-allege paragraphs 1 through 111 as if fully set forth herein.

113. The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech," U.S. Const. amend. 1, and is made applicable to the states through the Fourteenth Amendment, U.S. Const. amend. 14.

114. The First Amendment protects the right to speak and to refrain from speaking.

115. The Driver's License Policy violates the First Amendment rights of Plaintiffs to refrain from speaking by forcing them to disclose to each person who sees their license private information about their transgender status and their medical condition and by forcing them to identify themselves to each person who sees their license by a gender that conflicts with their core identity.

116. There is no compelling state interest that is furthered by the Driver's License Policy, nor is the Policy narrowly tailored or the least restrict alternative for promoting a state interest.

**COUNT NO. 3:
THE DRIVER'S LICENSE POLICY
VIOLATES EQUAL PROTECTION**

117. Plaintiffs re-allege paragraphs 1 through 116 as if fully set forth herein.

118. The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. 14, § 1.

119. The Driver's License Policy is directed solely to transgender individuals and discriminates against them because only transgender persons are required to show an amended birth certificate in order to correct their driver's license or state ID card so that it accurately reflects their identity. Other identifying characteristics, including height and eye color, on a driver's license or state ID card can be changed without any sort of proof.

120. There is no compelling or important governmental interest that is furthered by the Driver's License Policy differential treatment of transgender persons seeking to correct their driver's license as compared to non-transgender individuals who request a correction, nor is the Policy narrowly tailored or the least

restrict alternative for promoting a state interest. Nor is there even a rational connection between any legitimate governmental interest and the Driver's License Policy's disparate treatment of transgender persons.

121. The Driver's License Policy is invalid under any form of constitutional scrutiny because it was enacted for the improper purpose of disadvantaging a specific class, is founded in animus toward transgender Michiganders, and serves no legitimate governmental interest.

**COUNT NO. 4:
THE DRIVER'S LICENSE POLICY VIOLATES
PLAINTIFFS' RIGHT TO INTERSTATE TRAVEL**

122. Plaintiffs Tina Seitz, Codie Stone, E.B., and K.S. re-allege paragraphs 1 through 121 as if fully set forth herein.

123. The Privileges or Immunities Clause of the Fourteenth Amendment protects individuals' right to interstate travel.

124. The Clause protects citizens who choose to become permanent residents of a new state by requiring the new state to treat the new residents the same as existing residents of the state.

125. However, the Driver's License Policy divides transgender Michiganders into two groups: those who were born in Michigan and those who were not. The Policy substantially interferes with the rights of Plaintiffs who were not born in Michigan, including Tina Seitz, Codie Stone, E.B., and K.S., but were

born in a state where they are unable to amend the gender on their birth certificate or are required to obtain a court order in order to do so.

126. Michigan residents who were born in Michigan are able to change the gender on the Michigan driver's license or state ID card after having had surgery and do not have to obtain a court order.

127. Plaintiffs Seitz, Stone, and E.B. were born in states that do not allow amendments to birth certificates and thus are treated differently from those individuals born in Michigan in that they are unable to change the gender on their driver's licenses under the Driver's License Policy.

128. Plaintiff K.S. was born in a state that requires a court order to amend the gender on his birth certificate, so he is also treated differently from Michigan-born residents who do not have to obtain a court order to change the gender on a Michigan driver's license or state ID card under the Driver's License Policy.

129. The need of Ms. Seitz, Mr. Stone, E.B., and K.S. and other similarly situated transgender individuals to change the gender on their Michigan driver's licenses or state ID card is unrelated to the length of time that they have resided in Michigan or their place of their birth.

130. The Driver's License Policy is not narrowly tailored nor the least restrictive alternative to further a compelling state interest and thus violates the Plaintiffs Tina Seitz, Codie Stone, E.B., and K.S.'s right to interstate travel.

**COUNT NO. 5:
THE DRIVER'S LICENSE POLICY VIOLATES PLAINTIFFS' LIBERTY
INTEREST IN REFUSING UNWANTED MEDICAL TREATMENT**

131. Plaintiffs Emani Love and A.M. re-allege paragraphs 1 through 130 as if fully set forth herein.

132. The Fourteenth Amendment's Due Process Clause protects individuals' substantive rights to be free to make certain private decisions without unjustified governmental intrusion.

133. The right to make certain private decisions without unjustified governmental intrusion includes the right to refuse unwanted medical treatment.

134. The Driver's License Policy forces certain transgender individuals who were born in Michigan to choose between exercising their right to forgo gender confirmation surgery and securing a driver's license or state ID card reflecting the correct gender on it.

135. Not all transgender individuals undergo gender confirmation surgery. For some, the surgery is not medically necessary, while for others it is unsafe. Surgery may be medically necessary for others who do not have health insurance coverage for it and cannot afford to pay for the surgery out-of-pocket.

136. Ms. Love has not undergone gender confirmation surgery because she is not interested in having surgery, does not believe that it is medically necessary for her at this point, and does not have insurance coverage for the surgery or the

financial means to pay for it out-of-pocket. Plaintiff A.M. has not had surgery, because the medical professionals who treat her have not indicated that it is medically necessary for her and she has neither health insurance coverage for the surgery nor the financial resources to pay for surgery out-of-pocket.

137. As a result of not having had gender confirmation surgery, Love and A.M. are unable to amend their birth certificate to accurately reflect their gender and are therefore denied a driver's license or state ID card that accurately reflects their gender identity and expression.

138. The Driver's License Policy is neither narrowly tailored nor the least restrictive alternative to further a compelling government interest and therefore violates the liberty interests of Plaintiffs Emani Love and A.M. Nor is it rationally related to a legitimate governmental interest.

LACK OF LEGAL REMEDY

139. Plaintiffs' harm is ongoing and cannot be alleviated except by injunctive relief.

140. No other remedy is available at law.

REQUEST FOR RELIEF

Wherefore, Plaintiffs request that this Court:

- a. Issue a judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring the Driver's License Policy unconstitutional for the reasons and/or on the

counts set forth above;

- b. Permanently enjoin Defendant from enforcing the Driver's License Policy;
- c. Award Plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- d. Grant such other relief as the Court finds just and proper.

Respectfully submitted,

/s/ Jay D. Kaplan

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