

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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MINX GOTTI (f/k/a Alexander LeFlore),  
JEFFREY KNUTSEN, and DARRICK WALKER,

Plaintiffs,

v.

Case No. 07-CV-00928

RICK RAEMISCH, et al.,

Defendants.

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**SECOND AMENDED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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1. Minx Gotti, Jeffrey Knutsen, and Darrick Walker, by their attorneys, for their Complaint against Rick Raemisch, James Greer, Tim Lundquist, Tim Correll and Randall Hepp, in their official capacities (collectively, "Defendants"), allege as follows:

**NATURE OF THE ACTION**

2. This Complaint is related to the case of *Sundstrom v. Frank*, Case No. 06-C-112 (CNC), which was tried before the Court on October 22-25, 2007. It asserts a civil rights action pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief to redress Defendants' violations of Plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution. Defendants have violated the Constitution by enforcing 2005 Wisconsin Act 105 to terminate and deprive Plaintiffs of medical treatment for Plaintiffs' serious health condition, with no exercise whatsoever of individualized medical judgment and in contrast to the treatment Defendants provide to other similarly situated inmates at Wisconsin Department of Corrections

(“DOC”) facilities. Plaintiffs seek an end to those actions of Defendants that violate Plaintiffs’ right to equal protection and their right to be free from cruel and unusual punishment, pursuant to the Fourteenth and Eighth Amendments to the United States Constitution, and a declaration that 2005 Wisconsin Act 105 is unconstitutional on its face.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States, and 28 U.S.C. § 2201, as an actual controversy exists within this Court’s jurisdiction.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because at least one Defendant resides in her official capacity in this district and all Defendants reside in this State.

### **PARTIES**

5. Plaintiff Minx Gotti (“Gotti”) is a 35-year-old transgender woman, meaning that she<sup>1</sup> was born anatomically male, but has a female gender identity. Since October 2007, Gotti has been incarcerated at the Jackson Correctional Institution (“JCI”) in Black River Falls, Wisconsin. Prior to that, she was incarcerated at Dodge Correctional Institution (“DCI”) in Waupun, Dodge County, Wisconsin.

6. Plaintiff Jeffrey Knutsen, a/k/a Sara Knutsen (“Knutsen”), is a 36-year-old transgender woman, meaning that she was born anatomically male, but has a female gender identity. Since February 2008, Knutsen has been incarcerated at the Dodge Correctional Institution (“DCI”) in Waupun, Dodge County, Wisconsin.

7. Plaintiff Darrick Walker, a/k/a Michelle Walker (“Walker”), is a 33-year-old

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<sup>1</sup> This Complaint uses feminine pronouns to refer to Plaintiffs, a practice consistent with their gender identity, their preference, common practice, modern judicial practice, and the advice and guidance of mental health and other professionals who work with transgender persons.

transgender woman, meaning that she was born anatomically male, but has a female gender identity. Since March 2009, Walker has been incarcerated at the Dodge Correctional Institution ("DCI") in Waupun, Dodge County, Wisconsin.

8. Defendant Rick Raemisch ("Raemisch") is an adult citizen of the United States who is the Secretary of the DOC in Madison, Wisconsin. At all material times, Raemisch had the authority to implement state laws regarding the treatment of inmates at DOC facilities, including DCI and JCI, and was acting under color and authority of state law. Raemisch is sued in his official capacity.

9. James Greer ("Greer") is an adult citizen of the United States who is the Director of the DOC Bureau of Health Services. At all material times, Greer had the authority to implement state laws regarding the treatment of inmates at DOC facilities, including DCI and JCI, and was acting under color and authority of state law. Greer is sued in his official capacity.

10. Defendant Tim Lundquist ("Lundquist") is an adult citizen of the United States who is the Warden of DCI. At all material times, Lundquist had the authority to implement state laws regarding the treatment of inmates at DCI and was acting under color and authority of state law. Lundquist is sued in his official capacity.

11. Defendant Tim Correll ("Correll") is a physician at DCI who provided treatment to Plaintiff Gotti and was acting under color of state law. Correll is sued in his official capacity.

12. Defendant Randall Hepp ("Hepp") is an adult citizen of the United States who is the Warden of JCI. At all material times, Hepp had the authority to implement state laws regarding the treatment of inmates at JCI and was acting under color and authority of state law. Hepp is sued in his official capacity.

### **ALLEGATIONS OF FACT**

13. Gender Identity Disorder (“GID”) is a recognized medical condition defined in the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*. DSM-IV (4<sup>th</sup> ed. Text Reference 2001).

14. GID, sometimes known as gender dysphoria or transsexualism, is a serious health condition that involves a strong and consistent cross-gender identification and a persistent discomfort with one’s anatomical sex.

15. For people with GID, the conflict between their gender identity and their anatomy causes extreme psychological distress. Contemporary medical knowledge indicates that gender identity cannot be changed, and that attempts to change a person’s gender identity are futile and unethical.

16. Although GID is classified as a mental disorder, mounting medical research indicates that GID may be caused by biological or physiological factors that are not yet fully understood. For example, an article entitled “A Sex Difference in the Human Brain and Its Relations to Transsexualism,” authored by J.-N. Zhou, M.A. Hofman, L.J. Gooren, D.F. Swaab and published at *International Journal of Transgenderism* 1 (1997), reports that an area of the brain that may be involved in human sexual or reproductive functions was female-sized in male-to-female transsexuals.

17. Regardless of the etiology of GID, the prevailing medical standards of care dictate that hormone therapy and, in some cases Sex Reassignment Surgery (SRS), are the appropriate and medically mandated treatments for severe cases of GID. Although terminology used in the medical literature varies in subtle ways, “transsexualism,” as used in this complaint, is GID of such severity that hormone therapy or SRS are medically necessary for adequate treatment.

18. The World Professional Association for Transgender Health (“WPATH,”

formerly known as the Harry Benjamin International Gender Dysphoria Association (HBIIGDA)) is the leading professional association for surgeons, doctors, psychologists, medical researchers and others who specialize in the medical treatment of people with GID. Based on decades of clinical experience, WPATH has promulgated medical standards of care for treating patients with GID.

19. The WPATH Standards of Care for Gender Identity Disorders (“SOC”) recognize that treatment is medically necessary for people with GID. The SOC further indicate that the therapeutic approach includes three components (hormone therapy, living full-time as a member of the gender corresponding with one’s identity, and sex reassignment surgery), and that the appropriate course of treatment should be determined based upon individualized medical evaluation.

20. Plaintiff Gotti was identified as male when she was born but has a female gender identity, *i.e.*, an innate sense of being female. Starting around the age of three, she felt uncomfortable about being perceived as a boy. When she was seven, she wore her aunt’s shoes to school. At age thirteen, she started living as a female.

21. In or around 2001, doctors at Froedtert Hospital and Clinics in Milwaukee, Wisconsin diagnosed her with Gender Identity Disorder (“GID”). She has been prescribed and taken feminizing hormones since 2001. Gotti legally changed her name from Alexander LeFlore to Minx Gotti in 2005. Ms. Gotti is a transsexual, for whom hormone therapy is medically necessary treatment for her severe GID.

22. Under the medical supervision of the Department of Corrections’ medical personnel, including Dr. Correll, the Department of Corrections provided Gotti with hormone therapy since about the time she arrived at Dodge Correctional Institution in August 2007.

23. Plaintiff Knutsen was identified as male when she was born but has a female gender identity, *i.e.*, an innate sense of being female. Starting around puberty, she began to recognize her female identity and began to try on girls' clothing. When she was 23 years old, she attempted suicide, in part because of gender identity issues. In approximately 2003, she came out to her friends and family as transgender and adopted the first name "Sara."

24. In or around 2006, Knutsen sought counseling in Milwaukee for gender identity issues. After evaluating Knutsen, the counselor wrote a letter to Knutsen's physician, Dr. Lynn Telford in Wauwatosa, Wisconsin, recommending the initiation of feminizing hormone therapy for Knutsen. Dr. Telford prescribed feminizing hormone therapy to Knutsen. Knutsen commenced hormone therapy on or around January 1, 2007, and continued that treatment uninterrupted until the events alleged in this Amended Complaint. Knutsen has also undergone repeated laser hair removal treatments on her face. On information and belief, Knutsen is a transsexual, for whom hormone therapy is medically necessary treatment for her severe GID.

25. Plaintiff Walker was identified as male when she was born but has a female gender identity, *i.e.*, an innate sense of being female. She began wearing women's clothing in high school and disclosed her transgender identity to her family and friends in approximately 1996. She has lived and worked full-time as a woman for years.

26. Around 1997, Plaintiff Walker went to a physician who evaluated her and prescribed a feminizing hormone therapy regimen. Most recently, Dr. Rodney Mayhorn in Milwaukee prescribed feminizing hormone therapy to Walker, and conducted routine follow-up blood work to monitor her hormone levels. On information and belief, Walker is a transsexual, for whom hormone therapy is medically necessary treatment for her severe GID.

27. On December 6, 2005, the Wisconsin legislature passed 2005 Wisconsin Act 105,

codified at Wis. Stat. § 302.386(5m) (“the Act”). The Act provides that the DOC “may not authorize the payment of any funds or the use of any resources of this state or the payment of any federal funds passing through the state treasury to provide or to facilitate the provision of hormonal therapy or sexual reassignment surgery” to any inmate in a state prison, correctional facility, or secured child caring institution, or to any forensic patient in a state institution.

28. The Act defines “hormonal therapy” as “the use of hormones to stimulate the development or alteration of a person’s sexual characteristics in order to alter the person’s physical appearance so that the person appears more like the opposite gender,” and defines “sexual reassignment surgery” as “surgical procedures to alter a person’s physical appearance so that the person appears more like the opposite gender.”

29. After its passage, co-sponsors of the Act issued press releases calling it the “Inmate Sex Change Prevention Act,” describing medical treatment for GID as “bizarre.”

30. The Act took effect on January 24, 2006.

31. Prior to the Act’s passage, the Defendants provided hormone therapy to DOC inmates in accordance with individualized medical judgments, patient needs, and prevailing medical standards of care.

32. On or about October 15, 2007, the staff of the Health Services Unit at JCI notified Plaintiff Gotti that they intend to reduce her current hormone dosage and ultimately stop entirely her hormone therapy, because of a law that was enacted by the Wisconsin legislature and went into effect in 2006.

33. Gotti has suffered serious negative health effects when she has been without hormones temporarily in the past. On those occasions, she has experienced depression, suicidal thoughts, long crying spells, headaches, fatigue and agitation, chest pains and other body aches,

and increased facial and body hair. The loss of some of her female physical characteristics and increased hair embarrasses her and makes her want to isolate herself. She expects and fears the same kinds of harmful effects from the reduction and termination of hormone therapy on her body and her emotional well being that she has experienced in the past.

34. On or around February 20, 2008, a physician at DCI notified Plaintiff Knutsen that her current hormone dosage would be reduced and ultimately stopped entirely, because of a law that was enacted by the Wisconsin legislature and went into effect in 2006. Shortly thereafter, DCI reduced the dosage of Knutsen's feminizing hormone therapy.

35. As a result of the reduction in her hormone therapy dosage, Knutsen has suffered serious negative health effects, including sleeping problems, mood swings, and changes to her breast tissue.

36. On or around March 10, 2009, Dr. Scott Hoftiezer, a physician at Dodge Correctional Institution, informed Plaintiff Walker that her hormone therapy would be continued only until the end of March 2009, and then would be terminated because of Act 105. Plaintiff Walker is at risk of severe negative health effects due to the imminent termination of her hormone therapy.

37. Medical professionals experienced in the treatment of GID recognize that the abrupt reduction and termination of hormone therapy can have disastrous consequences for transgender people, including serious risk of permanent physical and emotional harm, severe danger of self-mutilation, and suicidal ideation and attempts.

38. Defendants restricted Plaintiffs' hormone dosage, and notified them of Defendants' intention to terminate Plaintiffs' hormone therapy, despite Defendants' knowledge that Plaintiffs previously had received hormone therapy and despite having provided that

hormone therapy to Plaintiffs.

39. Defendants' actions, which were undertaken without regard for any individualized medical determination and contradicted previously-existing policies regarding the provision of hormone therapy, were performed with deliberate indifference to Plaintiffs' serious medical needs.

### **FIRST CLAIM FOR RELIEF**

#### **Brought under 42 U.S.C. Section 1983 for Violation of the Eighth Amendment to the United States Constitution (against all Defendants)**

40. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

41. Plaintiffs receive hormone therapy as treatment for their serious health condition.

42. Defendants' application of the Act to Plaintiffs by denying them hormone therapy without consideration of any individualized medical judgment formed by Plaintiffs' health care providers constitutes deliberate indifference to Plaintiffs' serious medical needs and violates the Eighth Amendment's prohibition on cruel and unusual punishment.

43. The Act, which Defendants have followed and have announced they will follow, establishes a blanket rule that denies medical treatment to Plaintiffs and all other inmates of DOC facilities without consideration of any individualized medical judgment formed by health care providers, and therefore violates the Eighth Amendment's prohibition on cruel and unusual punishments.

44. As a direct and proximate result of Defendants' purposeful and intentional actions, Plaintiffs have suffered and continue to suffer injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and

indignity.

**SECOND CLAIM FOR RELIEF**

**Brought under 42 U.S.C. Section 1983 for Violation of the Fourteenth Amendment to the  
United States Constitution  
(against all Defendants)**

45. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

46. As transsexual inmates of a DOC facility, Plaintiffs are members of an identifiable group of people.

47. Defendants provide individualized medical evaluations to other inmates at DOC facilities with serious health conditions. Those evaluations result in medical judgments that determine the course of treatment that Defendants provide to those inmates.

48. The Act, and Defendants' application of the Act, treats Plaintiffs differently from similarly situated inmates at DOC facilities by singling Plaintiffs out for termination and denial of medical treatment, and by failing to provide treatment in accordance with individualized medical judgment.

49. Defendants' actions towards Plaintiffs are undertaken purposefully and intentionally and bear no rational relationship to any legitimate governmental or penological interest.

50. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered and continue to suffer injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

**RELIEF**

WHEREFORE, Plaintiffs pray for judgment under all her causes of action:

(a) Awarding Plaintiffs preliminary and permanent injunctive relief against Defendants' enforcement of the Act against them;

(b) Declaring that the Act, both on its face and as applied to Plaintiffs, violates the Eighth and Fourteenth Amendments to the United States Constitution;

(c) Awarding costs for the suit herein, including Plaintiffs' reasonable attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988; and

(d) Awarding all other relief that the Court deems just and proper.

Dated this 24th day of March, 2009.

Respectfully submitted,

s/ Cole Thaler \_\_\_\_\_  
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