

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LAUREN GREY, VICTOR WILLIAMS, and)
NICHOLAS GUARINO, on behalf of themselves)
and all persons similarly situated,)
)
Plaintiffs,)
)
v.)
)
DAMON T. ARNOLD, M.D., in his official capacity)
as State Registrar of Vital Records,)
)
Defendant.)

**CLASS ACTION COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

Lauren Grey, Victor Williams, and Nicholas Guarino, on behalf of themselves and all persons similarly situated, by their attorneys, complain against Damon T. Arnold, M.D., in his official capacity as State Registrar of Vital Records, as follows:

Preliminary Statement

1. Plaintiffs bring this action seeking declaratory and injunctive relief for violations of the Vital Records Act, 410 ILCS §§ 535/1-29, and in the alternative for violations of Article I, § 2 (the right to due process) and Article I, §§ 6 and 12 (the right to privacy) of the Illinois Constitution.

2. Plaintiffs are transsexual individuals who were born in Illinois and have Illinois birth certificates. Plaintiffs have undergone medical treatment, including surgeries, to conform their bodies to their internal sense of gender (their gender identities). They live their lives at all times according to the sex that matches their gender identity, female (Lauren Grey) or male (Victor Williams, Nicholas (Nick) Guarino), rather than the sex they were assigned at birth.

3. Defendant Damon T. Arnold, M.D. (the “Department” or “IDPH”) is the State Registrar of Vital Records and the Director of the Illinois Department of Public Health, and he is responsible for administering the Vital Records Act (VRA). The Act explicitly allows the changing of the gender marker on birth certificates provided that a licensed medical doctor attests that because of the surgery he or she has performed on an individual, the gender on the birth certificate should be changed.

4. For many years, in carrying out his duties under the Act, Defendant routinely changed the gender marker on Illinois birth certificates to accurately reflected the person’s gender identity for individuals born in Illinois who had undergone a form of gender confirmation surgery that did not include genital surgery. In or about 2005, Defendant adopted a practice of refusing to correct the sex designation on an Illinois birth certificate to match a person’s gender identity unless the person had undergone *genital* surgery. However, what is medically and psychologically necessary treatment for transsexual persons varies from person-to-person and does not always include genital surgery. Especially for transsexual men, genital surgery is rarely completed. Denying Plaintiffs *accurate* birth certificates makes it impossible for them to conform all aspects of their lives to their gender identities, preventing them from complying with their recommended medical treatment; places them at risk of discrimination in employment, housing, access to public services, and entitlements; makes them vulnerable to physical or emotional harm and embarrassment if their identities as transsexual individuals are disclosed to persons who did not know they are transsexual or who harbor hostility toward transsexual individuals; puts them at risk of false accusations of fraud; and causes them psychological and emotional harm by forcing them to keep a government-issued birth certificate that identifies them by the wrong gender.

5. A transsexual person has previously sought through litigation to change this genital surgery requirement. In January 2009, two transsexual women, through Plaintiffs' counsel in this case, filed a complaint against the Department challenging its practices regarding birth certificates. (*See Kirk v. Arnold*, Case No. 09 CH 3226, Circuit Court of Cook County.) The complaint was amended in August 2009 to include a transsexual male, Riley Johnson, who had been denied a birth certificate because he had not completed genital surgery. In November 2009, Defendant provided Mr. Johnson with a corrected birth certificate, despite the fact that he had not undergone genital surgery, and moved to dismiss the case as moot. Defendant resisted Mr. Johnson's argument that his case fit the public interest exception to mootness by asserting that the Department would be issuing new rules. The Defendant then stated, through counsel, that the fact "that IDPH has amended Mr. Johnson's birth certificate without requiring that he undergo genital-reconstruction surgery demonstrates that it is actually unlikelihood [sic] that the issue raised by Mr. Johnson's allegations will recur." Defendant's Combined Memorandum Replying in Further Support of Motion to Dismiss and Opposing Motion for Leave to Amend the Complaint, *Kirk v. Arnold* (Sept. 14, 2009), at 4.

6. Notwithstanding the inferences suggested to the court in *Kirk*, on January 14, 2011, Defendant published proposed rules for notice and comment, which reaffirm and codify Defendant's current practice of requiring genital surgery in order to amend the sex designation on an individual's birth certificate.

7. Plaintiffs seek a declaration that Defendant's policy of refusing to change the genders on their birth certificates in the absence of genital surgery violates the VRA, because nothing in the Act requires such surgery before a change in the gender marker on a birth certificate is allowed. Plaintiffs also seek a corresponding injunction ordering Defendant to issue

Plaintiffs and all others similarly situated who otherwise comply with the Act accurate birth certificates.

8. In the alternative, Plaintiffs seek a declaration that the VRA, as interpreted and administered by Defendant, violates the due process and privacy protections found in the Illinois Constitution by, without justification, burdening their right to refuse surgery that is not medically necessary for them, and that they cannot have or do not want. Plaintiffs further seek a corresponding injunction ordering Defendant to issue Plaintiffs and all others similarly situated who otherwise comply with the Act accurate birth certificates.

Jurisdiction

9. This Court has jurisdiction over the subject matter pursuant to Article VI, § 9 of the Illinois Constitution. This Court has personal jurisdiction over the Defendant pursuant to 735 ILCS § 5/2-209(a).

Venue

10. Venue is proper pursuant to 735 ILCS § 5/2-101, because the Defendant resides in Cook County.

The Plaintiffs

11. Plaintiff Lauren Grey lives in a suburb of Chicago and was born in Arlington Heights, Illinois in 1975. At birth, she was assigned the male gender, but she became aware of her female gender identity in early childhood. Her gender identity has been female her entire life.

12. Ms. Grey has a medical condition called Gender Identity Disorder (GID), which means that her female gender identity does not match the sex she was assigned at birth and that this conflict causes her psychological distress and feelings of discomfort. Under the care and

direction of mental health professionals and physicians, Ms. Grey underwent sex reassignment as treatment for her GID.

13. Plaintiff Victor Williams lives in Minneapolis, Minnesota and was born in Rockford, Illinois in 1961. At birth, he was assigned the female gender, but he became aware of his male gender identity in early childhood. His gender identity has been male his entire life.

14. Mr. Williams has also been diagnosed with GID, which means that his male gender identity does not match the sex he was assigned at birth and that this conflict causes him psychological distress and feelings of discomfort. Under the care and direction of mental health professionals and physicians, Mr. Williams underwent sex reassignment as treatment for his GID.

15. Plaintiff Nick Guarino lives in Houston, Texas and was born in Macomb, Illinois in 1973. At birth, he was assigned the female gender, but he later became aware of his male gender identity. His gender identity has been male his entire life.

16. Mr. Guarino has been diagnosed with GID, which means that his male gender identity does not match the sex he was assigned at birth and that this conflict causes him severe psychological distress and intense feelings of discomfort. Under the care and direction of mental health physicians, Mr. Guarino underwent sex reassignment as treatment for his GID.

17. Ms. Grey, Mr. Williams, and Mr. Guarino have completed all sex reassignment treatment that has been prescribed for them. They have no medical need for additional reassignment treatment, including genital surgery.

Plaintiff Class

18. Plaintiffs Lauren Grey, Victor Williams, and Nick Guarino bring this action for declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated pursuant to 735 ILCS § 5/2-801. The Plaintiff Class consists of:

All transsexual persons who are, or in the future will be, unable to obtain an Illinois birth certificate with the sex designation that matches their gender identity solely because of Defendant's policy of refusing to issue birth certificates with the correct sex designation listed on them to transsexual persons who have not had genital surgery.

19. The Plaintiff Class satisfies the requirements of 735 ILCS § 5/2-801 in that:

(a) Class certification and the appointment of Plaintiffs as class representatives is proper where, as here, joinder of all members is impracticable, since there are numerous transsexual persons born in Illinois who have had gender confirmation surgery or surgeries but have not had genital surgery and whose physician will state that the physician has performed an operation by reason of which the sex designation on their birth record should be changed, and most if not all of these persons either have requested or will request that Defendant change the gender marker on their birth certificates; since these persons are dispersed throughout the United States and beyond; since many of these persons are unable to file individual lawsuits on their own behalves because of the lack of financial resources, their need and desire to preserve their privacy regarding their medical care and transsexual identity, and their fear that public disclosure that they are transsexual individuals will subject them to embarrassment or injury; and since the Class includes persons who will in the future seek to change the gender marker on their birth certificates.

(b) The questions of law and fact are common to the Class and predominate over any questions affecting only individual members. The common questions are whether Defendant's

policy of refusing to issue birth certificates with the correct gender listed on them to transsexual persons who have had gender confirmation surgery or surgeries and whose physician will state that the physician has performed an operation by reason of which the sex designation on their birth record should be changed but have not had genital surgery violates the VRA and various provisions of the Illinois Constitution.

(c) The representative parties will fairly and adequately protect the interests of the class. The named Plaintiffs have no interest antagonistic to the class. They seek declaratory and injunctive relief on behalf of the entire class and such relief will remedy the statutory and constitutional injury currently inflicted on all members of the Class. Plaintiffs are represented by counsel who are competent and experienced in class action as well as civil rights litigation.

(d) Class action is an appropriate method for the fair and efficient adjudication of the controversy, as the statutory and constitutional injuries affect each of the transsexual persons unable to change the gender on their birth certificates because of Defendant's policy. A class action is far more appropriate than piecemeal litigation of the statutory and constitutional questions raised in this Complaint.

The Defendant

39. Defendant Arnold's official responsibilities and duties include directing, supervising, and issuing instructions necessary to the efficient administration of a statewide system of vital records, the state Office of Vital Records, and acting as the custodian of Illinois' vital records. 410 ILCS § 535/5. Defendant implements and administers the statutory provision, 410 ILCS § 535/17(1)(d), at issue in this case.

Facts
Gender Identity Disorder and Its Treatment

40. Generally, each person is assigned a sex at birth based on the appearance of their external genitalia. Gender identity, on the other hand, is a person's self-identification of gender, not necessarily based on biological sex characteristics. Gender identity is different from sexual orientation, which refers to a person's physical and emotional attractions towards persons of the same or a different sex.

41. The term "transsexual" describes persons, such as the Plaintiffs, who have the most severe form of GID. Typically, transsexuals have undergone, or plan to undergo, medical treatment in the form of hormone therapy or gender confirmation surgeries or both so that their bodies conform more closely to their gender identities. "Transgender" describes a larger group of persons whose gender identity, appearance, or mannerisms do not conform to societal expectations about the sex they were assigned at birth. That larger group includes transsexuals as well as others who have not undergone either hormone therapy or gender confirmation surgeries. There is a well-established medical consensus that the most important determinant of a person's gender is a person's gender identity, not their anatomy at birth. Gender identity develops in early childhood and is believed to be firmly established by age four. A person's gender identity cannot be changed. In the past, some therapists tried to "cure" people with GID through aversion therapies, electro-shock treatments, medication, and other therapeutic techniques. These efforts were not successful and often caused severe psychological damage. Based on contemporary medical knowledge and practice, attempts to change a person's core gender identity are considered to be futile and unethical.

42. GID is a medically recognized condition defined by a persistent discomfort with an individual's sex or sense of inappropriateness in the gender role of that sex (gender dysphoria)

and a strong and persistent cross-gender identification. Symptoms of GID include preoccupation with eliminating primary and secondary sex characteristics, belief that an individual was born the wrong sex, and the desire to be the other sex. Untreated, GID 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.

43. The treatment of GID is guided by the Standards of Care (SOC) set forth by the World Professional Association for Transgender Health (WPATH), initially published in 1979 and now in its 6th revision. These guidelines are widely accepted and respected, and reflect the professional consensus about the psychological, psychiatric, hormonal, and surgical management of GID. Based on an assessment by a mental health professional with expertise in the treatment of GID, an individualized treatment plan is developed.

44. It is the standard of care to treat GID with sex reassignment. Sex reassignment treatment is not, however, the same for every transsexual person, but is determined by the exercise of individualized medical judgment to achieve the goal of reducing a patient's gender dysphoria.

45. Moreover, sex reassignment does not change a person's gender, which is determined by their gender identity. Rather, it changes a person's appearance to alleviate a person's gender dysphoria and to better reflect a person's core gender identity. Sex reassignment often consists of three components: hormone therapy, living full-time "presenting" in the gender corresponding with the person's gender identity (known as the "real-life" experience), and gender confirmation surgeries.

46. Gender confirmation surgeries may include breast augmentation or reduction surgery, genital reconstruction surgery, and other surgeries to feminize or masculinize a person's body or appearance.

47. To begin hormone therapy, it is the standard of care for a patient to either have lived full-time presenting as the gender that matches his or her gender identity for a minimum of three months or to have had a therapeutic relationship with a mental health specialist for a minimum of three months. The hormones are prescribed by a physician, and the mental health provider must write a letter recommending the hormone therapy to the physician.

48. Real-life experience is the adoption of a gender role and gender presentation that is congruent with a person's gender identity. For example, a female transsexual 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 is a part of the real-life experience.

49. Changing the name and gender on a person's identity documents is another important aspect of sex reassignment, since those documents are crucial to that person's ability to function successfully in the new gender. A person may need a birth certificate to prove eligibility to work when starting a new job; to obtain other identity documents that allow him or her to vote, to travel, or to enter buildings; or to gain access to other government services or employment benefits.

50. Identity documents listing a gender that fails to match up to one's gender presentation can often lead to harassment, discrimination, or groundless accusations of fraud. Additionally, for a person who has struggled for years to live life in the correct gender, the knowledge that one's identity documents label her or him with the wrong gender can, by itself, cause serious psychological injury.

51. For persons who have gender confirmation surgery, what surgery is medically necessary varies from person-to-person. For some transsexual individuals, genital reconstructive surgery is medically necessary to adequately alleviate their gender dysphoria; for others, it is not. Particularly for female-to-male transsexual individuals (transsexual men) in the United States, genital surgery is rarely performed. Hormone therapy and chest surgery are the most commonly pursued treatments for transsexual men.

52. There are a number of reasons why transsexual people may not need or want genital surgery, including but not limited to:

- a. They have concluded, in consultation with their medical providers, that genital surgery is not required for them to live comfortably in their true gender identity;
- b. They have medical conditions that make genital surgery so risky that doctors advise against it potentially meaning that they could not find a doctor willing to perform surgery even if they were willing to undergo the medical risks;
- c. There are possible complications and significant scarring from certain types of genital surgery and they may be uncertain about the actual physical results of it, especially with regard to certain surgeries for transsexual men;
- d. They do not have the ability to take several weeks off from work or school, have care-giving responsibilities for family members, or have no one to care for them after genital surgery;
- e. They have financial barriers that prevent them from pursuing surgery. While there has been some improvement in access to transition-related health care among a select few employers, the vast majority of private health insurance plans

continue to exclude most or all coverage for transition-related health care. Illinois has excluded all transgender related health care from Medicaid coverage.

Statute Involved

53. The VRA provides:

410 ILCS § 535/17(1) For a person born in this State, the State Registrar of Vital Records shall establish a new certificate of birth when he receives any of the following:

* * *

(d) An affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he deems necessary.

54. After the new certificate is established, the new certificate is substituted for the original certificate of birth. *Id.* at § 535/17(2).

Lauren Grey

55. Since beginning her sex reassignment treatment in 2001, Lauren Grey has taken sex reassignment steps to make her body and her gender expression conform to her female gender identity, including electrolysis, and hormone therapy. She also changed her name to a traditionally female one and changed her name on her driver's license and social security documents. Ms. Grey, in consultation with her medical and mental health professionals, determined that facial feminization surgery and breast augmentation were the only surgical procedures needed in order to conform her external appearance to her internal gender identity.

56. Ms. Grey has been permitted to change the gender on all of her government-issued forms of identification, except for her birth certificate. The governmental agencies that have allowed her to correct her documents include the Illinois Secretary of State and the United States Social Security Administration.

57. Ms. Grey lives her life at all times as a woman. She previously worked for seven years as an executive and co-founder of a small business with a female partner. In June 2010, Ms. Grey and her business partner applied for Women Business Enterprise certification with the federal government. Their application was denied, however, because Ms. Grey's identity on her government documents did not reflect her female gender. As a result, Ms. Grey left the business and was forced to take a new position with a lower title and status.

58. Ms. Grey's current birth certificate fails to reflect who she is. She needs the sex designation on her birth certificate to match her body and gender identity. Having a birth certificate that incorrectly identifies her as male is a significant barrier to her ability to function successfully as a woman in seeking employment and gaining access to other private and public services, entitlements, and benefits. Further, being forced to show an identity document that identifies her as male puts her at significant risk of embarrassment and possible violence. It is psychologically and emotionally harmful for Ms. Grey to have a government-issued birth certificate that states incorrectly that she is male.

Victor Williams

59. Since beginning his sex reassignment treatment in 2005, Victor Williams has taken sex reassignment steps to make his body and his gender expression conform to his male gender identity, including hormone therapy. He also changed his name to a traditionally male one and changed his name on his driver's license, social security documents, and passport. Mr. Williams considered possible gender confirmation surgeries in depth. After considering the results that can be achieved through available surgical techniques, Mr. Williams decided that the only surgery that would assist him in resolving the disparity between his gender identity and his body was a bilateral mastectomy.

60. Mr. Williams extensively researched through consultation with medical professionals and through conversations with other female-to-male transsexuals the surgical techniques that are available to create a penis. After careful consideration of his options and the significant risks associated with these surgeries, Mr. Williams concluded that the risks of medical complications and disappointing results far outweighed the possible benefit for him.

61. Mr. Williams has been permitted to change the gender on all of his government-issued forms of identification, except for his birth certificate. The governmental agencies that have allowed him to correct his documents include the United States Social Security Administration, United States Department of State, and the Minnesota Department of Public Safety. His birth certificate still lists his gender as female, despite his transition, his surgery, and the change in the gender marker on his other government documents.

62. Mr. Williams lives his life at all times as a man. He has obtained a bachelor's degree in Management of Information Systems, and he currently works full-time as a network administrator for a public school district.

63. Mr. Williams's current birth certificate fails to reflect who he is. He needs the sex designation on his birth certificate to match his body and gender identity. Having a birth certificate that incorrectly identifies him as female is a significant barrier to his ability to function successfully as a man in seeking employment and gaining access to other private and public services, entitlements, and benefits. Further, being forced to show an identity document which identifies him as female puts him at significant risk of embarrassment and possible violence. It is psychologically and emotionally harmful for Mr. Williams to have a government-issued birth certificate that states incorrectly that he is female.

Nick Guarino

64. Since beginning his sex reassignment treatment in 2007, Mr. Guarino has taken sex reassignment steps to make his body and his gender expression conform to his male gender identity, including hormone therapy. He also changed his name to a traditionally male one and changed his name on his driver's license and social security documents. Mr. Guarino considered possible gender confirmation surgeries in depth. After considering the various surgical techniques and possible results, Mr. Guarino decided that the only surgery necessary to assist him in resolving the confusion caused by the disparity between his gender identity and his body was a double mastectomy. In consultation with medical and mental health professionals, Mr. Guarino concluded that he could live successfully as a man without having genital surgery.

65. Mr. Guarino has been permitted to change the gender on only one form of government-issued identification. The United States Social Security Administration allowed him to correct his gender in his social security records. As a result of his inability to receive a corrected birth certificate, Mr. Guarino has also been unable to change his gender on his driver's license or other Texas identification.

66. Mr. Guarino lives his life at all times as a man. He graduated from the University of Illinois with a Master's Degree in Social Work in 2003. Since then, he has worked as a licensed social worker assisting clients with adoption, substance abuse, and HIV/AIDS treatment. He has also counseled lesbian, gay, bisexual, and transgender individuals. He most recently worked at a program specializing in the treatment of mentally ill patients in Houston, Texas. In addition, he volunteers for a non-profit organization as a group counselor for transgender youth.

67. Mr. Guarino's birth certificate fails to reflect who he is. He needs the sex designation on his birth certificate to match his body and gender identity. Moreover, since Mr. Guarino moved to Texas, he has been unable to obtain any kind of Texas documentation reflecting his proper gender due to the inaccuracy of his Illinois birth certificate. Having a birth certificate that incorrectly identifies him as female is a significant barrier to his ability to function successfully as a man in seeking employment and gaining access to other private and public services, entitlements, and benefits. Further, being forced to show an identity document which identifies him as female puts him at significant risk of embarrassment and possible violence. Mr. Guarino knows how harmful it can be to have to show an identity document that lists his gender as female. Mr. Guarino was stopped by the police on a routine traffic stop, and was forced to show his driver's license, which still reflects his gender as female. As a result, Mr. Guarino was subject to a torrent of verbal humiliation, degradation, and abuse by the officers who stopped him. The experience was traumatizing for Mr. Guarino, and only after he receives an accurate birth certificate and changes his gender on his Texas driver's license can he ensure that it does not happen again.

68. Moreover, because his birth certificate still reflects his gender as female, Mr. Guarino has been forced to reveal his transsexual status at his places of employment, even though he would prefer to keep that information private. He has felt compelled to discuss his condition with those with access to his employment file in an attempt to ensure that they do not violate his medical privacy by speaking openly of his medical condition and transgender status.

69. It is psychologically and emotionally harmful for Mr. Guarino to have a government-issued birth certificate, and other government-issued identification, stating that he is female.

Defendant's Denial of Birth Certificates to Plaintiffs

70. Plaintiff Lauren Grey applied to the Department of Public Health for a new birth certificate with the correct name and gender listed on it on March 19, 2010, providing an affidavit from a physician stating that by reason of the surgeries he performed the sex designation of Ms. Grey should be changed to female. Her request was resubmitted on October 14, 2010. Plaintiff Victor Williams applied for a new birth certificate with the correct name and gender listed on it at the Office of Vital Records in July 2007. He submitted to the Office of Vital Records a letter from the surgeon who performed his bilateral mastectomy concluding that Mr. Williams's sex designation on his birth certificate should be changed to male.

71. On August 3, 2009, Plaintiffs in the case of *Kirk v. Arnold*, Case No. 09 CH 3226, Circuit Court of Cook County, moved for leave to amend their complaint to add Mr. Williams as a new plaintiff because of the failure to issue a corrected birth certificate.

72. During the court proceedings in *Kirk*, the Department stated, through counsel, that "IDPH is in the process of formulating written standards for evaluating applications for a change of sex designation on birth records," Defendant's Combined Memorandum Replying in Further Support of Motion to Dismiss and Opposing Motion for Leave to Amend the Complaint ("Def. Combined Mem."), *Kirk v. Arnold* (Sept. 14, 2009), at 3, through the Illinois Administrative Act rulemaking procedures.

73. Counsel for IDPH stated "it would be appear [sic] unlikely that any renewed application for an amended birth certificate by Mr. Williams would be denied *solely* on grounds that he has not undergone any 'surgery to attempt to create/attach/form a viable penis.'" Def. Combined Mem. at 6 (emphasis in original).

74. Mr. Williams, through counsel, again wrote on January 28, 2010 requesting an amended birth certificate providing an affidavit from a physician stating that by reason of the surgery she performed the sex designation of Mr. Williams should be changed to male.

75. Nick Guarino first requested his amended birth certificate in or about March 2010, but that request was denied. He again applied in or about September 2010 providing affidavits from physicians stating that by reason of the surgery they performed the sex designation of Mr. Guarino should be changed to male.

76. On January 14, 2011, the Illinois Register published a proposed new Section 500.43 of the Vital Records Act, which would require all transgender individuals born in Illinois to undergo genital surgery to change the gender on their birth certificate.

77. On April 12, 2011, Plaintiffs Grey, Williams, and Guarino, through counsel, wrote again to Defendant seeking amended birth certificates, and on April 21, 2011, Defendant rejected Plaintiffs' request on the basis of Defendant's existing practice, stating that Plaintiffs had not undergone "complete sex reassignment surgery, i.e. genital reformation surgery."

Harm to Plaintiffs

78. Plaintiffs suffer daily and will continue to suffer irreparable harm as a result of being denied a birth certificate with the correct sex on it. Plaintiffs have no adequate remedy at law.

Count One: **Violation of the Vital Records Act – Plaintiffs Grey, Williams, and Guarino, on behalf of themselves and Plaintiff Class**

79. Plaintiffs Grey, Williams, and Guarino, on behalf of themselves and those similarly situated, re-allege paragraphs 1-78, as though fully set forth herein.

80. The VRA requires “[a]n affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person’s birth record should be changed[.]” 410 ILCS § 535/17(1)(d), but does not define “operation” or specify which operations are required for the sex designation on a person’s birth record to be changed.

81. Defendant counsels applicants who have questions about whether they have completed gender reassignment surgery to contact their physicians for clarification. *See* Birth Records, Gender Reassignment, Frequently Asked Questions, Vital Records, IDPH, *available at* http://www.idph.state.il.us/vitalrecords/gender_faq.htm#gr (last visited April 20, 2011).

82. Defendant’s genital surgery requirement expands the requirements for gender changes well beyond the requirement of the VRA that an individual undergo “an operation” by reason of which “the sex designation on such person’s birth record should be changed.” 410 ILCS § 535/17(d). The ordinary and popularly understood meaning of “operation” includes “a surgical procedure.” The Merriam-Webster Dictionary 348 (11th ed. 2005). Alternatively, *Merriam-Webster Online Dictionary* defines “operation” as “a procedure performed on a living body usually with instruments especially for the repair of damage or the restoration of health.”¹ Medical professionals and researchers in the transgender health field define gender confirmation surgeries to include surgeries other than genital surgery as required by Defendant. Surgeons for Plaintiffs Grey, Williams, and Guarino concluded that the surgery performed on them was an operation that should result *in the change of the sex designation* on their birth certificates to their gender identity.

¹ *Available at* <http://www.merriam-webster.com/dictionary/operation> (last visited April 20, 2011).

83. For many years, Defendant interpreted and implemented Section 17 of the VRA as not requiring that all transsexual persons undergo genital surgery, an interpretation in which the Illinois General Assembly acquiesced by never amending the VRA to require genital surgery. Notwithstanding the many years that the Department of Vital Records applied the VRA to allow these transsexual persons to obtain accurate birth certificates without genital surgery, the Department in or about 2005 abruptly changed its practice and started refusing to provide birth certificates to transsexual persons who had not undergone such surgery. On January 14, 2011, the Illinois Register published a proposed new Section 500.43, which would require all transgender individuals born in Illinois to undergo genital surgery to change the sex designation on their birth certificate, formally codifying the Department's practices.

WHEREFORE, Plaintiffs Grey, Williams, and Guarino, on behalf of themselves and all others similarly situated, request the following relief:

(A) entry of a declaratory judgment that Defendant violates the Illinois Vital Records Act by refusing to issue birth certificates with the correct sex designation to Plaintiffs and members of the Plaintiff Class solely because they have not had genital surgery;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates to Plaintiffs and members of the Plaintiff Class, listing their correct sex designation;

(C) award of Plaintiffs' costs and expenses of this action; and

(D) entry of such other and further relief as deemed appropriate by the Court.

Count Two:
**Violation of Due Process –Plaintiffs Grey, Williams, and Guarino, on behalf
of themselves and all others similarly situated**

84. Plaintiffs Grey, Williams, and Guarino, on behalf of themselves and all others similarly situated, re-allege paragraphs 1-78, as though fully set forth herein.

85. Article I, § 2 of the Illinois Constitution provides that “No person shall be deprived of life, liberty or property without due process of law”

86. The due process clause of the Illinois Constitution protects the fundamental right to make decisions regarding one’s medical treatment, including the right to refuse unwanted treatment.

87. The Defendant burdens and imposes an unconstitutional condition on Plaintiffs’ fundamental right to make decisions regarding whether to undergo medical treatment, since the Defendant refuses to issue Plaintiffs birth certificates with the correct sex designation because Plaintiffs have not had the genital surgery that they do not want to have, places them at risk, and is not medically necessary for them.

88. There is no legally adequate justification for burdening Plaintiffs’ right to make decisions regarding whether to undergo medical treatment.

89. Defendant’s interpretation and administration of the VRA to refuse to grant birth certificates with the correct sex designation to Plaintiffs violates the due process clause in Article I, § 2 of the Illinois Constitution.

WHEREFORE, Plaintiffs Grey, Williams, and Guarino, on behalf of themselves and all others similarly situated, request the following relief:

(A) entry of a declaratory judgment that Defendant violates the due process clause in Article I, § 2 of the Illinois Constitution by refusing to issue birth certificates with the correct sex

designation to Plaintiffs and members of the Plaintiff Class solely because they have not had genital surgery;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates to Plaintiffs and members of the Plaintiff Class, listing their correct sex designation;

(C) award of Plaintiffs' costs and expenses of this action together with reasonable attorneys' fees pursuant to 740 ILCS § 23/5; and

(D) entry of such other and further relief as deemed appropriate by the Court.

Count Three:
**Violation of Privacy Right –Plaintiffs Grey, Williams, and Guarino, on behalf
of themselves and all others similarly situated**

90. Plaintiffs Grey, Williams, and Guarino, on behalf of themselves and all others similarly situated, re-allege 1-78, as though fully set forth herein.

91. Article I, § 6 of the Illinois Constitution provides that: “The people shall . . . be secure in their persons . . . against . . . unreasonable invasions of privacy”

92. Article I, § 12 of the Illinois Constitution provides that: “Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.”

93. The right to privacy protected by the Illinois Constitution, Article I, §§ 6 and 12, protects individual autonomy, including the right to make personal choices about whether to undergo medical treatment free from government interference.

94. The Defendant burdens and places an unconstitutional condition on Plaintiffs' fundamental right to make decisions regarding whether to undergo medical treatment, since the Defendant's policy prevents it from providing birth certificates with the correct sex designation to Plaintiffs, because they have not had genital surgery.

95. There is no legally adequate justification for burdening Plaintiffs' right to make decisions regarding whether to undergo medical treatment.

96. Defendant's interpretation and administration of the Act to refuse to grant birth certificates with the correct sex designation to Plaintiffs violates the privacy protections in Article I, §§ 6 and 12 of the Illinois Constitution.

WHEREFORE, Plaintiffs Grey, Williams, and Guarino, on behalf of themselves and all others similarly situated, request the following relief:

(A) entry of a declaratory judgment that Defendant violates Article I, §§ 6 and 12 of the Illinois Constitution by refusing to issue birth certificates with the correct sex designation to Plaintiffs and members of the Plaintiff Class solely because they have not had genital surgery;

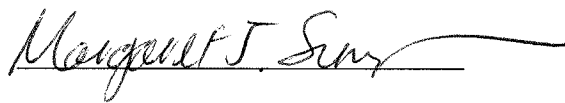
(B) entry of a permanent injunction ordering Defendant to grant new birth certificates to Plaintiffs and members of the Plaintiff Class, with their correct sex designation listed on them;

(C) award of Plaintiffs' costs and expenses of this action together with reasonable attorneys' fees pursuant to 740 ILCS § 23/5; and

(D) entry of such other and further relief as deemed appropriate by the Court.

May 10, 2011

Respectfully submitted,



One of Plaintiffs' attorneys

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