

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

VICTORIA KIRK and KARISSA ROTHKOPF, and	)	
RILEY JOHNSON,	)	
	)	
Plaintiffs,	)	No. 09-CH-3226
	)	Hon. Peter Flynn
v.	)	
	)	
DAMON T. ARNOLD, M.D. in his official capacity	)	
as State Registrar of Vital Records,	)	
	)	
Defendant.	)	
	)	

**MOTION FOR LEAVE TO AMEND THE COMPLAINT TO ADD  
ADDITIONAL PLAINTIFFS AND CLASS ALLEGATIONS**

Plaintiffs Victoria Kirk, Karissa Rothkopf, and Riley Johnson, by and through their attorneys, respectfully move this Court for leave to file an amended complaint against Defendant Damon T. Arnold, in his official capacity, in the above referenced case. In support of his motion, Plaintiffs state as follows:

1. On January 27, 2009, Plaintiffs filed a complaint for declaratory and injunctive relief in the above captioned action.
2. On April 7, 2009, Plaintiffs filed an amended complaint against Defendant to add an additional plaintiff and additional claims related to the statute and policies at issue in this case.
3. On June 26, 2009, Defendants moved pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure to dismiss Plaintiffs' First Amended Complaint on the grounds of mootness.
4. Plaintiffs oppose that motion, because Defendant failed to provide a supporting affidavit and because the public interest exception to mootness applies to Plaintiffs' claims.

Plaintiffs demonstrate in their response that numerous other persons have been harmed by the same two practices on which Defendant based its denial of birth certificates to them. Plaintiffs seek to name two of those persons as additional plaintiffs in their Second Amended Complaint. Like Plaintiffs Victoria Kirk and Karissa Rothkopf, Pamela Anders has been unable to obtain a birth certificate with the correct gender on it because she chose a surgeon who was not licensed in the United States. Like Plaintiff Riley Johnson, Victor Williams has been denied a birth certificate with the correct gender listed on it, because he has not had genital reconstruction surgery. In addition, Plaintiffs name in their Second Amended Complaint two putative classes of persons affected by the practices challenged in this case. Granting this Motion for Leave to Amend the Complaint would best serve the interest of judicial efficiency by allowing these issues to be decided for all persons similarly situated to Plaintiffs and the two new plaintiffs named here.

5. The Illinois Code of Civil Procedure provides, “At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert it.” 735 ILCS 5/2-616(a).

6. In Illinois, courts are encouraged to freely and liberally allow the amendment of pleadings. *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 467 (1992) (affirming trial court’s decision to permit plaintiff to amend complaint immediately prior to closing argument). As the Illinois Supreme Court noted, “[a]mong the factors to be considered in determining whether or

not to permit an amendment to the pleadings are whether the amendment would cure a defect in the pleadings; whether the other party would be prejudiced or surprised by the proposed amendment; timeliness of the proposed amendment; and whether there were previous opportunities to amend the pleadings." *Id.* at 467-68.

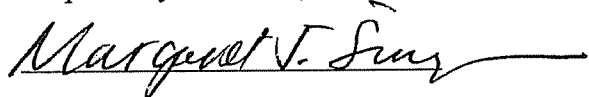
7. There will be no prejudice to Defendant if Plaintiffs are granted leave to amend, as discovery has not yet begun and the Court has yet to issue a dispositive ruling. Moreover, this Amended Complaint may cure any defects that Defendant has complained of in its Motion to Dismiss.

8. The proposed Second Amended Complaint is attached as Exhibit A to this motion.

WHEREFORE, for the foregoing reasons, Plaintiffs pray that this Court grant this Motion for Leave to Amend Complaint.

August 3, 2009

Respectfully submitted,



One of Plaintiffs' attorneys

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# EXHIBIT A

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

VICTORIA KIRK, KARISSA ROTHKOPF, and	)	
RILEY JOHNSON, individually, PAMELA	)	
ANDERS, on behalf of herself and all persons	)	
similarly situated, and VICTOR WILLIAMS, on	)	No. 09-CH-3226
behalf of himself and all persons similarly situated,	)	Hon. Peter Flynn
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DAMON T. ARNOLD, M.D. in his official capacity	)	
as State Registrar of Vital Records,	)	
	)	
Defendant.	)	
	)	

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

Victoria Kirk, Karissa Rothkopf, and Riley Johnson, individually, and Pamela Anders, on behalf of herself and all persons similarly situated, and Victor Williams, on behalf of himself 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 the following provisions of the Illinois Constitution: Article I, § 2 (the rights to equal protection and due process) and Article I, §§ 6 and 12 (the right to privacy).

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 have transitioned

from the sex they were assigned at birth to the sex that matches their gender identity, male to female (Victoria Kirk, Karissa Rothkopf, Pamela Anders) or female to male (Riley Johnson, Victor Williams).

3. Defendant is the State Registrar of Vital Records who is responsible for administering the Vital Records Act (VRA).

4. When an individual who was born in Illinois has a form of gender confirmation surgery, Defendant routinely changes the gender marker on Illinois birth certificates so that the certificates accurately reflect the person's gender identity.

5. Nevertheless, Defendant currently maintains or may re-institute a practice of refusing to make such changes for persons who have chosen to have their gender confirmation surgeries performed by doctors licensed in another country, rather than in Illinois or in another state of the United States.

6. In addition, Defendant maintains a practice of refusing to make such changes for female-to-male transsexuals who have had gender confirmation surgery or surgeries but have not had a specific type of surgery – “surgery to attempt to create/attach/form a viable penis.”

7. Denying Plaintiffs accurate birth certificates makes it impossible for them to conform all aspects of their lives to their gender identities as is required to comply with the standard of care for transsexual medical treatment.

8. Denying Plaintiffs accurate birth certificates places them at risk of physical or emotional harm if their identities as transsexuals are disclosed to persons who did not know they are transsexual or who harbor hostility towards transsexuals.

9. It is psychologically and emotionally harmful for Plaintiffs to have government-issued birth certificates that identify them by the wrong gender.

10. Plaintiffs Kirk, Rothkopf, and Anders seek a declaration that Defendant's practice of refusing to change the gender on birth certificates for persons like them who have chosen to have their gender confirmation surgeries performed by doctors licensed in other countries, rather than in Illinois or in another state of the United States, violates the VRA, because nothing in that Act requires surgery by a U.S.-licensed doctor before a change in the gender marker on a birth certificate is allowed. They also seek an injunction ordering Defendant to issue Plaintiff Anders and all persons similarly situated accurate birth certificates pursuant to the same procedures by which Defendant issues accurate birth certificates to persons whose surgery was performed by a U.S.-licensed doctor.

11. In the alternative, Plaintiffs Kirk, Rothkopf, and Anders seek a declaration that the VRA, as interpreted and administered by Defendant, violates the equal protection, due process, and privacy protections found in the Illinois Constitution, and an injunction ordering Defendant to issue Plaintiffs Anders and all persons similarly situated accurate birth certificates pursuant to the same procedures by which Defendant issues accurate birth certificates to persons whose surgeries were performed by U.S.-licensed doctors.

12. Defendant's interpretation of the VRA violates equal protection because, without justification, it treats Plaintiffs Kirk, Rothkopf, and Anders differently from other transsexual persons based on Plaintiffs' choice of surgeons. The distinction drawn by Defendant is arbitrary and fails to rationally further any legitimate state interest.

13. Defendant's interpretation of the VRA also violates Plaintiffs Kirk, Rothkopf, and Anders' due process and privacy rights, without justification, by burdening their right to make decisions about their medical care, including what surgeons to use for their gender confirmation surgeries. Defendant places an unconstitutional burden on those rights by preventing Plaintiffs

from obtaining birth certificates that accurately reflect their genders solely because they chose surgeons who are licensed abroad rather than in Illinois or another state of the United States.

14. Plaintiffs Johnson and Williams seek a declaration that Defendant's practice of refusing to change their genders on their birth certificates violates the VRA, because nothing in the Act requires surgery to create a "viable" penis before a change in the gender marker on a birth certificate from female to male is allowed. Plaintiffs also seek an injunction ordering Defendant to issue Plaintiff Williams and all others similarly situated accurate birth certificates.

15. In the alternative, Plaintiffs Johnson and Williams seek a declaration that the VRA, as interpreted and administered by Defendant, violates the due process and privacy protections found in the Illinois constitution, and an injunction ordering Defendant to issue Plaintiff Williams and all others similarly situated accurate birth certificates.

16. Defendant's interpretation of the VRA violates Plaintiffs Johnson and Williams' due process and privacy rights by, without justification, burdening their right to refuse surgery that they do not want to have, is not medically necessary for them, is extremely risky, and is not effective treatment for them. Plaintiffs have no medical need for surgery to create a penis, and their gender identity disorders have been successfully treated without such surgery. Further, their transitions to the male gender are complete. Defendant places an unconstitutional burden on Plaintiffs by preventing them from obtaining birth certificates that accurately list their genders as male solely because they have not undergone surgery to create a penis, even though they have completed other medical treatments, including hormone therapy, a bilateral mastectomy, and a hysterectomy, that have aligned their bodies to their male gender identities.

### **Relief**

17. Plaintiffs seek declaratory and injunctive relief to ensure that Plaintiff Anders and all others similarly situated are afforded their rights under the VRA, or alternatively, that their rights to equal treatment under the law and their due process and privacy rights to make their own decisions about medical care are fully respected. Plaintiffs also seek declaratory and injunctive relief to ensure that Plaintiff Williams and all others similar situated are afforded their rights under the VRA, or alternatively, that their due process and privacy rights to personal inviolability are respected.

### **Jurisdiction**

18. 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**

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

### **The Plaintiffs**

20. Plaintiff Victoria Kirk lives in Chicago, Illinois and was born in Aurora, Illinois in 1980. 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.

21. Victoria has a medical condition termed gender identity disorder, which means that her female gender identity does not match the sex she was assigned at birth and that this conflict causes her severe psychological distress and intense feelings of discomfort. Under the

care and direction of mental health professionals and physicians, Victoria underwent sex reassignment as treatment for her gender identity disorder.

22. Victoria first took sex reassignment steps to make her body and her gender expression conform to her female gender identity in 2003. She began hormone therapy in or around February 2003, and in August 2005, she legally changed her name to a traditionally female one and also changed the name on her driver's license and social security records. In September 2005, Victoria's name was changed on her birth certificate and in her school records, and she started to dress and present full-time as a woman. In November 2006, she underwent gender confirmation surgeries, including both genital reconstruction and breast augmentation.

23. Plaintiff Karissa Rothkopf lives in a small town in southern Wisconsin, but was born in Dixon, Illinois in 1972 and spent her childhood years in Rockford, Illinois. 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.

24. Karissa has a medical condition termed gender identity disorder, which means that her female gender identity does not match the sex she was assigned at birth and that this conflict causes her severe psychological distress and intense feelings of discomfort. Under the care and direction of mental health professionals and physicians, Karissa underwent sex reassignment as treatment for her gender identity disorder.

25. Karissa first took sex reassignment steps to make her body and her gender expression conform to her female gender identity in 2003. She began hormone therapy for sex reassignment in 2003 and started to dress and present herself at all times as a woman in March 2007. In April 2007, Karissa changed her name to a traditionally female one and changed her name and gender marker on her driver's license and social security records. In August 2007, she

changed the name on her birth certificate. She underwent breast augmentation surgery along with various feminizing procedures on her face and neck in October 2007. In November, Karissa changed her name and gender on her passport, and in December 2007, she had genital reconstruction surgery.

26. Plaintiff Pamela Anders lives in Phoenix, Arizona and was born in Chicago, Illinois in 1949. 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.

27. Pamela has a medical condition termed gender identity disorder, which means that her female gender identity does not match the sex she was assigned at birth and that this conflict causes her severe psychological distress and intense feelings of discomfort. Under the care and direction of mental health professionals and physicians, Pamela underwent sex reassignment as treatment for her gender identity disorder.

28. Pamela first took sex reassignment steps to make her body and her gender expression conform to her female gender identity in 2004. She began hormone therapy in or around April of 2004, legally changed her name to a traditionally female one in April 2005, and in May 2005 changed the name on her driver's license and social security records to her female name and began to dress and present full-time as a woman. In or around June 2006, Pamela changed the name in her passport and the gender on her driver's license. From June 2005 until December 2008, Pamela underwent various feminizing surgeries on her face and neck, and in January 2008 she completed genital reconstruction surgery. Pamela changed the gender on her passport and in her social security records in February 2008.

29. Plaintiff Riley Johnson lives in Chicago, Illinois and was born in Galesburg, Illinois in 1979. 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.

30. Riley has a medical condition called gender identity disorder, 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, Riley underwent sex reassignment as treatment for his gender identity disorder.

31. Riley first took sex reassignment steps to make his body and his gender expression conform to his male gender identity in 2000, when he began to bind his breasts to masculinize his appearance. In January 2003, Riley changed his name to a traditionally male one and changed his name on his driver's license and social security cards. He started to dress and present himself at all times as a man in February 2003. He began hormone therapy for sex reassignment in April 2003, had a bilateral mastectomy in December 2003, and underwent a hysterectomy three months later in March 2004. In June 2004, Riley changed the gender marker on his driver's license. In December 2008, Riley was issued a passport reflecting both the correct name and gender marker; and in March 2009, the gender was changed in his social security records. Riley has completed all sex reassignment treatment that has been prescribed for him. Riley has no medical need for additional reassignment treatment and his transition to male is complete.

32. 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.

33. Victor has a medical condition called gender identity disorder, 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, Victor underwent sex reassignment as treatment for his gender identity disorder.

34. Victor first took sex reassignment steps to make his body and his gender expression conform to his male gender identity in 2005. In October 2005, he began taking hormone therapy for sex reassignment, and in December 2005 he had a bilateral mastectomy. In April 2006, Victor changed his name to a traditionally male one and changed the name and gender marker on his driver's license. He changed his name and gender marker in his social security records in February 2008. Victor has completed all sex reassignment treatment that has been prescribed for him. Victor has no medical need for additional reassignment treatment and his transition to male is complete.

#### **Plaintiff Choice-of-Surgeon Class**

35. Pamela Anders brings this action for declaratory and injunctive relief on her own behalf and on behalf of all others similarly situated pursuant to 735 ILCS § 5/2-801. The Plaintiff Choice-of-Surgeon Class consists of:

All transsexual persons who are, or in the future will be, unable to obtain an Illinois birth certificate with the correct gender listed on it because of Defendant's practice of refusing to issue birth certificates with the correct gender listed on them to persons whose gender confirmation surgery was, or surgeries were, performed by doctors licensed in another country, rather than in Illinois or another state of the United States.

36. The Plaintiff Choice-of-Surgeon Class satisfies the requirements of 735 ILCS 5/2-801 in that:

(a) Joinder of all members is impracticable, since there are numerous transsexual persons born in Illinois who have chosen or will choose a surgeon for their gender confirmation surgery who is not licensed in the United States 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 practice of refusing to issue birth certificates with the correct gender listed on them to persons whose gender confirmation surgery was, or surgeries were, performed by doctors licensed in another country, rather than in Illinois or another state of the United States, violates the VRA and various provisions of the Illinois Constitution.

(c) The representative party will fairly and adequately protect the interests of the class. The named Plaintiff has no interest antagonistic to the class. She seeks 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 Choice-of-Surgeon Class. Plaintiff is 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 practice. A class action is far more appropriate than piecemeal litigation of the statutory and constitutional questions raised in this Complaint.

#### **Plaintiff Type-of-Surgery Class**

37. Victor Williams brings this action for declaratory and injunctive relief on his own behalf and on behalf of all others similarly situated pursuant to 735 ILCS § 5/2-801. The Plaintiff Type-of-Surgery Class consists of:

All female-to-male transsexual persons who are, or in the future will be, unable to obtain an Illinois birth certificate with the male gender listed on it because of Defendant's practice of refusing to issue birth certificates with the correct gender listed on them to female-to-male transsexual persons who have had gender confirmation surgery or surgeries but have not had "surgery to attempt to create/attach/form a viable penis."

38. The Plaintiff Type-of-Surgery Class satisfies the requirements of 735 ILCS 5/2-801 in that:

(a) Joinder of all members is impracticable, since there are numerous female-to-male transsexual persons born in Illinois who have had gender confirmation surgery or surgeries but have not had "surgery to attempt to create/attach/form a viable penis" 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 practice of refusing to issue birth certificates with the correct gender listed on them to female-to-male transsexual persons who have had gender confirmation surgery or surgeries but have not had "surgery to attempt to create/attach/form a viable penis" violates the VRA and various provisions of the Illinois Constitution.

(c) The representative party will fairly and adequately protect the interests of the class. The named Plaintiff has no interest antagonistic to the class. He seeks 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 Type-of-Surgery Class. Plaintiff is 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 practice. A class action is far more appropriate than piecemeal litigation of the statutory and constitutional questions raised in this Complaint.

#### **The Defendant**

39. Defendant Damon T. Arnold is the Director of the Illinois Department of Public Health and the State Registrar of Vital Records, whose 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. Gender identity disorder is a medically recognized condition in which a person's gender identity does not match his or her anatomical sex at birth and the conflict between the person's gender identity and anatomy causes severe psychological distress and intense feelings of discomfort. This psychological distress and discomfort is called gender dysphoria.

41. "Gender identity" is a person's internal personal identification as a man or a woman. It is distinct from sexual orientation in that it does not involve or dictate to whom an individual is romantically, emotionally, and physically attracted.

42. Medical specialists in gender identity agree that gender identity establishes itself very early – sometimes as early as three years of age – and is not the result of conscious choice.

43. A person's gender identity cannot be changed. In the past, some therapists tried to "cure" people with gender identity disorder 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.

44. The term "transsexual" describes persons, such as the Plaintiffs, who have the most severe form of gender identity disorder. 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 made up 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.

45. Standards of care have been established for administering sex reassignment treatment to patients with gender identity disorder based on decades of clinical experience and a substantial body of research. Sex reassignment is treatment that changes a person's physical anatomy, behavior, clothing, and other manifestations of gender from the gender he or she was assigned at birth to the one that fits his or her gender identity. Changing a person's legal name and correcting the gender and name on one's identity documents are parts of sex reassignment treatment.

46. It is the standard of care to treat gender identity disorder 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.

47. 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.

48. 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.

49. 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.

50. 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 women is a part of the real-life experience.

51. It is the standard of care to require someone to complete a full year of continuous hormone therapy and continuous real-life experience, among other requirements, prior to genital reconstruction surgery.

52. 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 her to vote, to travel, or to enter buildings; or to gain access to other government services or employment benefits.

53. Plaintiffs have been able to obtain government identity documents listing the correct gender without having corrected birth certificates. However, transsexual persons born in Illinois who now live in states such as Virginia are unable to even correct the gender on their driver's licenses, because those states require an amended birth certificate before changing the gender on a transgender person's driver's license.

54. Identity documents listing a gender that fails to match up to one's current 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.

**Gender Identity Disorder Treatment for Female-to-Male Transsexuals**

55. There are differences in the standard of care for gender confirmation surgeries for female-to-male transsexuals ("transsexual males") as compared to male-to-female transsexuals ("transsexual females"). In comparison to the importance genital reconstruction surgery plays in the treatment of many transsexual females, a mastectomy procedure is usually the first and most important surgical treatment provided to males because it allows them to present successfully as men. Transsexual males also often complete a hysterectomy to remove their female reproductive organs, but they rarely have the genital reconstruction surgery required by Defendant's practice. Most transsexual males resolve, or at least minimize, their gender dysphoria without having this surgery.

56. The fact that none of the surgical techniques currently available for creating a penis is fully satisfactory is at least part of the reason why genital surgery is so rarely offered as treatment for gender identity disorder for transsexual males. One procedure for creating a penis, a phalloplasty, requires several separate stages of surgery, often results in complications that require additional operations, and always results in significant donor-site scarring. The other form of genital surgery, the metoidioplasty, creates a microphallus that fails to conform closely enough to the typical male anatomy to be an effective treatment for many transsexual males.

57. The lack of fully satisfactory genital surgery options is evidenced by the small number of transsexual men having the surgery. One study reported that only three percent of the transsexual males studied had had genital surgery, only sixteen percent were planning to do so,

and twenty-nine percent had decided definitely not to have it. K. Rachlin, "Transgender Individuals' Experiences of Psychotherapy," *Int'l J. of Transgenderism*, Vol. 6, No. 1 (2002).

**Victoria Kirk**

58. Victoria Kirk extensively researched possible surgeons to perform her genital reconstruction surgery and breast augmentation by reviewing their credentials and photos of their patients' surgical results. Different surgeons offer diverse techniques, and a particular technique may offer some persons a better result or reduce the risks of the surgery. Additionally, Victoria communicated with many other transsexual women about their satisfaction with particular surgeons and the results they were able to achieve. Finally, she spoke to her therapist about her decision.

59. Victoria chose Dr. Suporn Watanyusakul because she concluded that his technique would achieve the most anatomically correct result for her with the least amount of scarring. She also preferred his practice of completing genital reconstruction surgery in one step, as opposed to the two-step process other surgeons followed.

60. Dr. Suporn is licensed by the Medical Council of Thailand; but he is not licensed in any state of the United States.

61. Prior to filing this action, Victoria had been permitted to change the gender on all of her government-issued identity documents to accurately reflect her female gender identity, except for her birth certificate. The governmental agencies that have allowed her to correct her documents include the United States Social Security Administration, the United States Department of State, and the Illinois Secretary of State.

62. Victoria completed a certificate in digital animation in September 2005 and has worked as a web developer and animator for the past eight years in Raleigh, North Carolina,

Tampa, Florida and the Chicago area. In her work and all other aspects of her life, Victoria has lived fully as a woman for more than three years, since September 2005.

63. Victoria received a birth certificate with her correct gender listed on it after filing this lawsuit. However, for the public interest, she seeks a declaration that Defendant's denial of birth certificates to transsexual persons who, like her, chose a surgeon for their gender confirmation surgery who was licensed in another country, rather than in Illinois or another state, violates the Vital Records Act or the Illinois Constitution.

**Karissa Rothkopf**

64. Karissa Rothkopf extensively researched possible surgeons to perform her genital reconstruction surgery by reviewing their credentials and photos of their patients' surgical results.

65. Karissa communicated with surgeons and their staff about their techniques and recommendations for her, and she asked a number of transsexual women about their satisfaction with particular surgeons and the results they were able to achieve. Finally, she spoke to her physician and therapist about her decision.

66. Karissa chose Dr. Suporn Watanyusakul, because she believed, based on her research, that his surgical procedure was the most effective technique for her.

67. Prior to filing this lawsuit, Karissa had 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 United States Social Security Administration, the United States Department of State, and the Wisconsin Department of Transportation.

68. Karissa has a master's degree in business administration and is a Supervisor/Project Leader at a large non-profit health care provider in Wisconsin, where she and the six employees she supervises maintain the medical records computer system for all the hospitals owned by her employer. Since March 2007, Karissa has presented full-time at work and in all other aspects of her life as a woman.

69. Karissa lost health insurance coverage for approximately \$10,000 in health care expenses because she was unable to get a birth certificate with her female gender on it. Her employer had a policy that the gender reflected in an employment record would not be changed from what it was when the employee started work unless the employee presented a birth certificate showing the new gender. Because her employer's insurance coverage for certain medical expenses requires that she be classified in her employment records as a woman, Karissa was required to repay bills for previous years of medical treatments, such as hormone level blood tests, because she was unable to present a birth certificate to prove that she is female.

70. Finally, after numerous complaints from Karissa to her employer, the employer changed the proof of her female gender that it required her to show, and her insurer paid for the medical expenses it had previously rejected. However, Karissa lost the use and benefit of the money she used to pay for uninsured medical expenses until her employer's policy was changed. In addition, Karissa's credit rating was seriously damaged because of the delay in payment of these medical bills and that harm continues to the present.

71. Karissa received a birth certificate with her correct gender listed on it after filing this lawsuit. However, for the public interest, she seeks a declaration that Defendant's denial of birth certificates to transsexual persons who, like her, chose a surgeon for their gender

confirmation surgery who was licensed in another country, rather than in Illinois or another state, violates the Vital Records Act or the Illinois Constitution.

**Riley Johnson**

72. Riley Johnson considered possible gender confirmation surgeries in depth. For him, the most important surgery to assist in resolving his gender dysphoria was a mastectomy, because having breasts made it extremely difficult for Riley to pass as male in public and conflicted, even in the privacy of his home, with Riley's core understanding of who he is. Riley also completed a hysterectomy, in part, to further masculinize his body.

73. Riley extensively researched the available surgical techniques to create a penis. After careful consideration of the available surgical options and the risks and costs associated with these surgeries, Riley concluded that he did not desire or need genital surgery to resolve his gender dysphoria.

74. Riley has also been examined by a psychologist and expert in the treatment of gender identity disorder who has concluded that Riley has no medical need for genital reconstructive surgery as treatment for his gender identity disorder, that he has completed all reassignment treatment that is medically necessary for him, and that his reassignment to the male gender is complete.

75. Prior to filing this lawsuit, Riley had 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, the United States Department of State, and the Illinois Secretary of State.

76. Riley lives his life fully as a man. He has obtained a bachelor's degree in Sociology and Anthropology from Knox College and is currently completing his master's degree at DePaul University. Riley also works full-time at DePaul, where he assists with the administration of their undergraduate core curriculum. He is the co-founder of Trans Gynecology Access Program (TGAP), a social service provider in Chicago for transsexual males and other gender variant individuals.

77. Riley received a birth certificate with his correct gender listed on it after filing this lawsuit. However, for the public interest, he seeks a declaration that Defendant's denial of birth certificates to female-to-male transsexual persons who, like him, have had gender confirmation surgery or surgeries but have not had a specific type of surgery -- "surgery to create/attach/form a viable penis" -- violates the Vital Records Act or the Illinois Constitution.

#### **Pamela Anders**

78. Pamela Anders researched possible surgeons to perform her genital reconstruction surgery by reviewing their credentials and photos of their patients' surgical results. Different surgeons offer diverse techniques, and a particular technique may offer some persons a better result or reduce the risks of the surgery. Additionally, Pamela communicated with many other transsexual women to learn about the qualifications of particular surgeons, including the surgeon she eventually chose.

79. Pamela chose Dr. Patcharapong Patrasinsuntorn, because she concluded that he would be able to safely provide her with the surgical results she desired at a reasonable cost.

80. Dr. Patrasinsuntorn is licensed by the Medical Council of Thailand, but he is not licensed in any state of the United States.

81. Pamela has been permitted to change the gender on all of her government-issued identity documents to accurately reflect her female gender identity, except for her birth certificate and her veteran's identification. The governmental agencies that have allowed her to correct her documents include the United States Social Security Administration, the United States Department of State, and the California Department of Motor Vehicles.

82. Pamela's birth certificate still lists her gender as male, despite her transition, her surgeries, and the change in the gender marker on her other government documents.

83. After twenty years working in various media and journalism positions and three years working as a truck driver, Pamela completed a degree in paralegal studies in December 2008 and has worked as a paralegal since then. In her work and all other aspects of her life, Pamela has lived fully as a woman for more than four years, since May 2005.

84. Pamela's current birth certificate fails to reflect who she is. She wants and needs the sex designation on her birth certificate to match her body and mind. Moreover, she has seen how much more restrictive the government has become about identity documents since September 11<sup>th</sup>, so she is concerned that, unless her birth certificate is corrected, more invasive and restrictive laws or government practices in the future may prevent her from obtaining a renewed passport or driver's license with her correct gender on it, or may make her inaccurate birth certificate more accessible to strangers. She reasonably fears the embarrassment and potential for violence that may result from being forced to show an identity document which identifies her as male.

85. Pamela knows how harmful it can be to have to show an identity document that lists her gender as male, since she had great difficulty finding work during the period when all or most of her government identification documents failed to match her gender expression and, as a

result, has avoided even applying for jobs with employers who told her they would require her to produce a birth certificate before being hired. It is psychologically and emotionally harmful for Pamela to have a government-issued birth certificate that states incorrectly that she is male.

### Victor Williams

86. Victor Williams considered possible gender confirmation surgeries in depth. After considering the results that can be achieved through available surgical techniques, Victor decided that the only surgery that would assist him in resolving the confusion caused by the disparity between his gender identity and his body was a bilateral mastectomy, because having breasts made it extremely difficult for Victor to pass as male in public and conflicted, even in the privacy of his home, with Victor's core understanding of who he is.

87. Victor extensively researched through conversations with medical professionals and with other female-to-male transsexuals the surgical techniques that are available to create a penis. After careful consideration of his options and the risks and costs associated with these surgeries, Victor concluded that he did not desire or need genital surgery to resolve his gender dysphoria.

88. Victor 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, 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.

89. Victor lives his life fully 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.

90. Victor's current birth certificate fails to reflect who he is. He wants and needs the sex designation on his birth certificate to match his body and mind. He is concerned that having a birth certificate that incorrectly identifies him as female will prevent him from changing the gender marker on other government documents, such as a passport, and that this could affect his ability to travel or to access certain government services and employment benefits. He fears the embarrassment and potential for violence that may result from being forced to show an identity document which identifies him as female.

91. It is psychologically and emotionally harmful for Victor to have a government-issued birth certificate that states incorrectly that he is female.

#### **The Illinois Vital Records Act**

92. The State of Illinois establishes laws governing vital records for persons born in Illinois. It has set out in the Vital Records Act (VRA), 410 ILCS § 535/17, a process for obtaining a new sex designation on a birth certificate. Under the VRA, the State Registrar of Vital Records shall establish a new certificate of birth when the Registrar receives an affidavit from a physician providing that he or she has performed an operation on a person, and that by reason of the operation, the sex designation on such person's birth records should be changed. *Id.* at § 535/17(1)(d). After the new certificate is established, the new certificate is substituted for the original certificate of birth. *Id.* at § 535/17(2).

93. The VRA defines physician as "a person licensed to practice medicine in Illinois or any other State." *Id.* at § 535/1(9).

94. 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.

95. He submitted to the Office of Vital Records a letter from the surgeon who performed his bilateral mastectomy concluding that Victor's sex designation on his birth certificate should be changed to male.

96. Notwithstanding the letter from the surgeon who performed his gender confirmation surgery, his request for an accurate birth certificate was denied solely because Victor had not had genital surgery:

97. Plaintiff Pamela Anders has not applied for a new birth certificate, because she believes that doing so will be futile because of Defendant's practice of refusing to provide birth certificates with the correct gender listed on them to persons who chose a surgeon licensed in another country, rather than in Illinois or another state of the United States.

#### **Harm to Plaintiffs**

98. Plaintiffs have suffered 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 Kirk and Rothkopf, in the public interest, and Plaintiff Anders, on behalf of herself and the Choice-of-Surgeon Plaintiff Class**

99. Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders, on behalf of herself and the Choice-of-Surgeon Plaintiff Class, re-allege paragraphs 1-13, 17-28, 35-36, 39-54, 58-71, 78-85, 92, and 97-98 as though fully set forth herein.

100. The VRA states that “[a]s used in this Act, unless the context otherwise requires: . . . ‘Physician’ means a person licensed to practice medicine in Illinois or any other State.” 410 ILCS § 535/1. It does not define the term “State.”

101. The ordinary and popularly understood meaning of “state” is “[t]he political system of a body of people who are politically organized.” Black’s Law Dictionary 1443 (8th ed. 2004). Alternatively, “state” is defined as “a body of people occupying a territory and organized under one government” or “one of the constituent units of a nation having a federal government.” The Merriam-Webster Dictionary 480 (11th ed. 2005).

102. Other Illinois statutes have explicitly defined “state” to include foreign countries, *see, e.g.*, 35 ILCS § 5/1501(22) and 750 ILCS § 22/102, including Illinois statutes that address licensing requirements for physicians, 225 ILCS § 60/22(A)(34); podiatrists, *id.* at § 100/24(29); and nurses, *id.* at § 65/70-5(16).

103. With the exception of § 535/17(1)(d) of the VRA, the provision at issue here, all other uses of the word “physician” in the VRA refer to an event, such as a birth or death, that took place in the State of Illinois. In contrast, the change of a gender marker allowed by § 535/17(1)(d) may take place anywhere where there is a surgeon with the specialized expertise to complete some type of gender confirmation surgery.

104. For many years Defendant interpreted Section 17 of the VRA to allow physicians licensed in foreign countries to complete the required affidavit, an interpretation in which the Illinois General Assembly acquiesced. Notwithstanding the many years that the Department of Vital Records applied the VRA to allow physicians licensed in foreign countries to sign the affidavit, the Department abruptly changed its practice and started refusing to accept such affidavits in or about 2005.

105. Section 17 of the VRA is a remedial statute that should be construed liberally to fulfill its purposes and should, therefore, be read to allow physicians licensed in foreign countries to complete the required affidavit.

WHEREFORE, Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders on behalf of herself and the Choice-of-Surgeon Plaintiff Class, request the following relief:

(A) entry of a declaratory judgment that Defendant violates the Illinois Vital Records Act by refusing to issue a birth certificate with the correct gender listed on it to Plaintiffs because they chose a surgeon for some of their gender confirmation surgeries who is licensed in a foreign state rather than in a state of the United States;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates with their correct gender listed on them to Plaintiff Anders and members of the Choice-of-Surgeon Plaintiff Class pursuant to the same procedures by which persons whose surgeon was licensed in the United States are able to receive new birth certificates with the correct gender listed on them;

(C) entry of a permanent injunction ordering Defendant to allow persons who chose to have their gender confirmation surgeries performed by doctors licensed in another country, rather than Illinois or another state of the United States, to follow the same procedure for correcting the gender on their birth certificates that is offered to persons whose surgeon is licensed in the United States;

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

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

**Count Two:**  
**Violation of Equal Protection – Plaintiffs Kirk and**  
**Rothkopf, in the public interest, and Plaintiff Anders, on behalf**  
**of herself and the Choice-of-Surgeon Plaintiff Class**

106. Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders, on behalf of herself and the Choice-of-Surgeon Plaintiff Class, re-allege paragraphs 1-13, 17-28, 35-36, 39-54, 58-71, 78-85, 92, and 97-98 as though fully set forth herein.

107. Article I, § 2 of the Illinois Constitution provides that “No person shall . . . be denied the equal protection of the laws.”

108. Defendant will issue a new birth certificate with a corrected gender marker only to persons whose surgeon for their gender confirmation surgeries was licensed in Illinois or another state of the United States.

109. There is no legally adequate justification for the denial of an accurate birth certificate to persons whose surgeon for their gender confirmation surgeries was not licensed in Illinois or another state of the United States.

110. The Vital Records Act, or, in the alternative, Defendant’s interpretation and administration of the Act to refuse to grant birth certificates with the correct gender on them to Plaintiffs, violates the equal protection clause in Article I, § 2 of the Illinois Constitution.

WHEREFORE, Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders on behalf of herself and the Choice-of-Surgeon Plaintiff Class, request the following relief:

(A) entry of a declaratory judgment that Defendant violates the equal protection clause in Article I, § 2 of the Illinois Constitution by refusing to issue a birth certificate with the correct gender listed on it to Plaintiffs because they chose a surgeon for some of their gender confirmation surgeries who is licensed in a foreign state rather than in a state of the United States;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates with their correct gender listed on them to Plaintiff Anders and members of the Choice-of-Surgeon Plaintiff Class pursuant to the same procedures by which persons whose surgeon was licensed in the United States are able to receive new birth certificates with the correct gender listed on them;

(C) entry of a permanent injunction ordering Defendant to allow persons who chose to have their gender confirmation surgeries performed by doctors licensed in another country, rather than Illinois or another state of the United States, to follow the same procedure for correcting the gender on their birth certificates that is offered to persons whose surgeon is licensed in the United States;

(D) award of Plaintiffs' costs and expenses of this action as well as reasonable attorneys' fees pursuant to 740 ILCS § 23/5; and

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

**Count Three:**  
**Violation of Due Process – Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders, on behalf of herself and the Choice-of-Surgeon Plaintiff Class**

111. Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders, on behalf of herself and the Choice-of-Surgeon Plaintiff Class re-allege paragraphs 1-13, 17-28, 35-36, 39-54, 58-71, 78-85, 92, and 97-98 as though fully set forth herein.

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

113. The due process clause of the Illinois Constitution protects the fundamental right to make decisions regarding one's medical treatment.

114. Defendant burdens Plaintiffs' fundamental right to make decisions regarding their medical treatment, since he refuses to issue them birth certificates with the correct gender listed on them because they chose surgeons who are not licensed in Illinois or another state of the United States.

115. There is no legally adequate justification for burdening Plaintiffs' right to make decisions regarding their medical treatment.

116. The Vital Records Act, or, in the alternative, Defendant's interpretation and administration of the Act to refuse to grant birth certificates with the correct gender on them to Plaintiffs, violates the due process clause in Article I, § 2 of the Illinois Constitution.

WHEREFORE, Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders on behalf of herself and the Choice-of-Surgeon Plaintiff Class, 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 gender listed on them to Plaintiffs because they chose a surgeon for some of their gender confirmation surgeries who is licensed in a foreign state rather than in a state of the United States;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates with their correct gender listed on them to Plaintiff Anders and members of the Choice-of-Surgeon Plaintiff Class pursuant to the same procedures by which persons whose surgeon was licensed in the United States are able to receive new birth certificates with the correct gender listed on them;

(C) entry of a permanent injunction ordering Defendant to allow persons who chose to have their gender confirmation surgeries performed by doctors licensed in another country, rather than Illinois or another state of the United States, to follow the same procedure for correcting the gender on their birth certificates that is offered to persons whose surgeon is licensed in the United States;

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

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

**Count Four:**

**Violation of Privacy Right – Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders, on behalf of herself and the Choice-of-Surgeon Plaintiff Class**

117. Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders, on behalf of herself and the Choice-of-Surgeon Plaintiff Class, re-allege paragraphs 1-13, 17-28, 35-36, 39-54, 58-71, 78-85, 92, and 97-98 as though fully set forth herein.

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

119. 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."

120. 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 one's own medical treatment free from government interference.

121. Defendant burdens Plaintiffs' privacy right to make decisions regarding their medical treatment, since he refuses to issue them birth certificates with the correct gender listed

on them because they chose a surgeon who is not licensed in Illinois or another state of the United States.

122. There is no legally adequate justification for burdening Plaintiffs' right to make decisions regarding their medical treatment, especially since Plaintiffs have provided affidavits from U.S.-licensed physicians certifying that their gender confirmation surgeries have been performed and that their sex designation should be changed accordingly.

123. The Vital Records Act, or, in the alternative, Defendant's interpretation and administration of the Act to refuse to grant birth certificates with the correct gender on them to Plaintiffs, violates the privacy protections in Article I, §§ 6 and 12 of the Illinois Constitution.

WHEREFORE, Plaintiffs Kirk and Rothkopf, in the public interest, and Plaintiff Anders on behalf of herself and the Choice-of-Surgeon Plaintiff Class, 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 gender listed on them to Plaintiffs because they chose a surgeon for some of their gender confirmation surgeries who is licensed in a foreign state rather than in a state of the United States;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates with their correct gender listed on them to Plaintiff Anders and members of the Choice-of-Surgeon Plaintiff Class pursuant to the same procedures by which persons whose surgeon was licensed in the United States are able to receive new birth certificates with the correct gender listed on them;

(C) entry of a permanent injunction ordering Defendant to allow persons who chose to have their gender confirmation surgeries performed by doctors licensed in another country, rather than Illinois or another state of the United States, to follow the same procedure for

correcting the gender on their birth certificates that is offered to persons whose surgeon is licensed in the United States;

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

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

**Count Five:**  
**Violation of the Vital Records Act – Plaintiff Johnson,**  
**in the public interest, and Plaintiff Williams, on behalf**  
**of himself and the Type-of-Surgery Plaintiff Class**

124. Plaintiff Johnson, in the public interest, and Plaintiff Williams, on behalf of himself and the Type-of-Surgery Plaintiff Class, re-allege paragraphs 1-9, 14-19, 29-34, 37-54, 72-77, 86-96, and 98 as though fully set forth herein.

125. 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.

126. 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](http://www.idph.state.il.us/vitalrecords/gender_faq.htm#gr) (last visited Aug. 3, 2009).

127. 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.”<sup>1</sup>

Medical professionals and researchers in the transgender health field define gender confirmation surgeries to include surgeries other than surgery to create a penis, such as mastectomies and hysterectomies. Plaintiff Williams’ surgeon concluded that the surgery performed on him was an operation that should result in the change of the sex designation on his birth certificate to male.

128. For many years, Defendant interpreted Section 17 of the VRA to allow transsexual males who had completed gender confirmation surgeries, such as mastectomies and hysterectomies, but who had not undergone surgeries to create a penis, to obtain birth certificates identifying them by the correct gender, an interpretation in which the Illinois General Assembly acquiesced. Notwithstanding the many years that the Department of Vital Records applied the VRA to allow these persons to obtain accurate birth certificates, the Department abruptly changed its practice and started refusing to provide birth certificates to these transsexual males in or about 2005.

WHEREFORE, Plaintiff Johnson, in the public interest, and Plaintiff Williams, on behalf of himself and the Type-of-Surgery Plaintiff Class, 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 gender listed on them to Plaintiffs solely because they have not had surgery to create a penis;

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<sup>1</sup> Available at <http://www.merriam-webster.com/dictionary/operation> (last visited January 16, 2009).

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates to Plaintiff Williams and members of the Type-of-Surgery Plaintiff Class with their correct gender listed on it;

(C) entry of a permanent injunction barring Defendant from refusing to correct the gender on the birth certificates of female-to-male transsexuals who have had gender confirmation surgery or surgeries but have not had “surgery to create/attach/form a viable penis”;

(D) award of Plaintiffs’ costs and expenses of this action; and

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

**Count Six:**

**Violation of Due Process – Plaintiff Johnson,  
in the public interest, and Plaintiff Williams, on behalf  
of himself and the Type-of-Surgery Plaintiff Class**

129. Plaintiff Johnson, in the public interest, and Plaintiff Williams, on behalf of himself and the Type-of-Surgery Plaintiff Class, re-allege paragraphs 1-9, 14-19, 29-34, 37-54, 72-77, 86-96, and 98 as though fully set forth herein.

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

131. 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.

132. The Defendant State Registrar of Vital Records burdens Plaintiffs’ fundamental right to make decisions regarding whether to undergo medical treatment, since the Registrar refuses to issue Plaintiffs birth certificates with the correct gender on them because Plaintiffs have not undergone a specific type of surgery – surgery to create a penis – that they do not want

to have, is not medically necessary for them, is extremely risky, and is unlikely to be effective treatment for them.

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

134. Defendant's interpretation and administration of the Vital Records Act to refuse to grant birth certificates with the correct gender on them to Plaintiffs violates the due process clause in Article I, § 2 of the Illinois Constitution.

WHEREFORE, Plaintiff Johnson, in the public interest, and Plaintiff Williams, on behalf of himself and the Type-of-Surgery Plaintiff Class, 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 gender listed on them to Plaintiffs solely because they have not had surgery to create a penis;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates to Plaintiff Williams and members of the Type-of-Surgery Plaintiff Class with their correct gender listed on them;

(C) entry of a permanent injunction barring Defendant from refusing to correct the gender on the birth certificates of female-to-male transsexuals who have had gender confirmation surgery or surgeries but have not had "surgery to create/attach/form a viable penis";

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

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

**Count Seven:**  
**Violation of Privacy Right – Plaintiff Johnson,**  
**in the public interest, and Plaintiff Williams, on behalf**  
**of himself and the Type-of-Surgery Plaintiff Class**

135. Plaintiff Johnson, in the public interest, and Plaintiff Williams, on behalf of himself and the Type-of-Surgery Plaintiff Class, re-allege 1-9, 14-19, 29-34, 37-54, 72-77, 86-96, and 98 as though fully set forth herein.

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

137. 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.”

138. 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.

139. The Defendant State Registrar of Vital Records burdens Plaintiffs’ fundamental right to make decisions regarding whether to undergo medical treatment, since the Registrar’s practice prevents it from providing birth certificates with the correct gender listed on them, because Plaintiffs have not undergone a specific type of surgery – surgery to create a penis.

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

141. Defendant’s interpretation and administration of the Act to refuse to grant birth certificates with the correct gender on them to Plaintiffs violates the privacy protections in Article I, §§ 6 and 12 of the Illinois Constitution.

WHEREFORE, Plaintiff Johnson, in the public interest, and Plaintiff Williams, on behalf of himself and the Type-of-Surgery Plaintiff Class, 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 gender listed on them to Plaintiffs solely because they have not had surgery to create a penis;

(B) entry of a permanent injunction ordering Defendant to grant new birth certificates to Plaintiff Williams and members of the Type-of-Surgery Plaintiff Class with their correct gender listed on them;

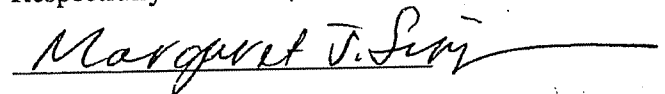
(C) entry of a permanent injunction barring Defendant from refusing to correct the gender on the birth certificates of female-to-male transsexuals who have had gender confirmation surgery or surgeries but have not had "surgery to create/attach/form a viable penis";

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

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

August 3, 2009

Respectfully submitted,



One of Plaintiffs' attorneys

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

VICTORIA KIRK, KARISSA ROTHKOPF, and  
RILEY JOHNSON,

Plaintiffs,

v.

DAMON T. ARNOLD, M.D. in his official capacity  
as State Registrar of Vital Records,

Defendant.

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) No. 09-CH-3226  
) Hon. Peter Flynn  
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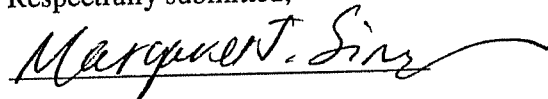
NOTICE OF MOTION

To: Meghan O. Maine  
Peter C. Koch  
Assistant Attorney General  
General Law Bureau  
100 W. Randolph Street, 13th Floor  
Chicago, Illinois 60601

Please take notice that on September 1, 2009, at 10:00 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Peter Flynn in the courtroom usually occupied by him and then and there present the attached Motion for Leave to Amend the Complaint to Add Additional Plaintiffs and Class Allegations, a copy of which is attached hereto and hereby served upon you.

August 3, 2009

Respectfully submitted,



One of Plaintiffs' attorneys

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