

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
Case Type: Other Civil

OutFront Minnesota, OutFront Minnesota  
Community Services, and Evan Tysilio  
Thomas,

Plaintiffs,

vs.

Emily Johnson Piper, in her official  
capacity as Commissioner of the Minnesota  
Department of Human Services,

Defendant.

Court File No. \_\_\_\_\_

**COMPLAINT**

**INTRODUCTION**

1. By statute, Minnesota arbitrarily and illegally deprives transgender people suffering from gender dysphoria of medically necessary care that is provided to every other Medical Assistance and MinnesotaCare recipient. Minnesota’s Medical Assistance and MinnesotaCare programs provide coverage for medically necessary care for virtually every type of medical condition.<sup>1</sup> But for gender dysphoria, Minn. Stat. § 256B.0625, subd. 3a mandates a sweeping and categorical exclusion of all transition-related surgical care without any regard to whether the treatment is medically necessary for an individual recipient. As a result of this sweeping exclusion, treatments for gender dysphoria—

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<sup>1</sup> MinnesotaCare provides the same health services coverage as is provided under Minn. Stat. § 256B, Minnesota’s Medical Assistance program, with certain enumerated exceptions not at issue here. *See* Minn. Stat. § 256L.03.

including, but not limited to, hysterectomies, mastectomies, orchiectomies, vaginoplasty, and phalloplasty—are excluded from coverage even though the same or substantially equivalent treatments are covered for Medical Assistance recipients to treat other serious medical conditions. These discriminatory exclusions of healthcare for gender dysphoria have no basis in medical science and have been condemned by every leading medical group.

2. The plaintiffs in this case are OutFront Minnesota, OutFront Minnesota Community Services, and Evan Tysilio Thomas. Plaintiffs bring this lawsuit seeking declaratory and injunctive relief to prohibit defendant in her official capacity from denying coverage for medically necessary transition-related surgery to transgender individuals who are covered by Minnesota’s Medical Assistance program. Specifically, plaintiffs seek a declaration that Minn. Stat. § 256B.0625, subd. 3a violates the right to equal protection and the fundamental right to privacy under the Minnesota Constitution, and plaintiffs seek a permanent injunction prohibiting its enforcement.

### **PARTIES**

3. Plaintiff OutFront Minnesota (“OFM”) is a Minnesota nonprofit corporation, organized under § 501(c)(4) of the Internal Revenue Code, with headquarters in Minneapolis, Hennepin County, Minnesota.

4. OFM solicits public support for its mission through membership enrollment. Any individual who supports the mission of OFM may become a member by applying for membership and paying annual dues. OFM currently has between 1,500 and 2,000 members throughout Minnesota, including many transgender Minnesotans. Some

transgender OFM members are covered by Medical Assistance and some by MinnesotaCare.

5. Plaintiff OutFront Minnesota Community Services (“OFMCS”) is a Minnesota nonprofit corporation, organized under § 501(c)(3) of the Internal Revenue Code, with headquarters in Minneapolis, Hennepin County, Minnesota.

6. OFMCS is organized for charitable and educational purposes, to provide education, training, and support to Minnesotans and Minnesota organizations, including attorneys, local governments, administrative agencies, and the courts to counter stereotypes, biases, and prejudice against lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) Minnesotans; to strengthen civil rights for LGBTQ Minnesotans; to promote safety and tolerance and discourage hate crimes; and to support those who are exposed to discrimination, violence, and hate crimes.

7. OFM is the sole corporate member of OFMCS. The Board of Directors and Officers of OFMCS are the same as the Board of Directors and Officers of OFM.

8. The mission of both OFM and OFMCS is to make Minnesota a place where LGBTQ people are free to be who they are, love who they love, and live without fear of violence, harassment, or discrimination. Collectively, OFM and OFMCS will be referred to herein as “OutFront.”

9. Plaintiff Evan Tysilio Thomas is Minnesota resident who lives in St. Paul, Ramsey County, Minnesota.

10. Defendant Emily Johnson Piper is the commissioner of the Minnesota Department of Human Services, and is responsible for administering Minnesota’s

Medical Assistance program. She is sued in her official capacity. The Minnesota Department of Human Services is a state governmental entity that maintains offices in St. Paul, Ramsey County, Minnesota.

### **JURISDICTION AND VENUE**

11. Plaintiffs bring this lawsuit pursuant to the Uniform Declaratory Judgment Act, Minn. Stat. § 555.01-.16, for violations of the right to equal protection and the fundamental right to privacy under the Minnesota Constitution.

12. This Court has personal jurisdiction over defendant.

13. This Court has subject matter jurisdiction over this lawsuit under Minn. Stat. §§ 484.01, 555.01, 555.02, and 555.08.

14. Pursuant to Minn. Stat. §§ 542.03 and 542.09, venue is proper in this Court because the causes of action arose in Ramsey County and defendant is located there.

### **FACTUAL BACKGROUND**

#### **Gender Dysphoria**

15. “Gender identity” is a well-established medical concept, referring to one’s sense of one’s gender. All human beings develop this elemental conviction of belonging to a particular gender.

16. Gender identity is an innate and immutable aspect of personality.

17. Typically, people who are designated female at birth based on their external anatomy identify as girls or women, and people who are designated male at birth identify as boys or men.

18. For transgender individuals, however, the sense of one’s self—one’s gender identity—differs from the sex assigned to them at birth. Transgender men are men who were assigned “female” at birth, but have a male gender identity. Transgender women are women who were assigned “male” at birth, but have a female gender identity.

19. The medical diagnosis for the feeling of incongruence beyond one’s gender identity and one’s sex assigned at birth is “gender dysphoria” (previously known as “gender identity disorder”).

20. Gender dysphoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (“DSM-V”) and International Classification of Diseases-10. The criteria for diagnosing gender dysphoria are set forth in the DSM-V (302.85).

21. If left untreated, gender dysphoria can lead to serious medical problems, including clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death.

22. The widely accepted standards of care for treating gender dysphoria are published by the World Professional Association for Transgender Health (“WPATH”) (formerly the Harry Benjamin International Gender Dysphoria Association).

23. For many transgender people, necessary treatment for gender dysphoria may require medical steps to affirm their gender identity and help them transition from living as one gender to another. This treatment, often referred to as transition-related care, may include hormone therapy, surgery (sometimes called “sex reassignment

surgery”), and other medical services that align their bodies to their gender identities. The exact medical treatment varies based on the individualized needs of the person.

24. The leading medical groups—including the American Medical Association; the American Psychological Association; the American Psychiatric Association; the American Academy of Family Physicians; the American Congress of Obstetricians and Gynecologists; the Endocrine Society; the National Association of Social Workers; and the World Professional Association for Transgender Health—all agree that gender dysphoria is a serious medical condition, and that treatment for gender dysphoria is medically necessary for many transgender people.

25. The WPATH Standards of Care are so well established that federal courts have declared that a prison’s failure to provide health care in accordance with those standards may constitute cruel and unusual punishment under the Eighth Amendment.

26. The Minnesota Department of Health also recognizes that transition-related healthcare—including surgery—is medically necessary care to treat gender dysphoria. On November 24, 2015, the Department of Health and the Department of Commerce issued an insurance bulletin stating that private insurance policies with categorical bans on coverage for transition-related healthcare illegally discriminate based on sex and gender identity. *See* Administrative Bulletin 2015-5: Gender Identity Nondiscrimination Requirements (Nov. 24, 2015), <http://mn.gov/commerce-stat/pdfs/bulletin-insurance-2015-5.pdf>. The bulletin further stated that “[d]etermination of medical necessity and prior authorization protocols for gender dysphoria-related treatment must be based on the most recent, published medical standards set forth by nationally recognized medical

experts in the transgender health field.” Under the bulletin, it is currently illegal for a private insurance company to issue an insurance policy with the same categorical exclusion of coverage mandated by Minn. Stat. § 256B.0625, subd. 3a for the Minnesota Medical Assistance and MinnesotaCare health programs.

### **Coverage for Transition-Related Surgery in Minnesota**

27. More than 35 years ago, the Minnesota Supreme Court recognized the medical necessity of transition-related surgery for some transgender individuals with gender dysphoria. In *Doe v. Department of Public Welfare*, 257 N.W.2d 816 (Minn. 1977), the Minnesota Supreme Court held that a policy of the Department of Public Welfare (renamed Department of Human Services in 1984) excluding coverage for medically necessary transition-related surgery was arbitrary and unreasonable, and recognized that denying these services denied individuals medically necessary care.

28. Following the *Doe* decision, Minnesota provided Medical Assistance coverage for medically necessary transition-related care, including surgery, from 1977 until 1998 without statutory restriction.

29. In 1995, the legislature considered a measure to amend the General Assistance Medical Care program—a program that is distinct from the Medical Assistance program—to eliminate funding for transition-related surgery. As is audible on legislative session audio recordings, a request for a roll call vote on the amendment prompted laughter by members of the House of Representatives. Two representatives who spoke during the discussion expressed concern about the laughter from members of the House. March 2, 1995, Journal of House, 1995, 79th Session, Vol. 1, p.454, 21st

Day, tape 2. The amendment passed during that session. Laws 1995, Ch. 178, art. 2, § 28.

30. In 1998, the legislature amended the Medical Assistance statute to provide that “[g]ender reassignment surgery and other gender reassignment medical procedures including drug therapy for gender reassignment are not covered unless the individual began receiving gender reassignment services prior to July 1, 1998.” Minn. Stat. § 256B.0625, subd. 3a (2004). After this 1998 amendment, a diminishing number of people were still able to receive coverage for medically necessary transition-related care, including surgery, through 2005.

31. In 2005, the legislature amended the statute again to remove the ban on coverage for drug therapy and the grandfather provision for services that began before 1998. The statute now provides that “[s]ex reassignment surgery is not covered.” Minn. Stat. § 256B.0625, subd. 3a (2014).

32. The legislature’s decision to exclude coverage was not based on any determination that the treatments were experimental or not medically necessary. An early draft of the statute affirmatively asserted that such services were “not medically necessary” but, at the urging of the Department of Human Services, the language was changed from “not medically necessary” to “not covered.” The Department urged the legislature to change the language because it was concerned that the assertion that transition-related surgery is not medically necessary could not be successfully defended in court. *See* Appellant’s Br. and App. at App. AA67-70, *Hare v. State of Minn., Dept of*

*Human Servs.*, No. C9-03-33 (Minn. Ct. App. July 23, 2003) (Tr. of Conference Committee Proceedings).

33. Nor was the legislature's decision to exclude coverage based on costs. According to one of the state senators supporting the legislation, Medical Assistance had paid for only three surgeries in the past three years at a cost of \$20,000. The senator said: "I don't think that's a lot, but I don't think it's something many of our tax payers [sic] want to be paying for with their taxes." Tr. of Minn. Senate, 80th Floor Sess., Day 79, Feb. 24, 1998, tape 3.

34. When considering the 2005 legislation removing the grandfather provision, the House Health Policy and Finance Committee estimated that the state had been paying for 2 surgeries per year. Audio of House Health Policy and Finance Committee meeting, April 12, 2005 at 1:00:19, *available at* <http://ww2.house.leg.state.mn.us/audio/mp3ls84/healthpol04122005.mp3>. The Committee projected the State would save an additional \$15,000 by completely eliminating coverage for transition-related surgery. Audio of House Health Policy and Finance Committee meeting, April 19, 2005 at 39:50, *available at* <http://ww2.house.leg.state.mn.us/audio/mp3ls84/healthpol04192005.mp3>.

### **The OutFront Plaintiffs**

35. As a part of its mission, OutFront provides comprehensive programs, services, and trainings to Minnesota's LGBTQ and allied communities in matters such as community organizing, public policy, anti-violence, law, and education. OutFront has been doing this work for nearly three decades.

36. OutFront regularly provides transgender Minnesotans and their families with individual services, including but not limited to information and referrals in such areas as housing, healthcare, employment, faith communities, and legal rights. These services include helping transgender Minnesotans find transgender-friendly businesses, churches, and service providers.

37. Transgender legal issues are wide-ranging, and include name changes; amending official documents such as driver's licenses, birth certificates, social security records, passports, and immigration documents; obtaining public benefits in relation to sex reassignment; gender identity issues in schools; insurance coverage; access to restrooms and similar facilities; and the placement and treatment of incarcerated transgender individuals. In addition to providing transgender individuals with referrals to legal professionals, OutFront also offers training and consultation, assists attorneys, and provides direct pro bono legal assistance to transgender individuals filing discrimination complaints, appealing insurance denials, and securing correct identity documents, among other things.

38. OutFront also provides peer support and mentoring to transgender Minnesotans, particularly through its Trans Folks, Friends, and Allies group. This group offers a safe space to gather, network, share resources and experiences, discuss local and national events in the transgender communities, and celebrate gender identity and expression.

39. OutFront's Anti-Violence Program provides support to transgender individuals who have experienced violence, assisting with filing police reports and with

courtroom support. The Anti-Violence Program works to end violence and harassment against and within LGBTQ communities in Minnesota and to create opportunities for support and healing through the provision of crisis intervention, advocacy, counseling, community education, and outreach.

40. Beyond these individual services, OutFront also educates the broader community about transgender issues. OutFront staff travel the state to provide information to community organizations, faith groups, workplaces, advocacy organizations, school groups, police departments, and others regarding transgender people and the issues of concern to them. In addition to introductory “trans 101” seminars, OutFront conducts frequent workshops and trainings about hate and bias crimes, domestic violence and sexual assault, public policy and current political issues, legal issues for transgender individuals and families, transgender issues in the workplace, transgender issues in law enforcement, serving transgender individuals, transgender issues in faith communities, and youth issues such as student athletics and bullying. OutFront also works to foster informed voting by conducting voter registration and voter pledge campaigns, surveying candidates for public office, pre-election phone-banking, holding voter rallies, and publishing voter guides.

41. In order to provide the wide array of information, programs, and other services that OutFront offers to transgender Minnesotans and other members of the LGBTQ communities, OutFront Minnesota relies on interns, volunteers, a paid staff of approximately 15 people, and an operating budget funded through state and federal

grants, private grants, individual contributions, and membership dues. OutFront also works in coalition with community partners.

42. Many transgender Minnesotans are low-income individuals who receive their healthcare through Minnesota’s Medical Assistance program.<sup>2</sup> OutFront is regularly contacted by transgender individuals who are on Medical Assistance or MinnesotaCare and seek coverage for transition services, including transition-related surgery. Some of these individuals initially obtained Medical Assistance coverage for transition services before transition-related surgery became categorically denied to transgender people. OutFront provides guidance to these individuals regarding Minnesota’s Medical Assistance program and their coverage options.

43. Transgender individuals who would otherwise seek transition-related surgery are unable to do so because Medical Assistance or MinnesotaCare coverage is denied to them.

44. Many transgender individuals come to OutFront for assistance because of societal stigmas associated with transgender people. When a law makes state financial assistance available for medically necessary surgery in some instances, but denies state assistance for that same or substantially equivalent surgery when the purpose is to treat

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<sup>2</sup> Unfortunately, in many instances the effects of depression, discrimination, and other factors contribute to the economic condition of transgender individuals. Indeed, “[i]n six studies conducted between 1996 and 2006, 20 to 57 percent of transgender respondents said they experienced employment discrimination, including being fired, denied a promotion or harassed.” Human Rights Campaign, <http://www.hrc.org/resources/discrimination-against-transgender-workers>.

gender dysphoria, such a law is perceived as a state-sanctioned badge of inferiority, and further fuels the stigma affecting the transgender community.

45. The categorical prohibition of Medical Assistance for transition-related surgery under Minnesota law impedes the mission of OutFront, which is to make Minnesota a place where LGBTQ people are free to be who they are, love who they love, and live without fear of violence, harassment, or discrimination.

46. Further, OutFront must devote a portion of its resources to providing training and consultation to individuals regarding Minnesota's categorical prohibition of Medical Assistance coverage for transition-related surgery. This diverts limited resources—including time, staff, volunteers, and money—away from other programs and services that OutFront would otherwise provide.

47. Many transgender individuals have serious privacy concerns regarding their transgender status. It can be stigmatizing in employment settings and private settings to be open about one's transgender status because transgender individuals are often subject to discrimination and violence. For this reason, many of OutFront's transgender members do not make it publicly known that they are transgender. This is particularly true in more rural parts of Minnesota. These privacy concerns, combined with economic factors, make it difficult for many transgender Minnesotans to bring a lawsuit regarding discriminatory and unlawful treatment.

### **Plaintiff Evan Thomas**

48. Plaintiff Evan Thomas is a 63-year-old transgender man. At all times relevant to this Complaint, he has resided in St. Paul, Ramsey County, Minnesota.

49. Following his graduation in the early 1990s from a restoration woodworking program at the North Bennet Street School in Boston, Massachusetts, Thomas worked for approximately eight years for a small furniture restoration business in Wellesley, Massachusetts. In 2001, Thomas opened his own furniture restoration business. In 2004, he moved his business from Boston, Massachusetts to St. Paul, Minnesota. In 2010, in the midst of the economic crisis, Thomas's business began to fail, ultimately leading to its closure in September 2012. His increasing depression related to his gender identity kept him from preventing or coping with the failure of his business.

50. After his furniture restoration business failed in September 2012, Thomas became unemployed. He applied for and received various forms of public assistance, including Medical Assistance. To this day, Thomas remains qualified for and is receiving Medical Assistance.

51. Prior to pursuing a career in furniture restoration, Thomas worked on the research faculty at Johns Hopkins University with a Ph.D. in Behavioral Neuroscience. During his tenure at Johns Hopkins, Thomas was unable to meet the University's gender normative expectations, which included that women should act feminine and wear skirts to work. Thomas left Johns Hopkins after only two years and changed careers in order to cope with distress surrounding his inability to meet the gender normative expectations at Johns Hopkins.

52. In approximately September 2013, in an effort to seek help coping with his increased depression related to his gender identity, Thomas sought assistance from the University of Minnesota Center for Sexual Health. Shortly thereafter, in approximately

December 2013, Thomas was diagnosed with Gender Identity Disorder (renamed in the DSM-V as gender dysphoria), and began receiving testosterone hormone therapy on March 3, 2014. Medical Assistance has been covering Thomas's testosterone hormone therapy and mental health services.

53. Thomas has presented in a stereotypically masculine fashion since childhood, and has lived full time in accordance with his male gender identity (including using a male name and pronouns) since approximately September 2013. Although the testosterone hormone therapy he has been receiving has relieved some of his depression and anxiety, the appearance of breasts is incongruent with his full-time masculine presentation and causes him distress and poor body image. This has necessitated the use of chest compression clothing in order to bind and obscure his breasts (hereinafter referred to as "binding").

54. Binding is extremely uncomfortable and unhealthy for long-term use. For example, binding can lead to musculo-skeletal problems from compression of the rib cage, and to rashes and yeast infections under the breasts. It also makes it difficult to inhale deeply enough to keep one's lungs clear. In Thomas's case, this has led to chest infections and acute bronchitis, requiring him to cease binding his chest for the duration of those infections. In turn, Thomas's inability to bind his chest during these infections has led to increased distress associated with Thomas's gender identity.

55. In addition to being extremely uncomfortable and unhealthy, binding is inadequate in alleviating the distress Thomas feels as a consequence of his significant gender dysphoria.

56. On or around March 23, 2015, Alex Iantaffi, Ph.D., M.Sc., LMFT, Thomas's mental health therapist at the University of Minnesota Physicians Center for Sexual Health, referred Thomas to Dr. Marie Claire Buckley, MD, University of Minnesota Medical Center Fairview, recommending gender transition-related surgical chest reconstruction (subcutaneous mastectomy and creation of a male chest). Dr. Iantaffi explicitly stated in his communication to Dr. Buckley that:

[Thomas] meets the World Professional Association for Transgender Health (WPATH) Standards of Care for surgical gender reassignment of gender dysphoric persons, as well as internal prerequisites for gender reassignment surgery. Chest surgery is considered an early intervention that many transgender men undergo in order to relieve body dysphoria, and increase congruence of their male presentation and their bodies. It is considered appropriate and needed surgical intervention by the WPATH Standards of Care for transgender persons. . . . Chest surgery is expected to alleviate [Thomas's] dysphoria, increase comfort with self, and improve interpersonal, sexual, and vocational functioning. Therefore I deem the surgery medically necessary.

57. On March 24, 2015, Thomas consulted with Dr. Buckley. Dr. Buckley recommended chest reconstruction surgery as an integral part of his treatment for gender dysphoria.

58. Plaintiff Thomas receives his Medical Assistance coverage through the Blue Plus HMO plan provided by Blue Cross Blue Shield of Minnesota.

59. On or around April 6, 2015, Dr. Buckley submitted an official request for authorization to Blue Cross Blue Shield of Minnesota for Thomas's chest reconstruction surgery.

60. On or around April 13, 2015, Blue Cross Blue Shield denied Dr. Buckley's request for authorization of Thomas's chest reconstruction surgery, citing the prohibitions contained in Minn. Stat. § 256B.0625, subd. 3a.

61. Thomas contacted OutFront for advice and information about his options for obtaining medically necessary chest reconstruction surgery.

62. Thomas considered filing an appeal from the denial of his request for authorization for chest reconstruction surgery, but ultimately did not appeal because it would have been futile given the prohibitions contained in Minn. Stat. § 256B.0625, subd. 3a.

63. On or about July 1, 2015, Thomas was granted a legal name and gender change by the Ramsey County District Court. Thomas has since changed his name and gender on all major forms of identification, including his driver's license, passport, house and car titles, and credit cards.

64. Thomas has done all he can to alleviate his distress surrounding his gender dysphoria. However, the existence of breasts is incongruent with his male gender identity and continues to cause him extreme distress, as well as health complications as a result of binding. Chest reconstruction surgery is medically necessary to alleviate Thomas's gender dysphoria.

**Count One**  
**Discrimination Based on Medical Diagnosis**

65. Minnesota Statutes § 256B.0625, subd. 3a, unconstitutionally discriminates between individuals with gender dysphoria and individuals with other serious medical conditions.

66. Minnesota Constitution Article 1, § 2 embodies principles of equal protection analogous to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

67. Surgical procedures, including but not limited to hysterectomies, mastectomies, orchiectomies, vaginoplasty, and phalloplasty, are medically necessary for many individuals suffering from gender dysphoria.

68. Although Medical Assistance generally provides coverage for all medically necessary surgery, Minn. Stat. § 256B.0625, subd. 3a, categorically bars coverage for all “sex reassignment surgery” regardless of medical need.

69. Many of the same or substantially equivalent surgical procedures that are excluded from coverage under Medical Assistance when used to treat gender dysphoria are covered by Medical Assistance when used to treat other serious medical conditions.

70. Individuals who receive coverage through Medical Assistance and require medically necessary surgery to treat gender dysphoria are similarly situated to individuals who receive coverage through Medical Assistance and require medically necessary surgery to treat other serious medical conditions.

71. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not rationally related to any legitimate governmental interest.

72. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance can be explained only by animus toward, or moral disapproval of, transition-related surgery and/or individuals who require transition-related surgery to treat gender dysphoria.

**Count Two**  
**Discrimination Based on Transgender Status**

73. Minnesota Statutes § 256B.0625, subd. 3a, unconstitutionally discriminates based on transgender status.

74. Minnesota Constitution Article 1, § 2 embodies principles of equal protection analogous to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

75. Classifications based on transgender status are suspect or quasi-suspect under the Minnesota Constitution.

76. Discrimination based on a suspect classification is subject to strict scrutiny and is unconstitutional unless narrowly tailored to a compelling governmental interest.

77. Discrimination based on a quasi-suspect classification is subject to intermediate scrutiny and is unconstitutional unless substantially related to an important governmental interest.

78. Although Medical Assistance generally provides coverage for all medically necessary surgery, Minn. Stat. § 256B.0625, subd. 3a, categorically bars coverage for all “sex reassignment surgery” regardless of medical need.

79. By categorically excluding “sex reassignment surgery” from Medical Assistance coverage, Minn. Stat. § 256B.0625, subd. 3a, has drawn a classification that discriminates based on transgender status.

80. The only individuals who require medically necessary surgery to treat gender dysphoria are transgender individuals.

81. Many of the same or substantially equivalent surgical procedures that are excluded from coverage under Medical Assistance when used to treat gender dysphoria are covered by Medical Assistance when used to treat other serious medical conditions.

82. Transgender individuals who receive coverage through Medical Assistance and require medically necessary surgery to treat gender dysphoria are similarly situated to non-transgender individuals who receive coverage through Medical Assistance and require medically necessary surgery to treat other serious medical conditions.

83. Under Minn. Stat. § 256B.0625, subd. 3a, non-transgender individuals receive Medical Assistance coverage for virtually all of their medically necessary healthcare, but transgender individuals do not.

84. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not narrowly tailored to further a compelling governmental interest.

85. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not substantially related to an important governmental interest.

86. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not rationally related to any legitimate governmental interest.

87. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance can be explained only by animus toward, or moral disapproval of, transition-related surgery and/or transgender individuals who require transition-related surgery to treat gender dysphoria.

**Count Three**  
**Discrimination Based on Sex**

88. Minnesota Statutes § 256B.0625, subd. 3a, unconstitutionally discriminates based on sex.

89. Minnesota Constitution Article 1, § 2 embodies principles of equal protection analogous to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

90. Discrimination based on transgender status is a form of sex discrimination under the Minnesota Constitution.

91. Discrimination based on sex is subject to intermediate scrutiny and is unconstitutional unless substantially related to an important governmental interest.

92. Although Medical Assistance generally provides coverage for all medically necessary surgery, Minn. Stat. § 256B.0625, subd. 3a, categorically bars coverage for all “sex reassignment surgery” regardless of medical need.

93. By categorically excluding all coverage for “sex reassignment” surgery under Medical Assistance, Minn. Stat. § 256B.0625, subd. 3a, has drawn a classification that discriminates based on transgender status.

94. The only individuals who require medically necessary surgery to treat gender dysphoria are transgender individuals.

95. Many of the same or substantially equivalent surgical procedures that are excluded from coverage under Medical Assistance when used to treat gender dysphoria are covered by Medical Assistance when used to treat other serious medical conditions.

96. Transgender individuals who receive coverage through Medical Assistance and require medically necessary surgery to treat gender dysphoria are similarly situated to non-transgender individuals who receive coverage through Medical Assistance and require medically necessary surgery to treat other serious medical conditions.

97. Under Minn. Stat. § 256B.0625, subd. 3a, non-transgender individuals receive Medical Assistance coverage for virtually all of their medically necessary healthcare, but transgender individuals do not.

98. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not substantially related to an important governmental interest.

99. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not rationally related to any legitimate governmental interest.

100. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance can be explained only by animus toward, or moral disapproval of,

transition-related surgery and/or individuals who require transition-related surgery to treat gender dysphoria.

**Count Four**  
**Fundamental Right to Privacy**

101. Minnesota Statutes § 256B.0625, subd. 3a, unconstitutionally infringes on transgender individuals' fundamental right to privacy.

102. The Minnesota Bill of Rights protects individuals' fundamental right to privacy, which includes the right to medical autonomy. *See Jarvis v. Levine*, 403 N.W.2d 298 (Minn. App. 1987).

103. The fundamental right to privacy protects individuals' right to make decisions about whether to receive or refuse medical treatment, and laws that infringe on the individuals' decision-making process violate the fundamental right to privacy.

104. Discrimination related to the exercise of a fundamental right is subject to strict scrutiny and is unconstitutional unless narrowly tailored to a compelling governmental interest.

105. Although Medical Assistance generally provides coverage for all medically necessary surgery, Minn. Stat. § 256B.0625, subd. 3a, categorically bars coverage for all "sex reassignment surgery" regardless of medical need.

106. By denying coverage for medically necessary surgery to treat gender dysphoria while providing coverage for medically necessary surgeries to treat all other medical conditions, Minn. Stat. § 256B.0625, subd. 3a, infringes on transgender

individuals' medical decision-making process, and therefore infringes on their fundamental right to privacy and medical autonomy.

107. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not narrowly tailored to a compelling governmental interest.

108. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not substantially related to an important governmental interest.

109. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance is not rationally related to any legitimate governmental interest.

110. Categorically excluding “sex reassignment surgery” from coverage under Medical Assistance can be explained only by animus toward, or moral disapproval of, transition-related surgery and/or transgender individuals who require transition-related surgery to treat gender dysphoria.

### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiffs respectfully seek the following relief:

A. A declaration that, by categorically excluding coverage for medically necessary transition-related surgery, Minn. Stat. § 256B.0625, subd. 3a (1) violates the equal protection guarantee of Minnesota Constitution Article 1, § 2; and (2) violates the fundamental constitutional right to privacy and medical autonomy protected by the Minnesota Constitution.

B. An order permanently enjoining the Defendant and her agents, employees, representatives, and all those acting in concert with her, from denying Medical Assistance

and MinnesotaCare eligible transgender patients medically necessary treatment, including transition-related surgery; and

C. Such further relief as the Court deems proper and the law allows.

Dated: December 17, 2015

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**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

DORSEY & WHITNEY LLP

*s/Kristina L. Carlson*  
Kristina L. Carlson