

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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COUNTY DEPARTMENT
CIRCUIT COURT

**FIRST AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Victoria Kirk, Karissa Rothkopf, and Riley Johnson, 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 §§ 553/1-29, 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 and Karissa Rothkopf) or female to male (Riley Johnson).

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 maintains two policies that unconstitutionally restrict who may correct their birth certificates:

a. Defendant refuses 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;

b. Defendant refuses to make such changes for female-to-male transsexuals who have not completed a specific type of surgery – “surgery to attempt to create/attach/form a viable penis.”

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

7. Denying Plaintiffs accurate birth certificates places them at risk of physical or emotional harm if their identity as a transsexual is disclosed to a person who did not know they were transsexual or who harbors hostility towards transsexuals.

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

Victoria Kirk and Karissa Rothkopf

9. Plaintiffs Kirk and Rothkopf seek a declaration that Defendant's refusal 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 them accurate birth certificates.

10. In the alternative, Plaintiffs Kirk and Rothkopf 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 accurate birth certificates.

11. Defendant's interpretation of the VRA violates equal protection because, without justification, it treats Plaintiffs Kirk and Rothkopf 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.

12. Defendant's interpretation of the VRA also violates Plaintiffs Kirk and Rothkopf's due process and privacy rights, without justification, by burdening their right to make decisions about their medical care, including what surgeon to use for their gender confirmation surgeries. Defendant places an unconstitutional burden on those rights by preventing Plaintiffs Kirk and Rothkopf from obtaining a birth certificate that accurately lists their gender solely because they chose a surgeon who is licensed abroad rather than in Illinois or another state of the United States.

Riley Johnson

13. Plaintiff Johnson seeks a declaration that Defendant's policy refusing to change the gender on his birth certificate violates the VRA, because nothing in that 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. Plaintiff also seeks an injunction ordering Defendant to issue him an accurate birth certificate.

14. In the alternative, Plaintiff Johnson seeks 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 an accurate birth certificate.

15. Defendant’s interpretation of the VRA violates Plaintiff Johnson’s due process and privacy rights by, without justification, burdening his right to refuse surgery that he does not want to have, is not medically necessary for him, is extremely risky, and is not effective treatment for him. Plaintiff Johnson has no medical need for surgery to create a penis, and his gender identity disorder has been successfully treated without such surgery. Further, his transition to the male gender is complete. Defendant places an unconstitutional burden on Plaintiff Johnson by preventing him from obtaining a birth certificate that accurately lists his gender solely because he has not undergone surgery to create a penis, even though he has completed other medical treatment – including hormone therapy, a bilateral mastectomy, and a hysterectomy – that has aligned his body to his male gender identity.

Relief

16. Plaintiffs seek declaratory and injunctive relief to ensure that Plaintiffs Kirk and Rothkopf 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 decision about medical care are fully respected. Plaintiffs also seek declaratory and injunctive relief to

ensure that Plaintiff Johnson is afforded his rights under the VRA, or alternatively, that his due process and privacy right to personal inviolability is respected.

Jurisdiction

17. 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

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

The Plaintiffs

19. 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.

20. 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.

21. 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 around February of 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.

22. 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.

23. 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.

24. 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, 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.

25. 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 his male gender identity in early childhood. His gender identity has been male his entire life.

26. 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.

27. 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 records. 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.

The Defendant

28. 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

29. 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 psychological distress and intense feelings of discomfort. This psychological distress and discomfort is called gender dysphoria.

30. "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.

31. 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.

32. 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.

33. 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 identity. "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.

34. 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 they were assigned at birth to the one that fits their 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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 New Jersey and 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.

43. 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

44. 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 policy. Most transsexual males resolve, or at least minimize, their gender dysphoria without having this surgery.

45. 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 effective treatment for many transsexual males.

46. The lack of fully satisfactory genital surgery options is evidenced by the small number of these 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' Experience of Psychotherapy," *Int'l J. of Transgenderism*, Vol. 6, No. 1 (2002).

Victoria Kirk

47. 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.

48. 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.

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

50. Victoria 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. The governmental agencies that have allowed her to correct her documents include the United States Social Security Administration, the United State Department of State, and the Illinois Secretary of State.

51. As stated in Paragraphs 74-77, Victoria applied for and Defendant denied her a corrected birth certificate. Her 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.

52. 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.

53. Victoria'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 11th, 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 result from being forced to show an identity document which identifies her as male.

54. Victoria knows how traumatic and embarrassing it can be to have to show an identity document that lists her gender as male, since she was stopped a few years ago by a state trooper in South Carolina. At that time, she presented as a woman, but the gender on her driver's license had not been changed. It is psychologically and emotionally harmful for Victoria to have a government-issued birth certificate that states incorrectly that she is male.

Karissa Rothkopf

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

56. 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.

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

58. Karissa has been permitted to change the gender on all of her government-issued forms of identification, except for her birth certificate. The governmental agencies that have allowed her to correct her documents include the United States Social Security Administration, the United States Department of State, and the Wisconsin Department of Transportation.

59. As stated in Paragraphs 74-77, Karissa applied for and Defendant denied her a corrected birth certificate. Her 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.

60. 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.

61. Karissa lost health insurance coverage of 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.

62. Finally, after numerous complaints from Karissa to her employer, the employer changed the proof it required her to show of her female gender 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. Karissa worries that this harm could occur again if she changes employers and her new employer has a policy requiring her to show a birth certificate before she can be treated as a woman for insurance purposes.

63. Karissa'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 11th, 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 result from being forced to show an identity document which identifies her as male.

64. She knows how traumatic and embarrassing it can be to have to show an identity document that lists her gender as male, since she was stopped a few years ago by a police officer or sheriff in a small Wisconsin town after she began to present as a woman but before the gender on her driver's license had been changed. After discovering that the sex on her driver's license did not match her female appearance, the officer detained her and questioned her for approximately an hour and a half before finally allowing her to leave. It is psychologically and emotionally harmful for Karissa to have a government-issued birth certificate that states incorrectly that she is male.

Riley Johnson

65. Riley Johnson considered in depth possible gender confirmation surgeries. 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.

66. Riley's 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 nor need genital surgery to resolve his gender dysphoria.

67. 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.

68. Riley 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, the United States Department of State, and the Illinois Secretary of State. 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.

69. 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.

70. Riley'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. Moreover, he has seen how much more restrictive the government has become about identity documents since September 11th, so he is concerned that, unless his birth certificate is corrected, more invasive and restrictive laws or government practices in the future may prevent him from obtaining a renewed passport or driver's license with his correct gender on it, or may make his inaccurate birth certificate more accessible to strangers. He fears the embarrassment and chance of violence that result from being forced to show an identity document which identifies him as female.

71. Riley knows how traumatic and embarrassing it can be if some aspect of his gender expression, such as his appearance, is not consistent with his male gender identity. Prior to his mastectomy and before he had begun hormone therapy, Riley was followed by a group of at least four young men who surrounded him, asked him whether he was a man or woman, and then threatened to kill him. Although he evaded physical injury, this traumatic experience underscores for Riley how important it is to make sure that all aspects of his gender presentation, including his identity documents, identify him as male. It is psychologically and emotionally harmful for Riley to have a government-issued birth certificate that states incorrectly that he is female.

The Illinois Vital Records Act

72. 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).

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

74. Plaintiffs Victoria Kirk and Karissa Rothkopf applied for a new birth certificate with the correct gender listed on it at the Office of Vital Records.

75. They submitted to the Office of Vital Records a medical certificate from the Thailand-licensed surgeon who performed their genital reconstruction surgery listing the surgeries he performed and concluding that their genitalia had been permanently changed from male to female.

76. They also provided to the Office of Vital Records an affidavit from a doctor licensed in Illinois who examined them and certified that they have undergone gender confirmation surgeries and that by reason of the surgeries their sex designation should be changed from male to female on their birth certificates.

77. Notwithstanding the medical certificate from the surgeon who performed their surgeries and the affidavit from a U.S.-licensed doctor who confirmed that the surgeries had been performed, their requests for accurate birth certificates were denied solely because the physician who performed some of the surgeries was not U.S. licensed.

78. Plaintiff Riley Johnson applied for a new birth certificate with the correct gender listed on it at the Office of Vital Records on January 15, 2009.

79. He submitted to the Office of Vital Records affidavits from surgeons licensed in the United States who performed his bilateral mastectomy and hysterectomy and affirmed that Riley's sex designation on his birth certificate should, as a result of these surgeries, be changed to male.

80. Riley's application is still pending, but based on the Defendant's stated policy his application will surely be denied.

Harm to Plaintiffs

81. 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

82. Plaintiffs re-allege paragraphs 1-12, 16-24, 28-43, 47-64, 72-77, and 81 as though fully set forth herein.

83. 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.”

84. 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).

85. 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).

86. 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.

87. 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.

88. 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 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 Kirk and Rothkopf 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 to Plaintiffs with their correct gender listed on them;

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

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

Count Two:
Violation of Equal Protection – Plaintiffs Kirk and Rothkopf

89. Plaintiffs re-allege paragraphs 1-12, 16-24, 28-43, 47-64, 72-77, and 81 as though fully set forth herein.

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

91. 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.

92. Even when presented with an affidavit from a U.S.-licensed physician who examined the person and certified that she had undergone gender confirmation surgeries and that by reason of the surgeries her sex designation should be changed from male to female on their birth certificates, Defendant refuses to issue a corrected birth certificate.

93. 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, especially when those persons have provided affidavits from a U.S.-licensed physician certifying that the gender confirmation surgeries have been performed and that their sex designation should be changed accordingly.

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

WHEREFORE, Plaintiffs Kirk and Rothkopf 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 Kirk and Rothkopf because they chose a surgeon for 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 to Plaintiffs with their correct gender listed on them;

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

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

Count Three:
Violation of Due Process – Plaintiffs Kirk and Rothkopf

95. Plaintiffs re-allege paragraphs 1-12, 16-24, 28-43, 47-64, 72-77, and 81 as though fully set forth herein.

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

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

98. Defendant burdens Plaintiffs Kirk and Rothkopf’s fundamental right to make decisions regarding their medical treatment, since he refuses to issue them a birth certificate with the correct gender listed on it because they chose a surgeon who is not licensed in Illinois or another state of the United States.

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

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

WHEREFORE, plaintiffs Kirk and Rothkopf 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 a birth certificate with the correct gender listed on it to Plaintiffs Kirk and Rothkopf 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 to Plaintiffs with their correct gender listed on them;

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

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

Count Four:
Violation of Privacy Right – Plaintiffs Kirk and Rothkopf

101. Plaintiffs re-allege paragraphs 1-12, 16-24, 28-43, 47-64, 72-77, and 81 as though fully set forth herein.

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

103. 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."

104. 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.

105. Defendant burdens Plaintiffs Kirk and Rothkopf's privacy right to make decisions regarding their medical treatment, since he refuses to issue them a birth certificate with the correct gender listed on it because they chose a surgeon who is not licensed in Illinois or another state of the United States.

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

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

WHEREFORE, Plaintiffs Kirk and Rothkopf 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 a birth certificate with the correct gender listed on it to Plaintiffs Kirk and Rothkopf 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 to Plaintiffs with their correct gender listed on them;

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

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

Count Five:
Violation of the Vital Records Act – Plaintiff Johnson

108. Plaintiffs re-allege paragraphs 1-8, 13-18, 25-46, 65-73, and 78-81 as though fully set forth herein.

109. 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.

110. Defendant counsels applicants who have questions about whether they have completed gender reassignment surgery to contact their physician 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.

111. 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*¹ defines “operation” as “a procedure performed on a living body usually with instruments especially for the repair of damage or the restoration of health.” Medical professional 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 Riley Johnson's surgeons concluded that the mastectomy and

hysterectomy performed on him were operations that should result in the change of the sex designation on his birth certificate to male.

112. 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 an accurate birth certificate, the Department abruptly changed its practice and started refusing to provide birth certificates to these transsexual males in or about 2005.

WHEREFORE, Plaintiff Johnson requests 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 Plaintiff Johnson solely because he has not had surgery to create a penis, even though he has completed all sex reassignment treatment that is medically necessary for him and his reassignment to the male gender is complete;

(B) entry of a permanent injunction ordering Defendant to grant a new birth certificate to Plaintiff Johnson with his correct gender listed on it;

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

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

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

Count Six:
Violation of Due Process – Plaintiff Johnson

113. Plaintiffs re-allege paragraphs 1-8, 13-18, 25-46, 65-73, and 78-81 as though fully set forth herein.

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

115. 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.

116. The Defendant State Registrar of Vital Records burdens Plaintiff Johnson’s fundamental right to make decisions regarding whether to undergo medical treatment, since the Registrar will refuse to issue him a birth certificate with the correct gender listed on it because Plaintiff has not undergone a specific type of surgery – surgery to create a penis – that he does not want to have, is not medically necessary for him, is extremely risky, and is unlikely to be effective treatment for him.

117. There is no legally adequate justification for burdening Plaintiff Johnson’s right to make decisions regarding whether to undergo medical treatment, especially since Plaintiff Johnson has provided affidavits from U.S.-licensed physicians certifying that they performed gender confirmation surgeries on him and that his sex designation should be changed to male on his birth certificate.

118. Defendant’s interpretation and administration of the Vital Records Act to refuse to grant a birth certificate with the correct gender on it to Plaintiff Johnson violates the due process clause in Article I, § 2 of the Illinois Constitution.

WHEREFORE, Plaintiff Johnson requests 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 a birth certificate with the correct gender listed on it to Plaintiff Johnson, who has completed all sex reassignment treatment that is medically necessary for him and whose reassignment to the male gender is complete, solely because he has not undergone a specific type of surgery – surgery to create a penis – that he does not want to have, is not medically necessary for him, is extremely risky, and is unlikely to be effective treatment for him;

(B) entry of a permanent injunction ordering Defendant to grant a new birth certificate to Plaintiff Johnson with his correct gender listed on it;

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

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

Count Seven:
Violation of Privacy Right – Plaintiff Johnson

119. Plaintiffs re-allege paragraphs 1-8, 13-18, 25-46, 65-73, and 78-81 as though fully set forth herein.

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

121. 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.”

122. 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.

123. The Defendant State Registrar of Vital Records burdens Plaintiff Johnson's fundamental right to make decisions regarding whether to undergo medical treatment, since the Registrar's policy prevents it from providing a birth certificate with the correct gender listed on it, because Plaintiff has not undergone a specific type of surgery – surgery to create a penis – that he does not want to have, is not medically necessary for him, is extremely risky, and is unlikely to be effective treatment for him.

124. There is no legally adequate justification for burdening Plaintiff Johnson's right to make decisions regarding whether to undergo medical treatment, especially since Plaintiff Johnson has provided affidavits from U.S.-licensed physicians certifying that they performed gender confirmation surgeries on him and that his sex designation should be changed to male on his birth certificate.

125. Defendant's interpretation and administration of the Act to refuse to grant a birth certificate with the correct gender on it to Plaintiff Johnson violates the privacy protections in Article I, §§ 6 and 12 of the Illinois Constitution.

WHEREFORE, Plaintiff Johnson requests 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 a birth certificate with the correct gender listed on it to Plaintiff Johnson, who has completed all sex reassignment treatment that is medically necessary for him and whose reassignment to the male gender is complete, solely because he has not undergone a specific type of surgery – surgery to create a penis – that he does not want to have, is not medically necessary for him, is extremely risky, and is unlikely to be effective treatment for him;

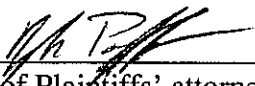
(B) entry of a permanent injunction ordering Defendant to grant a new birth certificate to Plaintiff Johnson with his correct gender listed on it;

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

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

DATED: 4-7-09

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)
) No. 09-CH-3226
Plaintiffs,) Hon. Peter Flynn
)
v.)
)
DAMON T. ARNOLD, M.D. in his official capacity)
as State Registrar of Vital Records;)
)
Defendant.)
)

CERTIFICATE OF SERVICE

I, Kyle A. Palazzolo, hereby certify that I am a member of the bar of this Court, and that I have this 7th day of April 2009, caused one copy of the First Amended Complaint to be hand-delivered to:

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



Kyle A. Palazzolo