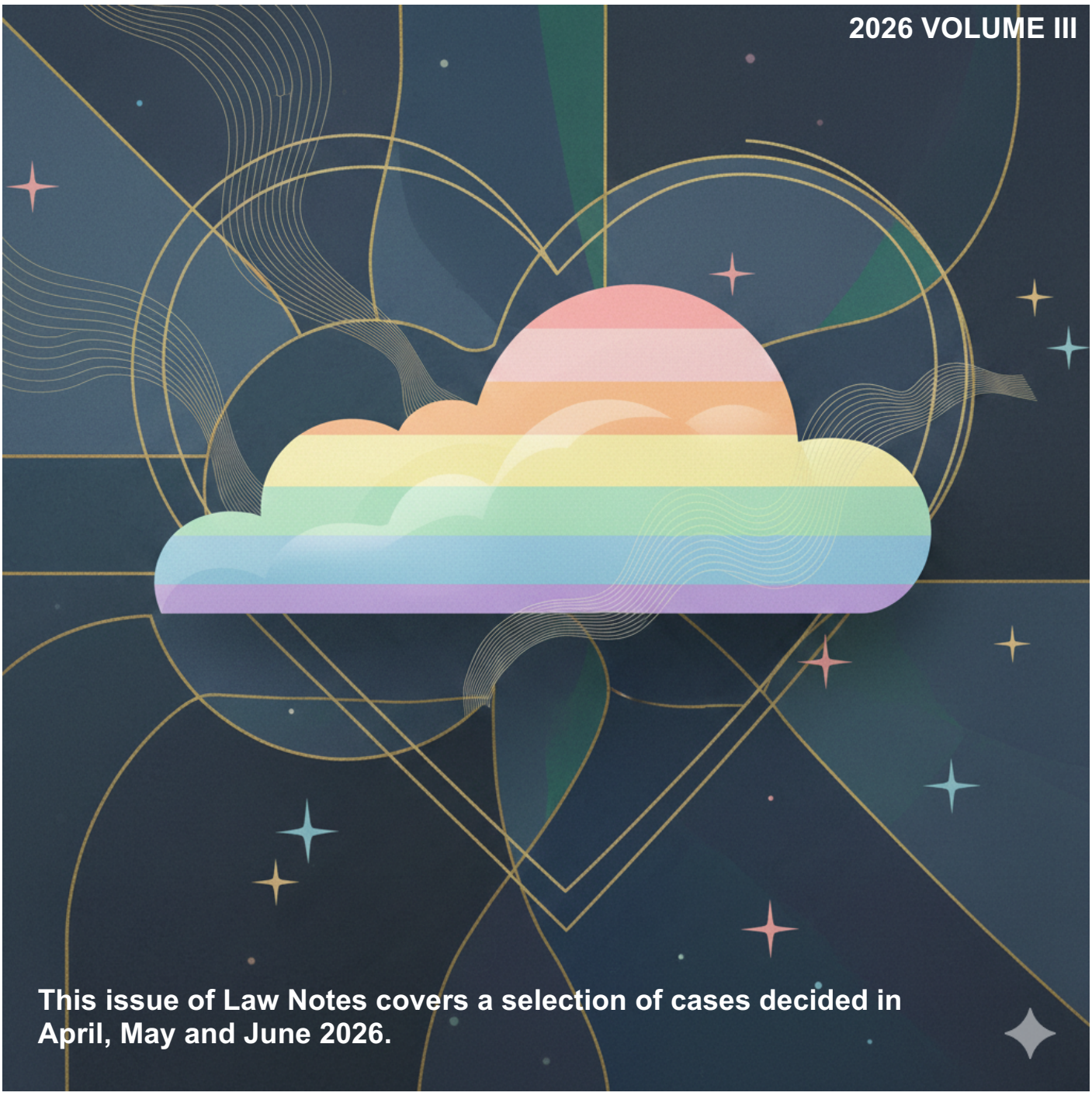
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LAW NOTES



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Supreme Court Rejects Challenge to State Bans on Transgender Girls and Women Participating in Female Sports Competition

By Arthur S. Leonard

The Supreme Court ruled on June 30 in *West Virginia v. B.P.J.* & *Little v. Hecox*, 609 U.S. ---- , 146 S.Ct. 2356, 225 L.Ed.2d 1040, that the states of West Virginia and Idaho did not violate Title IX of the Education Amendments of 1972 or the Equal Protection Clause of the 14th Amendment when they enacted laws providing that only "biological females" could compete in scholastic sports as girls or women, effectively excluding transgender girls or women from participating in such sports programs. The Court was unanimous in finding that the ban did not violate Title IX. The six conservative members of the Court voted to find no violation of Equal Protection, either, while the three more liberal members, concurring in the Title IX holding, would have affirmed the 4th Circuit's decision to remand the constitutional issue to the district court for further fact-finding in the *B.P.J.* case. Becky Pepper-Jackson has been open about being the plaintiff in the West Virginia case, but as she is a minor the courts have followed the convention of referring to her by initials.

Justice Brett Kavanaugh wrote for the Court in an opinion joined by Chief Justice John Roberts and Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, and Amy Coney Barrett. Justices Thomas and Gorsuch filed separate concurring opinions. Justice Sonia Sotomayor filed an opinion concurring in the judgment as to Title IX but not as to Equal Protection, joined by Justices Elena Kagan and Ketanji Brown Jackson. Justice Jackson also filed a separate opinion. In a footnote, Justice Kavanaugh emphasized the limited scope and focus of this case, writing: "As the plaintiffs, the States, and the United States as *amicus curiae* all agree, these cases do not present the distinct question of whether, under Title IX and the Equal Protection Clause, schools may *allow* biological males who identify as female to participate on girls' and women's sports teams. That question is currently the subject of litigation in some lower courts. Nothing in this opinion is intended to decide that question. In addition, nothing in this opinion should be interpreted to address or limit participation by biological females on male or co-ed sports teams."

In *West Virginia v. B.P.J.*, the federal district court granted summary judgment to the defendants on both issues. The 4th Circuit reversed the summary judgment on Title IX and vacated and remanded the district court's judgment on Equal Protection, opining that a fuller factual record needed to be developed before an opinion could be reached on the Equal Protection claim. *See B.P.J. v. West Virginia State Board of Education*, 98 F.4th 542 (2024). In *Little v. Hecox*, the district court awarded preliminary relief to the plaintiff, which was affirmed by the 9th Circuit in *Hecox v. Little*, 104 F. 4th 1061 (2024). After the Supreme Court granted the defendants' petition for certiorari, respondent Lindsay Hecox informed the courts that she had decided not to participate further in women's sports, moving to withdraw her case as moot. The State of Idaho opposed her motion, contending that the case was not moot and arguing for its interest in having the Supreme Court review and reverse the 9th Circuit's ruling. The Supreme Court deferred taking action on Hecox's request to withdraw her case until after the case was argued. It then determined that the case was not moot, although its ruling in B.P.J.'s case appeared to make that irrelevant, since the unanimous Court ruled that the bans by *both* states did not violate Title IX, and a majority of the Court held that they did not violate the Equal Protection Clause.

Addressing the Title IX claim first, the Court held that Title IX, first enacted in 1972, could not "plausibly" be construed to forbid academic institutions from barring "biological males" from participating in female sports competition. The Court used the terms "biological males" or "transgender athletes" to refer to transgender girls and women.

The statute provides, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial

assistance." The Court found that as of 1972 the word "sex" could only have the meaning of "biological sex," that is, sex as "identified at birth," as the contemporary meaning of the word used by Congress. Two years after Title IX was enacted, Congress enacted an amendment sponsored by Senator Jacob Javits directing the Department of Health, Education and Welfare (HEW) to issue regulations implementing Title IX that "shall include with respect to . . . athletic activities reasonable provisions considering the nature of particular sports." In 1975, HEW issued what the Court characterizes as "comprehensive regulations requiring that schools provide 'equal athletic opportunity for members of both sexes and authorizing 'separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.'" The Court concluded that this legislative and regulatory history supports the view that "biological sex" was the intended meaning of "sex" as used in the statute and regulations.

B.P.J. pushed an "as applied" argument, stressing that she had been diagnosed with gender dysphoria early and commenced treatment with puberty blocking medication that prevented her from going through male puberty, followed by cross-sex hormones that affirmed her female identity in physical terms. In short, she argued, taking into account the sports in which she sought to participate – track and field and cross-country, non-contact sports – she presented no competitive unfairness or safety issues by her participation. Indeed, the district court awarded her preliminary relief so that she was able to participate in women's sports for some period of time without incident. The Supreme Court, focusing on the word "reasonable" in the Javits Amendment, held that it was reasonable for West Virginia, "given the inherent physical differences between the sexes," to have separate sports teams for "biological females." The Court emphasized that this ruling was made in the context of competitive sports, which is different from other activities and programs offered by educational institutions, thus limiting the scope of the decision.

B.P.J. relied on the Court's decision in *Bostock v. Clayton County, Georgia*, 590 U.S. 644 (2020), in which the Court held that an employer violated Title VII's ban on employment discrimination because of a person's sex when the employer discharged an individual because of their transgender status. But the Court disagreed with *Bostock*'s application to this case. "Title VII and *Bostock* are not relevant in this very different statutory and factual context of sports," wrote Kavanaugh.

Turning to the Equal Protection issue, the Court acknowledged that for purposes of Equal Protection analysis, it was clear that B.P.J. was excluded from women's sports because of her "biological sex" as a "biological male." Thus, under EP precedents, the state's policy was subject to "intermediate scrutiny," under which "sex-based classifications are permissible only when the classification is 'substantially related' to achieving an 'important' governmental objective." The Court agreed with the States' argument that "the interests of safety and competitive fairness are important interests for purposes of equal protection analysis" and "the States' sex-based classification – limiting women's and girls' sports to biological females – is substantially related to those interests." The Court provided scant support for this conclusion.

The Court rejected B.P.J.'s argument that her Equal Protection challenge should be dealt with on an individual basis, rather than relying on generalizations about "biological males," asserting: "Under the intermediate scrutiny test the 'validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case,'" *citing Ward v. Rock Against Racism*, 491 U.S. 781, 801. "Intermediate scrutiny permits a sex-based classification that, as here, is 'not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances,'" *citing Michael M. v. Superior Court, Sonoma County*, 450 U.S. 464, 469. Again, emphasizing the sports context of this case, the Court contended that it "would be an impossible task for a judge to perform on an equitable basis" a case-by-case evaluation of whether a particular individual's characteristics present the safety or fairness risks that the Court had determined would justify line-drawing

by legislators or schools.

Furthermore, evoking last Term's ruling in *U.S v. Skrmetti*, 605 U.S. 495 (2025), the Court rejected B.P.J.'s argument that the challenged laws "unconstitutionally discriminate against transgender individuals" because the court had determined that on its face the challenged law classifies "on the basis of sex," not on the basis of gender identity or transgender status. The Court has yet to rule about whether discrimination on the basis of transgender status as such should be evaluated using intermediate scrutiny and does not do so in this case. The citation back to *Skrmetti*, however, shows the Court's readiness to evade that question by concluding by deciding that the discrimination challenged in both cases was based on "sex as assigned at birth." A neat hat-trick to avoid the obvious.

Justice Kavanaugh was noted in press accounts to have a personal interest in the subject, having coached his daughters in sports, and this is reflected in the final part of his opinion, responding to the rhetoric and arguments of Justice Sotomayor's dissenting opinion. He devotes several paragraphs to supporting his contention that sports is a "zero sum" activity in which every place taken on a women's team by a "biological male" deprives a "biological female" of that place, and every time a "biological male" is a winner, a "biological female" has been displaced. He also emphasized that 27 states, the International and U.S. Olympic Committees, and the National Collegiate Athletic Association had all adopted policies similar to those being challenged in this case, representing a body of informed opinion among those regulating scholastic athletic competition on the issues of fairness and safety. Thus, the Court's position was presented as being mainstream.

Kavanaugh concluded: "We emphasize one last point. Most of the biological female and transgender student-athletes who are involved in transgender sports disputes around the country are teenagers or in their early twenties. Those student-athletes want to play sports. Their desire to compete warrants respect. No student-athlete on either side of the issue, whether a biological female or transgender, deserves to be ostracized or vilified."

Justice Thomas provided a three-paragraph concurrence intended to bring home his view that "transgender status is not a suspect class requiring heightened equal protection scrutiny," inaccurately conflating the concepts of "suspect class" and "heightened scrutiny." "Suspect classes" get *strict scrutiny*, requiring compelling justification and narrow tailoring. That is not how the Court handled this case. "A man does not have a legal right to compete against women just because he believes that he is a woman," Thomas wrote, misrepresenting B.P.J.'s claim. Although he concurs with the Court in upholding the West Virginia and Idaho laws, it is clear that he would have considered this to be a rational basis case, not an intermediate scrutiny case. He characterizes "gender dysphoria" as "a mutable mental state that is the object of psychiatric treatment," and asserts that it does not resemble the "immutable characteristics on the basis of which our precedents have applied heightened scrutiny." He goes even further, now channeling the rhetoric of President Trump's Executive Orders: "This case concerns 'biological men' and 'boys who identify as girls.' Men and boys with gender dysphoria are not women or girls, even if they believe they are. Sex is an immutable 'biological' characteristic; it is binary; and 'man' and 'woman,' 'boy' and 'girl' are the terms that correspond to adults and children of each sex. To use language to obscure reality – to show 'indifference regarding the truth' – it to lie to the public and cease to treat our fellow citizens 'as equals.'" A typical Thomas rant.

Justice Gorsuch joins the Court's opinion but adds two points: He observes that Title IX was enacted under Congress's spending power, so he contends that a dispute about compliance with Title IX by educational institutions would be subject to a contract analysis, identifying conditions of the contract. "A funding recipient must 'voluntarily and knowingly' assent to those conditions for them to bear any legal force," he explains. He focuses on the requirement, identified in earlier cases, that Congress "clearly and unambiguously specify" any such conditions it expects funding recipients to satisfy. "Nothing in Title

IX clearly and unambiguously alerts funding recipients that they are prohibited from restricting a school-sponsored sports team to biological women or girls." And he follows with his textualist analysis from there. Also, as author of the *Bostock* decision, he argues that it supports the Court's decision in this case, noting that the parties in that case had agreed that the word "sex" in Title VII referred to "biological sex," as did the parties stipulate in this case as to Title IX, and his further analysis of the claims of the transgender petitioner in *Bostock* case was based on this premise. As the Court did in this case, asserting that the word "sex" as used in Title IX refers to "biological sex" and that excluding B.P.J. from the women's teams was excluding her because her biological sex is male, thus making this a case of sex discrimination, requiring intermediate scrutiny and focusing on the state's justifications for treating transgender girls differently from "biological female" girls.

Justice Sotomayor begins her partial dissent by pointing out that B.P.J. is "the only transgender girl publicly identified in the State who has sought to play sports with other girls. . . As for B.P.J.'s equal protection claim, the majority, at this stage of the litigation, gets the answer wrong."

She focuses most of her opinion on the dissenting portion, dealing with the Equal Protection ruling, leaving to the end her explanation for agreeing with the Title IX ruling. She points out that B.P.J. "does not dispute that, for the purposes of this case, 'sex' in Title IX means 'biological sex,' or sex identified at birth. Nor does she dispute that 'sex' is used in the same way in the 1974 Javits Amendment and its accompanying regulations, which expressly authorize, but do not require, sex-separated sports teams. Finally, she does not seriously dispute that those regulations are lawful. It follows from all this that, even though West Virginia's policy of separating sports teams by sex identified at birth draws a sex distinction, it is one that Title IX allows." But she emphasizes the sports context of this case, and she explains that "there are plenty of contexts outside of athletics in which Title IX applies and does not allow sex distinctions like this one to be drawn. Title IX does not allow schools, for example, to institute mandatory sex-segregated classes or extracurricular activities like chess club, theater, and student government. Title IX also prohibits on-campus harassment, discrimination in admission and expulsion, and much, much more. I do not understand the majority to suggest, for instance, that schools could expressly bar transgender students from participating in certain classes or extracurricular activities entirely, or on the more extreme end, that schools could expel transgender students because they are transgender, and that those actions would not violate Title IX. Such actions would qualify as sex discrimination under *Bostock*, and in those contexts, just like in the employment context for the purposes of Title VII, treating people differently because of their sex would be unlawful under Title IX." With these words, Justice Sotomayor sought to put more detail on Justice Kavanaugh's footnote describing the context-limited scope of this decision.

As to the Equal Protection issue, however, she doubles down on the 4th Circuit's insight that the summary judgment record in this case was inadequate to ground a ruling on the merits of the B.P.J.'s Equal Protection claim. Once having accepted that, as the majority concludes, the exclusion of B.P.J. from playing women's sports because of her "biological sex" is discrimination because of sex, she insists that the full weight of intermediate scrutiny (sometimes called alternatively heightened scrutiny) should apply, and that this requires much more factual development than was undertaken either in the lower courts or by the opinion for the Court by Justice Kavanaugh. Justice Sotomayor insists that B.P.J.'s argument that a class of transgender girls who have taken puberty blockers and cross-sex hormones can't just be treated as "biological males" without further investigation of whether B.P.J.'s class is significantly different enough to merit different treatment, and she devotes considerable discussion to showing how the majority's approach of reaching a conclusion based on supposition rather than factual investigation falls short. That B.P.J. was in West Virginia at the time a subclass of one person made her case no less pressing as a matter of equal protection of the law, and it undermined the state's contention that there was a

need for an across-the-board ban with no sensitivity to individual facts.

As she explains, "B.P.J. contends that the means deployed by West Virginia here, a total ban on participation, lack the right fit. She argues that the chosen classification bars a discrete subclass from participating in girls' and women's sports even though the State's interests will not be furthered by their exclusion. According to B.P.J., transgender girls and women who both receive gender-affirming treatment and have never experienced endogenous male puberty neither possess any inherent athletic advantage nor pose any safety risks because of their sex identified at birth. As B.P.J. tells it, this distinct subclass is thus similarly situated to cisgender girls and women and yet is still being excluded. It is this overbreadth, she argues, that leads to the equal protection violation. Under this Court's precedents, this asserted factual difference, which has not been conclusively litigated below, matters to the equal protection analysis." By granting summary judgment, the trial judge had foreclosed B.P.J.'s opportunity to present testimonial evidence on a hotly contested point concerning fairness and safety, which could not be decided on the basis of "common knowledge" or as a matter of law. The 4th Circuit understood this, vacating and remanding the Equal Protection issue for further fact-finding, and the dissenters at the Supreme Court would have done the same.

Justice Jackson wrote separately to put a gloss on the Title IX point. "The Court did not need to hold that Title IX protects against discrimination solely on the basis of 'biological sex,'" she wrote, "even if only 'in the sports context.' And it should not have. Instead, the Court should have assumed as much while leaving open the possibility that Title IX's definition of 'sex' is more capacious." "When B.P.J. is sorted onto a team by sex assigned at birth, she doubtless suffers discrimination on the basis of her sex assigned at birth. The same is true, however, of any other athlete sorted in the same manner, regardless of their gender identity. In the context of athletics, the Javits Amendment and resulting regulations instruct that this brand of sex discrimination is permissible. The sexes may generally be separated." She then asserts that "there is reason to doubt the soundness of the concession that Title IX's reference to 'sex' means *only* sex assigned at birth. We have construed discrimination under Title IX broadly," she observed, citing *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005), "to ensure that the statute protects against denial of opportunities on the basis of gender. Thus, we have recognized that Congress's antidiscrimination statutes 'intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes,'" citing *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978). "That is why, in the analogous Title VII context, 'an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender' and has therefore violated the statute."

"The prohibition against stereotyping is difficult to explain fully by reference to sex assigned at birth," Justice Jackson continued. "A sex stereotype often will but need not have anything to do with an individual's sex assigned at birth. A transgender woman penalized for being perceived as aggressive has experienced discrimination 'on the basis of sex' just as much as a cisgender woman has, no matter that the transgender woman's behavior matches expectations of her sex assigned at birth. Either way, the institution has imposed its gender-based expectations upon her. And either way, the institution may have violated Title IX. In short, the majority is wrong to suggest that the term 'sex' in Title IX 'cannot plausibly be interpreted to refer to anything other than biological sex." To so limit it would be to cut the heart out of much Title IX case law concerning how students experience such phenomena as gender-related harassment at school. "Because West Virginia's law forces B.P.J. to live – in this case, to play – as a boy though she is a girl, it might well run afoul of Title IX properly construed," concluded Justice Jackson.

The list of counsel for the parties and amici accompanying the opinion is too long to recite in full here. At oral argument, the parties in *West Virginia v. B.P.J.* were represented by Michael R. Williams, Solicitor General, Charleston, W. Va. (for the Petitioner, West Virginia); and Hashim M. Mooppan,

Principal Deputy Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.), and by Joshua A. Block, American Civil Liberties Union, New York, N. Y. (for the Respondent, B.P.J.). The parties in *Little v. Hecox* were represented by Alan M. Hurst, Solicitor General, Boise, Idaho (for Petition Governor Bradley Little); and Hashim M. Mooppan, Principal Deputy Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.), and Kathleen R. Hartnett, of Cooley LLP, San Francisco, Cal. (for Respondent Lindsay Hecox).

All of the justices in the majority on the Equal Protection claim were appointed by Republican Presidents: George H.W. Bush (Thomas), George W. Bush (Roberts and Alito), and Donald J. Trump (Gorsuch, Kavanaugh, and Barrett). All of the justices dissenting on the Equal Protection claim were appointed by Democratic Presidents: Barack Obama (Sotomayor and Kagan) and Joe Biden (Jackson).

District Court Issues a Measured Strike against Thinly Reasoned Executive Order Targeting Gender-Affirming Care for Federally Incarcerated Transgender People

By Jae Bang, Esq.

On June 17, 2026, Senior Judge Royce C. Lamberth of the U.S. District Court for D.C. granted the plaintiffs' motion for preliminary injunction in Kingdom v. Trump, 2026 U.S. Dist. LEXIS 135103 (D.D.C.). This appear to stall the U.S. government from implementing a "near total ban" on gender-affirming care for federal inmates (as articulated in the Federal Bureau of Prisons (BOP) Program Statement 5260.1 (Program Statement), and the government was ordered to provide plaintiffs Alishea Sophia Kingdom, Solo Nichols, Jas Kapaule, and future class members gender-affirming care as was in effect prior to President Trump's January 20, 2025, Executive Order 14168 (EO). The plaintiffs were represented by attorneys from the Transgender Law Center and the ACLU.

In a carefully drafted opinion in which the court noted on two separate occasions that it had no interest in "wad[ing] into the culture war," Judge Lamberth, a Reagan appointee, found that the plaintiffs were likely to win on their Administrative Procedure Act (APA) claim – that the Program Statement was arbitrary or capricious. Judge Lamberth previously stayed BOP's two implementing memoranda (one dated February 21, 2025, and the other dated February 28, 2025) challenged by the plaintiffs, reasoning that the then-current statements relied solely on the commands of the EO itself, which he found likely lacks sufficient evidence and justification to withstand arbitrary-or-capricious review. In the spirit of judicial restraint, it seems likely that Judge Lamberth will *not* rule on the plaintiffs' constitutional claims, which demarcates the distance Judge Lamberth is looking to maintain from the so-called culture war.

The plaintiffs of this class-action suit are federal inmates who are medically diagnosed with gender dysphoria. Prior to the EO, BOP provided Kingdom, Nichols, and Kapaule with hormone therapy, social accommodations, and surgery. But these treatments stopped after the EO, which dictated in Section 4(c) that federal funds shall not be spent on any medical treatment for the purpose of conforming an inmate's appearance to that of the opposite sex. The Program Statement at issue in this case is the BOP's final agency action that seeks to implement the EO. The specific claim that the plaintiffs raised was that this Program Statement – which eliminates all gender-affirming care except for psychotherapy and psychotropic medication to treat gender dysphoria – is arbitrary or capricious, which is prohibited under the APA.

This preliminary injunction is the latest development in *Kingdom v. Trump*, and the case has not been fully decided on the merits. That being said, the district court's holding suggests that the plaintiffs have a stronger case. The court found that BOP is responsible for caring for all inmates and for providing them with medically necessary health care. This fundamental duty is in conflict with the EO, which does not discuss the medical necessity of gender-affirming care in individuals with gender dysphoria.

This conflict received much of the airtime in non-procedural aspects of the holding. The court found it problematic that BOP did not sufficiently consider its own experience and records, having provided gender affirming care for almost a decade. Judge Lamberth also found it troublesome that BOP first issued clinical guidelines concerning the care of individuals with gender dysphoria in 2017 and had periodically updated those guidelines, and these are at distinct odds with the agency's abrupt change of position in 2025, which incidentally lacked scientific evidence, except for a declaration by a doctor specially retained for this litigation who had limited experience treating gender dysphoria. The court went as far as to say that it was likely that "the government disregarded significant evidence in its possession to reach the EO's mandated result." In this way, the *Kingdom* decision delineates how EOs may be reviewed according to the relief measures and guardrails established by the courts and legislators.

The *Kingdom* holding also has a notable implication for what kind of transgender rights federal courts may be more open to protecting. Judge Lamberth found that gender affirming care is the *only* effective treatment for gender dysphoria, and thus, denial of this treatment would result in irreparable harm to inmates with a gender dysphoria diagnosis. In contrast, the right to be housed in a prison facility matching one's gender identity is on thinner ice. Judge Lamberth nodded to the fact that, unlike the near decade-long policy in favor of gender affirming *care*, BOP has housed inmates based on their gender identity on a much more limited, individualized basis (*see Doe v. Blanche*, 172 F.4th 901 (D.C. Cir. 2026)). Narrowly defined norms and historical treatment seem to have a decisive influence on how federal courts will decide preliminary injunction motions involving transgender inmates.

In staying the agency memoranda that promulgated an Executive Order, the court reminded the public that the system's means for checks and balances are many. It's true, such checks and balances between the courts and the executive branch have not led to much relief for transgender individuals – especially at the appellate level – and until the merits of the cases are fully examined and decided, it is not clear how long the series of preliminary injunctions can be reasonably granted (consider the trend indicated in *Trump v. CASA*; separately, in *Doe v. Blanche*, dissenting Senior Circuit Judge A. Raymond Randolph (a Geoge H.W. Bush appointee) warned district courts about perpetually reissuing preliminary injunctions" in Prison Litigation Reform Act cases). Nevertheless, it is encouraging to see evidence, science, and experts guiding the way for marginalized individuals facing the whims of a political mood.

[Editor's Note: Prior to issuing this opinion, Judge Lamberth had issued an order extending a prior preliminary injunction in this case for a further 90 days, see 2026 WL 1906863 (May 26, 2026). That preliminary injunction was stayed by a three-judge panel of the D.C. Circuit, voting 2-1, on June 17, the same date that Judge Lamberth issued the preliminary injunction reported above, the majority of the panel stating that the district court did not have jurisdiction to issue an "administrative injunction" on May 26. The members of the panel were Circuit Judge Karen Henderson (appointed by President George H.W. Bush) and Justin Walker (appointed by President Trump) in the majority, and Circuit Judge Cornelia Pillard (appointed by President Obama) dissenting. The June 17 preliminary injunction reported above was appealed to the D.C. Circuit on June 23, 2026, where it was pending at the end of June.]

Federal Court Certifies Class Action Against Idaho Bathroom Bill and Issues Preliminary Injunction Against Enforcement

By Arthur S. Leonard

Idaho's H.B. 752, codified at Idaho Code Ann. Se. 18-4117, is a "bathroom bill" intended to criminalize transgender people's use of restrooms designated for use by persons whose biological sex is different from theirs. It applies to government facilities and non-government places of public accommodations such as retail businesses. The bill makes limited exceptions for single-user restrooms and for "dire" emergencies. Its

enactment was opposed by the state's law enforcement associations as being too difficult to enforce. Shortly after enactment, a group of transgender plaintiffs represented by Lambda Legal and the ACLU together with cooperating attorneys filed suit in the U.S. District Court in *Jackson-Edney v. Labrador*, Case 1:26-cv-00261(D. Idaho, filed April 29, 2026), challenging the law on 14th Amendment Due Process and Equal Protection grounds. The case is pending before Chief Judge Amanda K. Brailsford (an appointee of President Joe Biden), who issued a decision and order on June 16 ruling on pretrial motions by plaintiffs. *See* 2026 WL 1732955. Judge Brailsford granted a motion for provisional class certification and a motion by certain plaintiffs to proceed under pseudonyms and issued a preliminary injunction barring enforcement while the case is pending. The state has moved to stay the injunction pending its appeal to the 9th Circuit.

The state's first argument against issuance of a preliminary injunction was that because the new statute had not been enforced against anybody yet, the plaintiffs could not meet the test of showing "injury in fact" in order to have standing to mount a constitutional challenge in federal court. The judge found that the lack of any statements or actions by prosecutors threatening enforcement did not undermine the plaintiffs' allegation of a credible threat of prosecution, as neither the attorney general nor the state's prosecutors had disavowed enforcement, which the court concluded was "strong evidence" of a "credible threat," noting as well that "Idaho is vigorously defending the constitutionality of [H.B. 752] and its broad coverage." The court also readily found that the plaintiffs had named the correct defendants to meet the requirements of traceability and redressability, since the provisions they were attacking were criminal law provisions that could only be enforced by prosecutors.

As to injunctive relief, Judge Brailsford noted that as long as at least one of the plaintiff's legal claims was likely to succeed, the test of likely success on the merits would be met for purposes of preliminary relief. H.B. 752 criminalizes that act of a person "knowingly and willfully enter[ing] a restroom or changing room in a government-owned building or a place of public accommodation . . . that is designated for use by the opposite biological sex." A first offense is a misdemeanor punishable by jail not to exceed one year, while a second offense is a felony punishable by up to five years imprisonment. The statute also contains ten exceptions that would allow an individual to enter a restroom designated for the opposite sex, "such as to render medical assistance or to perform custodial services." The judge found two exceptions relevant to the plaintiff's claimed due process violation of "vagueness." One allows a person to "use a single-user facility designated for the opposite sex, if such single-user facility is the only facility reasonably available at the time of the person's use of the facility." The other permits a person to "use restroom facilities when the person is in dire need of urinating or defecating and such facility is the only facility reasonable available at the time of the person's use."

The court found that these two exceptions were not clearly defined, accepting the plaintiffs' arguments that they are unconstitutionally vague because they fail to provide Plaintiffs fair notice of when the provisions apply. The court found that the statute lacks "sufficient standards for law enforcement." Indeed, the opposition of the law enforcement community pinpointed the problems at issue. How was a police officer to know whether other facilities were "reasonably available" without any legislated standard setting out factors to be considered. There was also the issue that law enforcement critics raised of how a police officer was to determine the "biological sex" of an individual. The state's lame suggestion of DNA testing after the fact to validate an arrest was laughable. "Different officers could reasonably reach different conclusions regarding identical conduct," wrote the judge, "not because the facts differ, but because the statute furnishes no standards by which those facts are to be evaluated."

A letter to the legislature from the Idaho Chiefs of Police Association commented that "it is unclear how an officer responding to a call would reasonably determine whether someone was truly in 'dire need,' creating an unenforceable standard that places officers in a difficult position." And the Iowa Fraternal Order

of Police opposed passage, arguing "the way this language is worded, the way this bill is, it makes it difficult for us to enforce." The probable result would be arbitrary and inconsistent enforcement, based on the subjective views of the responding officers. The state argued that this did not make the law vague, but the court responded: "a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved."

Judge Brailsford found that plaintiffs were likely to succeed on the merits of their vagueness argument. "H.B. 752's 'reasonably available' and 'dire need' exceptions subject individuals to an unascertainable standard because the statute does not indicate upon whose sensitivity a violation depends. Furthermore, the incriminating fact is indeterminate, i.e., what constitutes 'reasonably available' and 'dire need.' As noted above, H.B. 752 fails to limit the scope of when a restroom is 'reasonably available.'" And, she found, as the Supreme Court had held in the past, "the vagueness doctrine guards against laws that permit enforcement based on 'personal predilections' rather than objective standards." While tort law, for example, uses "reasonableness" as a factor in determining civil liability, criminal law is bound by Due Process to provide "fair notice of proscribed conduct," which this statute does not.

The court also resolved the "irreparable harm" and "balance of equities and public interest" factors in favor of plaintiffs. The state argued its interest in promoting "bodily privacy" and "protecting women and children in public restrooms from those who may seek to do harm." This bogeyman is always raised by legislative proponents of bathroom bills, in the absence of any evidence that transgender people have caused harm in restrooms. "The Court does not question the inherent privacy interest implicated by restroom use nor Idaho's interest in protecting the public from wrongdoers," the court commented. "But Idaho may protect those interests without infringing upon Plaintiffs' constitutional rights." She noted the many statutory provision prohibiting harmful conduct which can be enforced without imposing a categorical exclusion of transgender people from using restrooms appropriate to their gender identity and expression. The court rejected the state's argument that the court could "sever" the offending "exceptions" while leaving the rest of the law intact.

The court found no difficulty in certifying a class, which is a virtual prerequisite these days to issuing preliminary injunctive relief going beyond the named plaintiffs. In her order, the judge enjoins "enforcement of HB. 752 as against all transgender people who seek to use a restroom in a government-owned building or place of public accommodation in Idaho consistent with their gender identity wherever: (1) the covered restroom designated for use by sex is a single-user facility; or (2) when a single-user restroom is not available because no single-user restroom exists on the same floor as the multi-user facilities or all single-user restrooms on the same floor as the multi-user facilities are occupied or not in service." In addition to certifying the class of "all transgender people who seek to use a restroom in a government-owned building or place of public accommodation in Idaho consistent with their gender identity," the court granted the request for anonymity by certain of the plaintiffs.

The plaintiffs are not contesting the application of the law to "changing rooms" as opposed to restrooms, so they are not addressed in the court's opinion.

Attorney General Raul Labrador, the lead defendant, announced that the state would appeal the preliminary injunction order to the 9th Circuit, which received a notice of appeal in mid-July.

Federal District Judge Finds Department of Justice Unworthy of Court's Trust in Case Challenging Subpoena of Gender-Affirming Care Medical Files

By Arthur S. Leonard

In numerous cases around the United States, courts have been grappling with subpoenas issued by the Justice Department as part of the Trump Administration's strategy to deter caregivers from

providing gender-affirming care to minors. In Rhode Island, U.S. District Judge Mary S. McElroy used particular strong language to criticize the behavior of DOJ attorneys in *In re: Administrative Subpoena,* 25-1431-032 to Rhode Island Hospital, 836 F.Supp.3d 459 (D.R.I., May 14, 2026), appeal filed in 1st Circuit, injunction pending appeal denied, 177 F.4th 21 (1st Cir. May 19, 2026). This case was brought by the Child Advocate for the State of Rhode Island and by Rhode Island Hospital, asking the court to quash the subpoena, which sought unredacted medical records of minors within the state who had been receiving gender-affirming care at the hospital. Such care is legal in Rhode Island. The DOJ served the subpoena purported for the purpose of collection information relevant to an investigation of billing fraud, with DOJ theorizing that since the medications used for gender-affirming care are "off-label" doctors will manipulate the billing codes when submitting claims on behalf of patients to shield the purpose for with the medication are ordered. Judge McElroy granted the motions by both the Child Advocate and the Hospital to quash the subpoenas, enjoining DOJ from seeking or receiving any documents related to "this now invalid subpoena."

The court's outrage is well captured by the introductory paragraphs of her opinion: "The United States Department of Justice ("DOJ") possesses immense prosecutorial authority and discretion. As citizens, we trust that federal prosecutors, when wielding this awesome power against a state, a company, or certainly against vulnerable children, will play fair and be honest with its counterparts and the judiciary.

"DOJ has proven unworthy of this trust at every point in this case. It has misrepresented and withheld information to both this Court and the United States District Court for the Northern District of Texas (the "Texas court"). It did so in an obvious effort to shield its recent investigative tactics—previously rejected by every other court to review them—from this Court's review, in favor of a distant forum that DOJ deems friendly to its political positions. Its representatives have, under oath, misrepresented salient facts. It has misled the parties with whom it was negotiating in Rhode Island, who have now been placed in an untenable and unprecedented procedural position. And when its attorneys came to this Court to explain their conduct, the senior attorney—who was present at many of the events that took place in this case—sat silently by as his counterpart, a junior attorney who has been practicing law for approximately six months and had no relevant information, was forced to answer questions about DOJ's blatant disregard for the proper course of negotiations."

And, in the "Background" section of her opinion, Judge McElroy pulls no punches: "This matter arises out of an ostensible nationwide healthcare fraud investigation that seeks to examine the manner in which children throughout the United States receive gender-affirming care." She then describes the course of negotiations over what DOJ would accept as a satisfactory response to the subpoena, during which she asserts that DOJ attorneys made misleading statements both to Rhode Island Hospital representatives and to the court about the status of negotiations. She then continues the tale: "Notably, and misleadingly, DOJ never acknowledged that it had failed to respond in any way to the February message from RIH where it suggested search terms for compliance with the subpoena. Thereafter, on April 28, 2026, email correspondence between DOJ and RIH reveals that DOJ reinitiated contact with RIH, explained that the responsible prosecutor had "been out for a few weeks[,]" and requested that the parties conference "this week" regarding Rhode Island Hospital's next production. (ECF No. 28-11.) Notwithstanding this representation to RIH, and roughly forty-eight hours later, DOJ instead decided to file an unannounced Petition for Enforcement of this same administrative subpoena in the Northern District of Texas, Fort Worth Division. No. 4:26-mc-00006-O, ECF No. 1. At 6:10 PM on April 30, DOJ emailed RIH reversing its previous negotiating position and announcing that there was "[n]o immediate need to connect now." (ECF No. 28-11 at 2.) This omission leads the Court to conclude this request was a subterfuge to prevent RIH from realizing that DOJ had decided to go to Texas for an order compelling production of the very records that they had been discussing for months." The court pointed out that

DOJ's representation that the so-called investigation as being conduct by the U.S. Attorney for the Northern District of Texas appeared to be a ruse to justify asking a federal judge in Texas to issue an order to Rhode Island Hospital to comply with the subpoena, when the children whose record were being subpoenaed and the Hospital to which the subpoena was addressed were in Rhode Island, and internal DOJ communications that were examined by the court were all between Rhode Island the Washington, D.C.

After describing several instances in which DOJ attorneys had misrepresented what was going on in the negotiations with Rhode Island Hospital, she wrote: "This reckless disregard for the duty of candor owed to a federal court is appalling."

After continuing this narrative at some length, the court turns to the legal issues, finding that the Child Advocate has standing to represent the interests of transgender minors in the state, that there is no Congressionally authorized purpose for DOJ's purported "investigation," and joining those other federal district courts who used the "improper purpose" doctrine as a basis to quash the subpoenas. She also found a potential violation of Due Process privacy rights of the people whose medical records were being sought by DOJ for the "improper purpose."

Since DOJ under the leadership of Pam Bondi and now Todd Blanche has been a shameless institution, it is not surprising that it filed an appeal in the 1st Circuit on May 18, seeking to reverse the quashing of the subpoena. A 1st Circuit panel rejected a motion for an injunction while the case is pending, 177 F.4th 21 (May 19, 2026).

Colorado Supreme Court Orders Children's Hospital Colorado to Resume Providing Gender-Affirming Care to Minors While Litigation Proceeds

By Arthur S. Leonard

On December 15, 2025, U.S. Secretary of Health and Human Services Robert F. Kennedy, Jr., issued a "Declaration" proclaiming that medical gender-affirming care is neither safe nor effective and "fails to meet professional recognized standards of care." As such, he stated that HHS may seek to exclude entities or individuals from federal health care payment programs if they provided such care to minors. Children's Hospital Colorado (CHC) was the main regional provider of such care, heavily dependent on participation in federal health care payment programs for its existence. The Colorado Attorney General joined a lawsuit brought by Oregon challenging the legality of the Kennedy Declaration. Despite the pendency of that suit, HHS's general counsel announced that he was referring CHC to the agency's Inspector General for investigation of its practice in this area, leading CHC to announce that it was suspending that practice, leaving minor patients throughout the region who were receiving gender-affirming care without a treatment provider. A group of minors and their parents brought a federal class action suit challenging CHC's action under Colorado's Anti-Discrimination Act (CADA), which forbids discrimination on the basis of gender identity or expression as well as on the basis of sex or sexual orientation, and sought a preliminary injunction requiring CHC to resume this program while the case was pending. Reversing a trial judge, who found that some of the elements for preliminary relief had not been met, the Colorado Supreme Court reversed and remanded with orders to issue the preliminary injunction in *Boe v. Children's Hospital Colorado*, 589 P.3d 478 (Colo. Sup. Ct. May 18, 2026), a 5-2 decision.

The trial judge, Denver County District Court Judge Ericka F. H. Englert, purported to apply a six-part test established by the Colorado Supreme Court for issuing preliminary injunctions to maintain the status quo pending a ruling on the merits as to the validity of an action by the defendant. The trial court found that plaintiffs had fallen short in showing three of the factors: that granting the preliminary injunction would not disserve the public interest, that the balance of equities favored the injunction, and that the injunction would preserve the status quo pending trial

on the merits. The trial judge reasoned, in common with the dissenters at the Supreme Court, that CHC was serving the broader public interest because continuing the gender-affirming care program risked losing federal funding and shutting down CHC's entire operation; the trial court's view of the equities followed naturally from that. The trial court had found that plaintiffs were likely to win on the merits of their claim under CADA, concluding that the hospital's policy discriminated against transgender minors based on their gender identity, but that the risk of losing federal funding outweighed that in terms of the overall public interest.

The Colorado Supreme Court disagreed, in an opinion by Justice William W. Hood. "With sympathy for the petitioners, respondent's employees and representatives, and the trial court that had to blaze an uncertain trail," he wrote, "we conclude that the trial court erred in its application of the test we adopted in *Rathke v. MacFarlane*, 648 P. 2d 648 (Colo. 1982), for determining whether to grant a preliminary injunction."

Commenting that "it is hardly surprising that the trial court recognized that granting the requested injunctive relief would serve the public interest by protecting petitioners and other vulnerable transgender and gender-diverse youth," wrote Hood, "Colorado law makes it unmistakably so. But the trial court still found itself in a bind. It worried that ordering CHC to 'violate federal law,' as it put it, could have catastrophic consequences for a larger segment of the public" if CHC lost its federal funding, and it opined that giving the preliminary injunction "could create a greater risk to a greater number of individuals, which would adversely affect the public interest." Why was the trial court wrong? This case involves a group of people who are a "protected class" under Colorado law. "We conclude that a … strict numerical comparison of affected individuals isn't appropriate when the individuals seeking injunctive relief are part of a protected class and seeking an injunction because of discrimination based on that protected class. Were it otherwise, minority groups would always lose. But that is not the law. On the contrary, that's precisely why we have protected classes," citing the famous Footnote 4 from *U.S. v. Carolene Products Co*., 304 U.S. 144 (1938).

The court also found that the trial court's concern about violating federal law was misplaced here, observing that Kennedy's Declaration was *not* federal law. "A declaration from the HHS secretary can be a basis for exclusion from federal health care payment programs," wrote Justice Hood, "but the Declaration itself isn't a federal law banning gender-affirming care." Kennedy's declaration would be governed by statutory procedural requirements; directing an investigation was only a first step, and, of course, there was that Oregon case pending, in which the federal district court had since issued an opinion concluding that "the Kennedy Declaration is unlawful" and enjoining HHS from taking any enforcement actions under it. *Oregon v. Kennedy*, 2026 WL 1048354 (D. Ore., April 18, 2026).

The dissenters, on the other hand, Justices Brian D. Boatright and Carlos A. Samour, Jr., concluded that the first step of getting a preliminary injunction had not been met, because they concluded that CHC's actions did not constitute discrimination under CADA, the state's antidiscrimination statute. Here they had recourse to the bizarrely reasoned U.S. Supreme Court opinion in *U.S. v. Skrmetti*, 605 U.S. 495 (2025), in which that court rejected an equal protection challenge to Tennessee's law banning gender-affirming care for minors. The U.S. Supreme Court held that the Tennessee ban did not constitute discrimination because of transgender status, but rather discrimination because of age and medical diagnosis, neither of which mandated heightened scrutiny. This gave the dissenters their argument as well under CADA. Writing for the dissent, Justice Boatright stated: "Precocious puberty and gender dysphoria are different conditions. Thus, the use of puberty blockers to treat precocious puberty and their use to treat gender dysphoria are different 'medical services.' To lump them into a singular bucket is illogical and ultimately untenable. Therefore, it is inaccurate to characterize CHC's decision to stop providing puberty blockers as a treatment for gender dysphoria while continuing to provide this medication for precocious puberty as discrimination. Using this correct framing of medical

'service,' petitioner's gender identity, sex, or disability was not a 'but-for' cause of CHC's decision to cease medical gender-affirming care for minors." The dissenters insisted that the services CHC provide to their minor patients did not depend on their protected status, and therefore it did not offend the state law.

Furthermore, the dissenters argued that petitioners failed to show that CHC made its decision with a discriminatory intent. They did this to protect their federal funding stream. "Common sense dictates that one cannot discriminate against another without a motive or purpose to do so, at least in this context," wrote Boatright, insisting that there was no "discriminatory intent" here. Just a health care provider deciding to protect its other programs by closing this one. As their evidence on this point, the dissenters noted that CHC *continued* to provide gender affirming care to adults. "CHC had been providing medical gender-affirming care to transgender youth for years, stopping this care only *after* they were referred to OIG for failure to comply with the Kennedy Declaration. …. [T]he record demonstrates that CHC made this decision for its own survival, as well as the thousands of patients who would be deprived of *all* medical care if the hospital were to meet its demise."

Attorneys for the plaintiffs are Greisen Law, LLC, Paula Greisen, Denver, Colorado; and Demanding Equality, Inc., John M. McHugh, Denver, Colorado.

Montana Supreme Court Finds State Law on Birth Certificates and Driver's Licenses Violates State Constitutional Equal Protection Rights of Transgender People

By Arthur S. Leonard

The Montana legislature enacted S.B. 458 in 2023, defining "sex" as that term is to be used in Montana law, solely in biological terms, insisting that there are only two sexes, in that respect anticipating President Trump's 2025 Executive Order on the subject. After the legislature passed this law, the state's Health Department ended their practice of allowing transgender people to get amended birth certificates showing the sex with which they identify, and the Motor Vehicle Department ended their practice of allowing transgender people to have their driver's license reflect their gender identity. In the case of driver's licenses, the prior policy involved both initial issuance of licenses and applications to amend licenses so that a person who has transitioned can having a license with name, picture, and sex designation consistent with how they are living. Under the new policy, transgender people in Montana would be unable to obtain government-issued documents that were consistent with their gender identity. Clark County District Judge Mike Menahan issued a preliminary injunction in *Kalarchik v. State of Montana* in December 2024, finding a violation of the state's constitution, and the state appealed. On April 14, 2026, the Montana Supreme Court affirmed Judge Menahan's preliminary injunction order. See 427 Mont. 333, 587 P.3d 784.

Two transgender individuals, Jessica Kalarchik and "Jane Doe," had filed the lawsuit contending that the new policies violate the Montana Constitution. Kalarchik, a transgender woman who was identified as male at birth in Montana, now lives in Alaska, where she was able to legally change her name and her sex designation on her Alaska nursing license, her Alaska driver's license, and her federal social security card. She obtained her name change with a court order. However, only Montana can amend her birth certificate to match those other documents, but Montana won't do that under its new policy. Even when she presented the Alaska court order granting her name change, Montana would not change the name and sex designation on her birth certificate. Jane Doe, a Montana-born resident of the state, was turned down in her attempts to secure a new birth certificate and driver's license. Due to her transition, she presents as a woman, but her pretransition driver's license pictures her as a man with a man's name. She encountered difficulty in a traffic stop when a police officer could not verify her identity based on that license and only accepted her explanation after prolonged scrutiny of the picture. She fears future complications when she needs to present government-

issued identification.

In light of the plaintiffs' experiences, the judges in the majority had no trouble finding standing for the two women to bring suit. The issue on appeal was whether Judge Menahan abused his discretion by granting the preliminary injunction, which essentially preserves the status quo that prevailed in Montana before the passage of S.B. 458 while the case is being litigated on the merits. The seven-member court voted 5-2 to uphold the preliminary injunction, in an opinion by Justice Laurie McKinnon joined by three other justices to make a majority of the seven-member court. Justice Beth Baker wrote a concurring opinion adopting a different analysis from the majority. Justice Jim Rice and Chief Justice Cory J. Swanson dissented in separate opinions.

Addressing the plaintiffs' likely success on the merits, which is a *sine qua non* of obtaining preliminary injunctive relief, Justice McKinnon relied on the "Individual Dignity" provision of the Montana Constitution, Article II, Section 4, which states: "Individual Dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." This provision goes far beyond the Equal Protection Clause of the U.S. Constitution. It restrains both government and private actors from discriminating, and specifies prohibited grounds of discrimination, including "sex." But the Montana Constitution does not define "sex" for this purpose. Here, the U.S. Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), came in handy, with the court quoting that opinion to the effect that discrimination because of transgender status was necessarily discrimination because of sex. The court pointed out that such discrimination occurred because cisgender people could obtain government identification documents consistent with their gender identity, but transgender people could not. This was a blow to their dignity, on top of being a form of discrimination. The court found that transgender and cisgender people were similarly situated in their need to have functional birth certificates and driver's licenses for those occasions when they needed to document their birth or their identity. Imagine trying to get on an airplane without appropriate government-issued identification – which is one reason why President Trump's directive to the passport office to stop allowing transgender people to get new passports consistent with their gender identity is clearly discriminatory and unconstitutional, or at least one hopes the U.S. Supreme Court will eventually agree, despite a false start in a "shadow docket" ruling. Imagine trying to vote in a state that has a voter-ID rule if your name and picture are inconsistent with how you are living.

While Justice McKinnon and the majority focused their ruling on equal protection, Justice Baker stressed the dignity aspect of the provision. On the other hand, Justice Rice complained that the court's opinion "forces the state to issue falsified legal documents. According to the Court," he wrote, "a biological male is constitutionally entitled to have 'female' noted in the sex field of a birth certificate. Such a result flows from the Court's flawed equal protection analysis that fails at the threshold step: The Court treats a biological male and biological female as similarly situated when both request that 'female' be entered in the sex field of a birth certificate." He relies on an outrageous statement made by the U.S. Supreme Court on its "shadow docket" when it confronted a lower court's grant of preliminary injunctive relief in a passport case: "Displaying passport holders' sex at birth no more offends equal protection principles than displaying their country of birth – in both cases, the Government is merely attesting to a historical fact without subjecting anyone to differential treatment." How obtuse! And, of course, being part of a "shadow docket" opinion, it should not be binding when the issue comes back to that court on the merits.

Chief Justice Swanson, stating his agreement with Justice Rice's dissent, complained about the court's "unnecessary engagement in law-making which belongs to the legislative branch." In his view, the issues in this case are not justiciable, presenting political questions not appropriate to the judicial

branch. He argues that the plaintiffs did not have standing to bring this case.

Because the majority of the Court premised its ruling on an interpretation of the state's constitution, it is not subject to review by the U.S. Supreme Court, and it is binding on the Health Department and the Motor Vehicle Department unless overruled by the people of Montana through a constitutional amendment.

Indiana Appeals Court Finds Biological Father Who Sexually Impregnated Birth Mother Rebutted Non-Birth Mother's Parental Presumption

By Arthur S. Leonard

In what is likely an extremely unusual case, the Court of Appeals of Indiana ruled on March 30 that although a child born during the marriage of a lesbian couple was presumptively a child "of the marriage" with both the non-birth other presumed to be the child's second mother, this presumption can be rebutted by the child's biological father upon a showing that the child was conceived through sexual intercourse. Olbera v. Sykes, 280 N.E. 3d 282.

Nicole Olbera and Tiara Sykes, then an unmarried lesbian couple, were already raising children borne by Sykes during a prior relationship, but they wanted to have a child conceived in their own relationship. In 2019, they decided they wanted to have a child together. They invited Demaj Baker, a man, to join their relationship and live with them to be the biological father of the child. Baker had sexual intercourse with both women and Olbera became pregnant twice early in 2021 but miscarried both times. Olbera became pregnant again, this time successfully. Olbera and Sykes consulted a lawyer and decided to marry to ensure that Sykes would be presumed to be a legal parent to the child who would be born after the marriage had taken place. Baker continued to live with them. He insisted that he was not just a "sperm donor" and although he was not asserting paternal status then, he wanted to be part of the child's life. Although there was no written agreement about all of this, there was clearly an understanding that the three made up a "throuple" having and raising this child. But eventually the women separated, the child remaining with birth-mother Olbera, who soon moved with the child to Texas. Sykes filed a petition for dissolution of the marriage, alleging that child was a "child of the marriage" and seeking to preserve her parental rights. But Baker filed a petition to establish his paternity of the child.

The trial court determined that Sykes' status as a legal parent was established under a 7th Circuit decision, Henderson v. Box, 947 F.3d 482 (2020), which held that Indiana's statutory marital presumption of paternity statute was unconstitutional because it denied female same-sex spouses the same presumption that an opposite-sex spouse who was male would enjoy regarding a child of the marriage. The trial judge concluded that Baker was not a presumptive parent, under the Henderson ruling, dismissing his petition, also premising the dismissal on the argument that Baker's petition was filed too late under the statute of limitations. The trial court awarded Olbera sole legal and primary physical custody of the child subject to parenting time for presumptive parent Sykes (which would necessarily involve blocks of time since Sykes continued to live in Indiana while Olbera and the child resided in Texas). Olbera and Baker jointly appealed, arguing that Baker had rebutted the marital presumption with uncontested proof that he was the child's father, so the trial court erred in dismissing his paternity petition.

In an opinion by Judge DeBoer, the Court of Appeals agreed that the trial court had erred, rejecting along the way the contention that the trial court's dismissal of Baker's petition should be upheld on statute of limitations grounds. "Since Henderson in 2020, our Legislature has not amended section 31-14-7 or sections 31-0-2-15 and -16 to bring them into compliance with the constitution," wrote DeBoer. "Nevertheless, it is apparent to us that the marital presumption of parentage (biological fatherhood under the terms of the statute and in the case of opposite-sex couples) must be afforded to women in same-sex

marriages. Indeed, many states have said the same," and the Supreme Court essentially held as much in Pavan v. Smith, 582 U.S. 563 (2017), a brief opinion ordering a state to list both women in a married same-sex couple on a child's birth certificate. "In this case, Olbera gave birth to N.O.-B. while she was married to Sykes. We needn't look any further to conclude that the law required that Sykes be afforded the marital presumption of parentage. Next, we examen whether Baker successfully rebutted that presumption."

The court went on to assert that the trial court erred by treating this as a "rule of parentage" rather than a "presumption of parentage." Presumptions can normally be rebutted, and some states allow the presumption of parentage to be rebutted in opposite-sex couple cases, but some do not. DeBoer quoted from the Henderson decision: "There's no constitutional reason why a presumption that can be defeated for men can't be defeated for women too." "Consequently," wrote the judge, "just as it is in opposite-sex marriage, the marital presumption of parentage is rebuttable when a child is born into a female-female marriage."

The key here is that the child was conceived through sexual intercourse, not through donor insemination effected with the assistance of a physician. Baker had insisted he was not just a "sperm donor" and had sex with Olbera. Judge DeBoer wrote that the trial court erred in describing Baker as a "sperm donor." "But the Indiana Supreme court has expressly held that one cannot donate sperm through an act of sexual intercourse because 'there is no such thing as "artificial insemination by intercourse"' And the state's statutory scheme expressly excludes "insemination by intercourse." Under the statute, "sperm donor" can't asset parental rights. But Baker is not a "sperm donor." And since all parties agree that Olbera's pregnancy was due to intercourse with Baker, the marital presumption enjoyed by Sykes was rebutted and he was the legal father.

The purpose of the marital presumption in a same-sex couple case is to ensure that the child has two parents. "There is no risk that successful rebuttal of the marital presumption would leave N.O.-B. without a second parent as both Sykes and Baker seek parental right," wrote the judge. "In any event, the parties in this case unquestionably failed to enter into a valid sperm donor agreement. . . Moreover, there was no written agreement memorializing the parties' intention that N.O.-B. would be a child of Sykes and Olbera's marriage and that, as a consequence, Baker would relinquish all legal rights to the child. We find nothing in the record to reflect that Baker ever explicitly or implicitly demonstrated an intention that his biological child would exclusively be considered a child of Sykes and Olbera's marriage or that he knowingly and voluntarily relinquished his parental rights to the child. Indeed, the [trial] court's findings focused on the women's intent to the exclusion of Baker's." And, of course, the parties all agreed that "Baker would be part of the child's life because he wanted to be involved in the child's life and they wanted their child to know his biological father." Baker was actually present for the birth, lived with the women and child for the period before the separation, and testified that he told the women that he expected to "be a father to [his] child," and had actually been doing that. The court decided that Baker had met his burden to rebut the marital presumption by "direct, clear, and convincing evidence."

In conclusion, the court stated "we reverse the trial court's order dismissing Baker's petition to establish paternity and remand for further proceedings in that cause consistent with this opinion. We also reverse the trial court's decree of dissolution to the extent it deemed N.O.-B. a child of Sykes and Olbera's marriage and its custody and parenting time decisions that flowed from that erroneous finding."

As of the end of June, there is no indication of any attempt by Sykes to appeal this ruling to the Indiana Supreme Court. The opinion as reported in Westlaw includes the following editor's note: "This document contains discussion of unverified citations, likely generated by AI tools used by a party or counsel. These citations are not attributable to the Court. The unverified citations have been preserved as part of the official record, but links are unavailable."

Olbera is represented by Thomas Roberts, of

Noblesville, Indiana. Baker is represented by Georgia Dunkerley, of Harshman Ponist Smith & Rayl, Indianapolis. Sykes represented herself as appellee.

Kansas Trial Judge Issues Statewide Temporary Injunction Against Enforcement of State Ban on Gender-Affirming Medical Care for Minors

By Arthur S. Leonard

Douglas County District Court Judge Carl Folsom III issued an order on May 15, 2026, in *Loe v. State of Kansas*, DG-2025-CV-000241, blocking the enforcement of several provisions of S.B. 63, a state law enacted in 2023 over the governor's veto that outlaws the provision of gender-affirming medical care to minors. Judge Folsom's ruling was entirely premised on provisions of the Kansas Constitution that Kansas courts have construed as providing broader protection to individual autonomy and privacy than are available under the federal constitution. The court's ruling placed great weight on the state constitutional right of parents to provide for the health care of their children.

There are four plaintiffs in the case, a transgender girl and her mother (Lily and Lisa Loe) and a transgender boy and his mother (Ryan Roe and Rebecca Roe). They are represented by the ACLU of Kansas. The girl and boy were receiving gender-affirming care in the form of puberty blockers for Lily and testosterone for Ryan. Passage of the law meant that the clinic that was providing their care was forced to suspend treatment. In both cases, the mothers researched the availability of such care out-of-state and were able to make arrangements (which imposed significant practical and economic hardships) to continue care after the complaint was filed in this case while awaiting a ruling on their motions for temporary injunctive relief (the Kansas equivalent of a preliminary injunction). Both sides in the litigation proffered expert testimony. Judge Folsom found the experts presented by plaintiffs were well-qualified to testify on the key issues in the case based on extensive experience providing health care to minors with gender dysphoria and invoking the guidelines adopted by professional medical societies. He found that the experts proffered by the defendants generally lacked relevant expertise based on experience. On a heavily disputed point, the court found that arguments based on the actions of governments in other countries offered by the defendants did not support the absolute bans imposed by the Kansas statute.

Unlike *United States v. Skrmetti*, 605 U.S. 495 (2025), in which the U.S. Supreme Court held that the federal Equal Protection Clause was not violated by Tennessee's statutory ban on gender-affirming care for minors, this case was found by Judge Folsom to be controlled at the temporary injunction phase by Kansas state constitutional provisions on fundamental rights and personal autonomy, provisions providing broader protection than the federal Due Process Clause as interpreted by the U.S. Supreme Court. The *Skrmetti* Court ruled that the Tennessee law was subject on to a rationality test, whereas the court in this case applied strict scrutiny based on the "fundamental right of parents" to make medical decisions for their children under Section 1 of the Kansas Constitution Bill of Rights, which the Kansas Supreme Court says "protects the core right of personal autonomy – which includes the ability to control one's own body, to assert bodily integrity, and to exercise self-determination. . . Section 1 encompasses a natural right to make decisions about parenting and procreation. . . This right allows Kansans to make their own decisions regarding their bodies, their health, their family formation, and their family life." In *In re Adoption of Baby Girl P.*, 291 Kan. 424, 242 P.3d 1168 (2010), wrote Judge Folsom, "The Kansas Supreme Court has held that the right to parent one's child is also a fundamental right that is protected by the Kansas Constitution." Thus, for this court, the question of equal protection did not require discussion.

The most notable characteristic of Judge Folsom's opinion is its detailed, in-depth, summary of the medical evidence presented to the court, especially as it pertained to side effects of medical gender-affirming care through puberty blockers and hormones and the

risks and benefits of such treatment for minors with gender dysphoria. The court massed the evidence to refute every argument the state made in support of its statute. Unfortunately, Kansas trial court decisions are not published in the West Regional Reporters and are not as readily accessible as federal trial court decisions frequently published in West's Federal Supplement. This opinion, which cannot be found either on Westlaw or Lexis but is available as a pdf file of the court's typescript on the ACLU website, really deserves widespread attention. Assuming the state appeals, of course, a Kansas Supreme Court decision would be readily available.

Refugee Litigation Notes

By Arthur S. Leonard

U.S. Court of Appeals, 5th Circuit – *Vasquez-Barrera v. Blanche*, 2026 WL 1679032 (5th Cir. June 10, 2026) (not reported in Federal Reporter) – Petitioner, a bisexual Salvadoran man, was denied refugee status by the Board of Immigration Appeals. Record showed he suffered abuse by police officers who repeatedly brutalized him while yelling homophobic slurs. BIA found that commission of a serious nonpolitical crime disqualified him for asylum or withholding of removal, and also denied relief under the Convention against Torture, claiming petitioner had not demonstrated a likelihood of torture if he was removed to El Salvador. Panel voted to affirm denial of asylum and withholding but remanded the CAT claim to the BIA "for further consideration in accordance" with the court's per curiam opinion. The court reviewed the history of abuse experienced by the petitioner, noting the special circumstances that defendant's father, a former sergeant in the Salvadoran air force, was an influential man with connections to the police, who believed that physical abuse might turn petitioner into a "man." The court was very critical of the BIA's analysis of the CAT claim, asserting that "an official acts under color of law when the improper conduct occurs as part of an officer's performance of their official duties. . . Here, the record suggests – and the Board may find on remand – that Officer Gutierrez acted in an official capacity when he allegedly beat and extorted Vasquez while wearing his police uniform and with the assistance of his fellow police officers. The BIA also mistakenly found that Officer Gutierrez acted as a 'rogue' officer and not on behalf of the state when he extorted Vasquez. Our court has rejected the notion that 'rogue' conduct fails to satisfy the CAT standard, finding that even 'acts motivated by an officer's personal objectives are under color of law when the officer uses his official capacity to further those objectives."

. **U.S. Court of Appeals, 4th Circuit** – In *Diahn v. Blanche*, 175 F.4th 291 (4th Cir., May 5, 2026), the majority of a 4th Circuit panel agreed with the petitioner, Trokon Morris Diahn (who is incarcerated), who was born to Liberian parents in a refugee camp in Cote d'Ivoire during the Second Liberian Civil War and was subsequently raised by his refugee parents in the U.S. from the age of 2 (he was 20 at the time of the Court of Appeals opinion), that he did not receive a full and fair hearing before the Immigration Judge. The panel granted his petition for review, vacated the Board's determination, and remanded for further proceedings. The government is seeking to remove him to Liberia, a country he fled with his parents at age 2, where he knows nobody and faces threats of harm on account of his parents' prior involvements during the war. Although his father is now a naturalized U.S. citizen and his mother has legal status, his own status was never adjusted, leaving him vulnerable to removal. Due to a criminal record, his claims for asylum or withholding of removal were questionable, and his main reliance was on the Convention Against Torture. Within the administrative process he was pro se and incarcerated and based on quotes from the transcripts of his hearings before Immigration Judges, he was a confused teenager who was unfamiliar with the procedures, uncertain of what he had to do, and prone to misunderstanding instructions. As described by Judge Gregory in the appellate opinion, "Diahn's proceeding before the IJ and BIA were fraught. Diahn came before the IJ pro se, so he had limited understanding of the legal standards he need to meet and the evidence necessary to corroborate his claims. He was also incarcerated throughout his interactions with the IJ. Due to confusing communications from

the IJ, Diahn sent relevant documentary evidence in support of his applications for relief to the incorrect immigration court. With an inadequate record before it, the IJ denied relief on all grounds. On appeal before the Board, and hampered by ineffective counsel, Diahn was unable to adequately present his claims, and his appeal was dismissed in full by the Board." Because the procedures were going on when hearings were being conducted remotely, for example, he was confused about where to send supporting documentation, so even though he sent it within an applicable deadline, it went to the wrong Immigration Court and was not in the record before the second IJ who adjudicated his claims for relief. One member of the panel dissented in part, but she agreed to vacating the ruling and sending it back to the administrative process. The court majority emphasized that it is the responsibility of the IJ to see that an adequate record is made when dealing with pro se applicants, and the IJs fell short in this respect. The petitioner identifies as bisexual, but the record was devoid of information about whether bisexual people face persecution in Liberia, even though he sought to claim relief on that basis. The 4th Circuit panel consisted of Circuit Judge Roger Gregory (recess appointment by Clinton, subsequently appointed by George W. Bush), and Circuit Judges DeAndrea Benjamin and Toby Heytens (partial dissent) (both appointed by Biden). Before the court of appeals petitioner was represented by Sahar R. Atassi, Cooley LLP, Washington, D.C.

U.S. Court of Appeals, 9th Circuit – The Board of Immigration Appeals denied an out gay man from Nigeria's application for asylum, withholding of removal and protection under the Convention Against Torture (CAT). In *Fredrick v. Blanche*, 2026 WL 1329379 (9th Cir., May 13, 2026) (unpublished disposition), a unanimous 9th Circuit panel voted unanimously to deny the asylum and withholding claims, but it granted review respecting the CAT claim and remanded to order deferral of removal, which will allow Mr. Fredrick to remain in the United States. Plaintiff entered the U.S. in 2016 legally on a visa but overstayed. In 2023 he was convicted of conspiracy to launder money under 19 U.S.C. Sec. 1956(h) and was sentenced to 46 months in prison. The agency decided this was a particularly serious crime, so he was not eligible for asylum or withholding of removal. The agency also denied the CAT claim, stating that the mistreatment he suffered in Nigeria was mere "bullying and a beating" that did not rise to the level of past torture. The 9th Circuit panel unanimously agreed with the Petitioner that the agency's conclusion was not supported by substantial evidence in the record. "Petitioner was found credible," writes the court in a Memorandum, "and his testimony of mistreatment on account of his sexual orientation included being drugged, beaten, and raped by four unknown armed men. Such brutality qualifies as torture." The agency did not even mention the sexual assault in its opinion, trivializing the evidence. "Because Nigeria criminalizes homosexual conduct on a nationwide basis," wrote the court, "and the country conditions reports reflect the government's participation in mistreatment of gay individuals, government acquiescence is apparent on the record," which the court says, "similarly compels a finding of likely future torture." The three-judge panel included Senior Circuit Judge Mary Schroeder (appointed by President Carter), and Circuit Judges Morgan Christen (appointed by President Obama) and Danielle Forrest (appointed by President Trump).

U.S. Court of Appeals, 9th Circuit - The petitioner is a woman who was brought into the United States when she was six years old, lived in the U.S. for nineteen years before returning to Mexico. She identifies as gay and decided to seek asylum in the United States. The Board of Immigration Appeals dismissed her appeal of the Immigration Judge's denial of her application for asylum, withholding of removal, or protection under the Convention Against Torture. The IJ opined that petitioner failed to show that she could not relocate to a "gay-friendly" part of Mexico. The 9th Circuit panel, as noted, rejected her appeal and the 9th Circuit panel voted 2-1 to deny the petition in *Rodriguez v. Blanche*, 2026 WL 1734884 (9th Cir. June 16, 2026) (Memorandum). The dissenting judge, Salvador Mendoza, Jr., disagreed with the majority's disposition of the case, arguing that the IJ failed to undertake the necessary relocation analysis or to provide an explanation for rejecting

petitioner's proposed "particular social group" of Mexican nationals that were raised in the United States. Her counsel are Peter Afrasiabi, One, LLP, Newport Beach, CA, and Kathryn Marie Davis, Pasadena, CA. The panel consisted of N. Randy Smith (G.W. Bush appointee), Mark J. Bennett (Trump appointee), and the dissenter, Salvador Mendoza, Jr. (a Biden appointee).

Kentucky – In *Hart v. Puckett*, 2026 WL 1345297 (W.D. Ky. May 14, 2026), a transgender woman who was in pre-trial detention at the Louisville Metro Department of Corrections (LMDC) from August 2022 until January 2024, suffered summary judgement in favor of jail officials on the constitutional claims she as asserting *pro se*. Senior U.S. District Judge Joseph H. McKinley had allowed 14th Amendment due process claims to proceed against certain named defendants on screening of the complaint (see 2024 WL 4819269 [11/18/2024]). but he ultimately concluded that prison officials had not violated plaintiff's constitutional rights based on the rather thin record. According to the opinion, many of the plaintiff's factual assertions were contradicted by the record or by lack of evidence. A major point of dispute was plaintiff's genital status at various times. She asserted that she had surgically transitioned, but it appears that she still had a penis, having only undergone an orchiectomy (removal of testicles) as part of gender-affirming care. Placing an individual with a penis in the women's section of the jail, as she had requested, was considered to pose a safety risk. She was placed in a single cell, at first in the men's section, then after full documentation was received of her gender transition, in the women's section. In both sections, prison officials concluded that safety and security required that she not be placed in general population, and that she could only use a razor for grooming when being observed. The court concluded that these conditions did not deprive her of the necessities of life. Judge McKinley was appointed by President Bill Clinton.

Pennsylvania – In *Hennessy v. Mason*, 2026 WL 1759292 (M.D. Pa., June 18, 2026), Senior U.S. District Judge Robert D. Mariani analyzed a pro se complaint addressing multiple defendants and multiple legal theories by an incarcerated transgender woman suing pro se. As is frequently the case with pro se complaints, the plaintiff has a good story to tell about the poor way they have been treated but is unfamiliar with the principles of pleading a claim. Judge Mariani patiently explains what is missing or incorrect and grants plaintiff an opportunity to file an amended complaint closing the gaps, although one claim was dismissed outright with prejudice. Much of the complaint has to do with the struggle by plaintiff to relieve her gender dysphoria by obtaining various accommodations regarding dress and grooming. Judge Mariani was appointed by President Clinton.

Civil Litigation Notes

By Arthur S. Leonard

U.S. Supreme Court – The Supreme Court has scheduled its hearing in *St. Mary Catholic Parish in Littleton v. Roy*, No. 25-581, for November 3, 2026. The decision by the 10th Circuit is reported at 154 F.4th 752 (2025). The court granted certiorari on April 20, 2026, limited to the first two questions in the cert petition: "1. Whether proving a lack of general applicability under *Employment Division v. Smith* requires showing unfettered discretion or categorical exemptions for identical secular conduct. 2. Whether *Carson v. Makin* displaced the rule of *Employment Division v. Smith* only when the government explicitly excludes religious people and institutions." The third question, on which cert was not granted, is: "3. Whether *Employment Division v. Smith* should be overruled." Getting *Employment Division v. Smith*, 494 U.S. 872 (1990), overruled has been a long-term goal of the conservative religious legal movement, and the question has been listed frequently in cert petitions, only to the have the Court signal in its decisions denying cert that it doesn't want to confront that question. The decision in *Employment Division v. Smith* was written by Justice Antonin Scalia, and perhaps the Court's conservatives, who purport to worship at the Altar of Scalia, don't want to be backed into a corner to overrule one of his decisions. In this case, petitioners are challenging a state law under which providers of pre-kindergarten programs must

sign a non-discrimination policy in order to qualify for state funding. The policy must prohibit discrimination because of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability, to be consistent with the state's antidiscrimination law. Religious pre-K providers don't want to sign such a policy, especially as it includes sexual orientation and gender identity, arguing that their free exercise of religion is burdened by conditioning state money on such a requirement. The 10th Circuit agreed with the district court that this requirement did not violate the 1st Amendment rights, referring to *Employment Division v. Smith*. Although other opinions of recent years have punched large holes in this precedent, it is still strong enough to have upheld the provision in this case, below. The petition ass submitted by attorneys from the Becket Fund for Religious Liberty in an attempt to widen the exceptions or get *Smith* overruled entirely.

U.S. Court of Appeals, 1st Circuit – Professor Linda Crawford, a tenured Spanish professor in Salve Regina University's Modern Languages Department from 2004 until her termination in 2022, sued the university, its trustees, and various administration and faculty members, claiming her discharge violated federal and state anti-discrimination laws. U.S. District Judge Mary S. McElroy (D.R.I.) granted defendants' motion to dismiss, 2024 WL 3046404 (June 28, 2024), and Crawford appealed to the 1st Circuit, which affirmed in *Crawford v. Salve Regina University*, 178 F.4th 734 (June 11, 2026). The precipitating incident that led to her termination began on November 15, 2021, in a class on Spanish American Culture and Civilization. The topic for the day was "Sexuality in Latin America." Crawford had assigned a reading that referred to "transvestites," and led a discussion in class on LGBTQ+ rights in Latin American countries, noting that "these rights have not evolved to the level such rights have evolved to in the United States." A student became upset, objected to the terminology used in the assigned reading, and "had an outburst in class." Several students then met with the Department Chair to complain about Professor Crawford. One of them identifying as transgender criticized Crawford's use of language, and another objected to a "cisgender white woman" teaching this material. The Chair encouraged them to submit written comments. Things escalated from there until a Faculty Board voted 3-2 to recommend her discharge, which was then voted unanimously by the Trustees. Insensitivity in discussing LGBTQ issues was referred to, but Crawford suggested that she was railroaded in a process plagued with procedural faults, driven by the Department Chair and other faculty who disagreed with her teaching methods. She claimed that she was targeted because of her race (white), sex, sexual orientation, and age, in violation of federal and state anti-discrimination law as well as breach of contract and various torts. She filed first in state court, but the University removed the case to the U.S. district court and moved to dismiss. Both Judge McElroy and the 1st Circuit panel concluded that her allegations fell short of stating claims of discrimination, justifying the district court's dismissal of the federal claims and declining to assert jurisdiction over the remaining state claims. Because this is a private university, she could not assert constitutional claims, which might have helped her cause if this was a public university bound by principles of due process, in the opinion of this writer based on the court's detailed narrative. She was represented by counsel, Stephen T. Fanning. Judge McElroy was appointed by President Trump. Circuit Judge Gustavo Gelpi, a Biden appointee, wrote the opinion. The other members of the panel were Chief Judge David Barron, an Obama appointee, and Circuit Judge Seth Aframe, a Biden appointee.

U.S. Court of Appeals, 2nd Circuit – Plaintiff Jennifer Vitsaxaki is the parent of a child who was formerly enrolled in the Skaneateles, N.Y., Central School District. She brought suit challenging the District's policy of using "the name and pronoun that corresponds to the gender identity the student consistently asserts at school" even when that conflicts with the student's name and pronouns assigned at birth, without requiring that parents be contacted about the student's name and pronoun request. She sought declaratory relief and damages alleging the policy violated her procedural and substantive parental rights and her free exercise of religion rights. The district court dismissed her claims and she appealed. While

the appeal was pending, the U.S. Supreme Court decided *Mirabelli v. Bonta*, 146 S. Ct. 797 (2026), which the parties agree "at least partially undermines the district court's reasoning as to the Free Exercise and Due Process issues." In *Vitsaxaki v. Skaneateles Central School District*, 2026 WL 1831552 (2nd Cir. June 25, 2026), the court remanded the case for reconsideration in light of Mirabelli but upheld the district court's dismissal of the plaintiff's claims for declaratory and injunctive relief. The district court had noted that the mother withdrew her child from the Skaneateles schools and thus did not have standing for prospective declaratory and injunctive relief, just for damages if her constitutional rights were violated. The court noted that this is a summary order without precedential effect and issued only a brief per curiam opinion. The panel consisted of Senior Circuit Judge Robert D. Sack (appointed by President Clinton), and Circuit Judges Beth Robinson and Myrna Perez (both appointed by President Biden). Plaintiff is represented by attorneys associated with Alliance Defending Freedom (ADF). Numerous amici appeared on both sides of the case.

U.S. Court of Appeals, 8th Circuit – In *Female Athletes United v. Ellison*, 172 F.4th 1019 (8th Cir. April 15, 2026), Female Athletes United (FAU), a self-described non-profit organization founded "for the purpose of defending women's sports," sued Minnesota education officials and several school districts under Title IX of the Education Amendments of 1972, claiming that its members, cisgender female athletes, were suffering discrimination on the basis of sex because they had to compete against a transgender woman, identified as Jane Doe in the court's opinion, who had been allowed to play varsity girls softball, and had led her team to a state championship after pitching "every inning of its final five playoff games." District Judge Eric C. Tostrud denied FAU's motion for a preliminary injunction to bar Jane Doe from competing while the case was pending. He concluded that FAU had standing to seek its proposed injunction but denied its motion because FAU lacked a private right of action under Title IX, and because FAU failed to meet the requirements for preliminary injunctive relief. The 8th Circuit panel (Circuit Judge Raymond Gruender (appointed by President George W. Bush), and Circuit Judges Ralph Erickson and Steven Grasz (both appointed by President Trump) agreed with the district court that FAU lacks a private right of action to being its Title IX claims, affirming the denial of preliminary injunction. The court reasoned, based on Supreme Court precedent under Title VI, which prohibits race discrimination in educational institutions in parallel with Title IX's prohibition of sex discrimination in educational institutions, that only disparate treatment claims can be brought under Title IX, and that FAU's complaint stated a disparate impact claim, indeed, a paradigmatic one. The court rejected FAU's argument that the allegations of its complaint were sufficient to state a disparate treatment claim, finding that there was no allegation that defendant's policies discriminated expressly on the basis of sex, only that the policies had the *effect* of disadvantaging cisgender women. Thus, the facially surprising result is that a three-judge panel of all-Republican appointees, two of them appointed by Trump, could come to the conclusion that Judge Tostrud had correctly concluded that FAU was not entitled to a preliminary injunction because its complaint did not state a claim under Title IX. Numerous amicus briefs were filed on both sides in this appeal, from state attorneys general to civil rights organizations (including ACLU) to school boards and women's rights organizations. This result may surprise the U.S. Department of Education, which under Trump has taken the position that allowing transgender women to compete in women's sport violates Title IX, in accord with a Trump Executive Order and the president's rhetoric on social media and at his rallies.

U.S. Court of Appeals, 9th Circuit – In *Brown v. Alaska Airlines*, 179 F.4th 707 (9th Cir. June 24, 2026), a three-judge panel of the 9th Circuit reversed Senior U.S. District Judge Barbara Rothstein's grant of summary judgment in favor of Alaska Airlines, in a suit by two terminated flight attendants who alleged discrimination because of their religious beliefs. The panel majority concluded that there were issues of material fact to be resolved as to whether the plaintiffs were discharged because of their religious beliefs. The company had posted an endorsement of the Equality

Act, a bill pending in Congress that would amend existing federal anti-discrimination laws to extend express protection based on sexual orientation and gender identity or expression, on its internal intranet. The two flight attendants had posted comments in response to this endorsement, one stating "As a company, do you think it's possible to regulate morality?", while the other posted a full paragraph raising various objections to the Equality Act, and its impact on religious believers, which she subsequently admitted she had cut and pasted from other sources. In both cases, company officials decided to terminate the two flight attendants, relying on their belief that the posted comments were discriminatory in violation of company rules. The plaintiffs were unsuccessful in the company's grievance procedure, and their union decided not to push their case to arbitration. Both of the plaintiffs, claiming in federal court that their views were dictated by their religious beliefs, claimed protection under Title VII of the Civil Rights Act, noting the company's failure to extent them an "accommodation" for their religious beliefs. The company denied that the termination was due to the plaintiffs' religious beliefs. District Judge Rothstein held that state law claims asserted by the plaintiffs were preempted by federal labor law and rejected their Title VII claims. The opinion by Circuit Judge Daniel Bress disagreed with Judge Rothstein on the preemption point and concluded that disputed issues of material fact precluded summary judgment for the defendant. Circuit Judge Morgan Christen dissented in part, believing there was no material fact dispute that one of the flight attendants never raised any issues concerning her religious beliefs in her intranet posting or in the subsequent company grievance procedure, and would have affirmed summary judgment against her on the Title VII claim. Senior District Judge Rothstein was appointed by President Jimmy Carter. Judge Bress was appointed by President Trump, as was Judge Kenneth Lee, the third member of the panel. Judge Christen was appointed by President Obama.

U.S. Court of Appeals, 9th Circuit – A panel consisting entirely of Republican appointees reversed a U.S. Magistrate's award of summary judgment to the Defense Department in a lawsuit by a discharged bisexual military police officer in *Crowe v. Averill*, 2026 WL 1298100 (May 12, 2026), not reported in Federal Reporter. Steven Crowe claims he was subjected to homophobic harassment sufficient to create a hostile environment, that one of his harassers was improperly designated to investigate charges against him of misconduct, and that he was the target of retaliation when he complained about the harassment. He sued under Title VII of the Civil Rights Act of 1964. The panel issued a memorandum opinion reversing the trial judge as to each claim, although one member of the panel issued a concurring opinion pointing out that a prior 9th Circuit ruling at an earlier point in the case, Crowe v. Wormuth, 74 F. 4th 1027), remained binding, limiting the relief that Crowe can obtain at trial under Title VII because the employer had rebutted the prima facie case with undisputed testimony about Crowe's alleged misconduct. The panel includes Senior Judge Jay Bybee (G.W. Bush), Ryan Nelson (Trump), and Danielle Forrest (Trump). Nelson wrote the concurrence. Crowe is represented by James Albert Hill, Kevin Owen, and Christopher Hugh Bonk, of Gilbert Employment Law, P.C., Silver Spring, MD, and local counsel Elbridge W. Smith, Gilbert & Smith Law Firm, Honolulu, HI.

U.S. Court of Appeals, 9th Circuit – A 9th Circuit panel found that the Trump Administration may have violated the 1st Amendment by terminating grants to faculty at educational institutions that are not in line with Trump Executive Orders against diversity, equity and inclusion policies, and running afoul of the Trump Administration's policy against teaching about "gender ideology." *Thakur v. Trump*, 176 F.4th 1187 (9th Cir. May 26, 2026). While finding that the trial court lacked jurisdiction over claims for payment for work already done under award grants, which should have been filed in the Court of Claims, the court found that individuals whose grants were terminated based on the contention that they were contrary to Trump Administration policy did have standing to assert their 1st Amendment claims.

U.S. Court of Appeals, 9th Circuit – A California statute, A.B. 1955, regulates the policies of school districts by "generally prohibiting mandatory

reporting policies or directives that would require an employee 'to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent," according to an unsigned Order issued by a three-judge panel in *City of Huntington Beach v. Newsom*, 2026 WL 1785110 (9th Cir. June 18, 2026). In this case, the constitutionality of that prohibition was challenged as violating the parental right of the plaintiffs, and plaintiffs sought a preliminary injunction against its enforcement, which was at first denied. But the 9th Circuit, having twice turned down the plaintiffs' request, changed course in response to a motion for reconsideration in light of the Supreme Court's ruling in *Mirabelli v. Bonta*, 207 U.S. 492 (2026), in which that Court opined that such a policy violated due process rights of parents to access information from public schools about the mental health of their children. The unsigned 9th Circuit order states "we enjoin Defendants-Appellees from taking any action to enforce Sections 5 and 6 of AB 1955 as to Parents 2A, 3A, 4A, 5A, 6A, 7A, and 10A with respect to information about their respective children exhibiting symptoms of gender dysphoria." The judges on the panel are Daniel Collins and Kenneth Lee (appointed by President Trump) and Lucy Koh (appointed by President Obama.

California – In *Long v. Hemet Unified School District*, 2026 WL 1480940 (Cal. Ct. App. 4th Dist., May 27, 2026), the 4th District Court of Appeal affirmed in part and reversed in part decisions to grant summary judgment to the employer in a case alleging discrimination on the basis of transgender status under the California Fair Employment and Housing Act (FEHA). Long, a physical education and dance teacher at Hemet High School, presented as male when hired in 2013 and for several years thereafter, but in 2016 told the principal and the school district deputy superintendent that she would be transitioning over the summer and henceforth would live as a woman. These administrators told her that she was not to enter either the girls' or boys' locker rooms while they were being used by students. This inconvenienced her because her office, at that time as head of the physical education department, was in one of the locker rooms, and she needed to enter it to get supplies and also to use a restroom. She came in early and stayed late in order to be able to access her office and the PE staff restroom. Over ensuing years as people got used to her gender identity and presentation, she began to ignore the "rule" about locker rooms, but the issue emerged anew when the administration assigned her to supervise the "commons door" at the end of each gym period to stop students from wandering the halls when physical education classes let out early, and at that time reiterated that Long was not to enter the lockers rooms when students were present. She complained to the principal, and ultimately avoided further confrontation by resigning, and then complaining to the California Department of Fair Employment and House and the federal Equal Employment Opportunity Commission. She claimed that her quitting was a constructive discharge, that she was subject to a hostile environment and had suffered retaliation for complaining, among other claims, charging the school district with failing to investigate her claims and failing to present discrimination. She subsequently filed suit in Riverside Couty Superior Court, asserting claims under the FEHA. Superior Court Judge Raquel A. Marquez granted the school district's motion for summary judgment on all claims. The court of appeal held that the trial court erred in granting summary judgment on the discrimination claims, but upheld summary judgment on the other claims, leaving two causes of action under the FEHA to be litigated, discriminatory constructive discharge and failure to prevent discrimination. Long is represented by Finkel Firm and Sheryl L. Marx, and Cowan Law Firm and Jeffery W. Cowan. The court of appeal opinion is by Judge Julia C. Kelety.

California – Dr. Shannon Joslin, a wildlife biologist, was a probationary employee at Yosemite National Park. Joslin identifies as non-binary and uses gender neutral pronouns. On the Memorial Day holiday in 2025 when the Park was closed to visitors and employees were off for the holiday, Joslin and others flew a large "trans pride" flag on the face of El Capitan, an iconic place in the park. The Park began an investigation that ultimately led to Joslin's dismissal. A spokesperson for the Park said that there

might also be a criminal investigation in future. The Park Service relies on various rules regarding demonstrations and other activities in public parks as grounds for dismissal. On the simplest level, Joslin never sought a permit to conduct a demonstration in the Park. Joslin claims to have been fired because of their protected speech in violation of the First Amendment and filed a free speech complaint with the Office of Special Counsel as is required of federal employees who wish to raise constitutional employment claims under the Civil Service Reform Act. However, Joslin did not wait for the normal administrative process that would be triggered in their case, instead going to the federal district court. Joslin filed a motion for a preliminary injunction, asking to be reinstated. The government cross-moved to dismiss on jurisdictional grounds, and in *Joslin v. U.S. Department of the Interior*, 2026 WL 1707794 (E.D. Calif. June 12, 2026), U.S. District Judge Jennifer Thurston denied Joslin's motion and granted the government's motion. Probationary federal employees have a prescribed administrative path to follow in raising constitutional claims related to their employment. Joslin's filing with OSC was the first step, but they never waited to pursue subsequent step through the Merit Systems Protection Board, whose decisions would be appealable to the Court of Appeals. So, the District Court lacked jurisdiction to award Joslin relief, even if the court thought he was theoretically entitled to it. Joslin is represented by the Civil Service Law Center LLP and attorneys from Quinn Emanuel Urquhart & Sullivan LLP. Judge Thurston was appointed by President Biden.

California – The Los Angeles County Board of Supervisor adopting a measure titled "Raising the Progress Pride Flag at Los Angeles County Facilities" that provided that the flag (herein PPF) be flown during the month of June to show the county government's support for the LGBTQ community. This stimulated a conflict between Jeffrey Little, a county employee who was a lifeguard in the Fire Department, and his supervisors, culminating in a lawsuit, *Little v. Los Angeles County*, 2026 WL 1693929 (C.D. Cal. June 10, 2026). He had been promoted to a Captain with the supervisory responsibilities at several locations. He sought an accommodation to his religious beliefs, which were strongly averse to LGBTQ rights, and at first, it appeared that something might be worked out by assigning him to sites where pride flags had not been flown in the past, but evidently things blew up when he took the initiative of lowering PPF's that had been raised prior to his shifts. Little claimed discrimination and failure to accommodate his religious beliefs, retaliation (relating to a suspension that had been imposed) and a violation of constitutional rights. The county moved for summary judgment on all claims, and plaintiff moved for partial summary judgment on failure to accommodate, retaliation, and violation of Free Exercise under the federal and California constitutions. Ruling on the summary judgment motions, Senior U.S. District Judge Josephine L. Staton (appointed by President Obama) granted each of them in part and denied each of them in part, in an opinion explaining which claims could be decided as a matter of law and which claims turned on factual issues that could not be decided as a matter of law but required factfinding and trial. The court's order leaves many issues to be probed in discovery and potentially a trial. Confusingly, at the end of the opinion, it states that it was dated May 18, but in the heading to the opinion, it states that was filed on June 10.

California – Senior U.S. District Judge Susan Illston granted a motion by plaintiffs (a gay couple) in *Doe v. Deutsche Lufthansa Aktiengesellschaft*, 2026 WL 1146741 (N.D. Calif., April 28, 2026), to file an amended complaint and, at the same time, rejected arguments by Lufthansa that plaintiffs' claims are preempted by the Convention on Rules for International Carriage by Air and that the court lacks subject matter jurisdiction under the Montreal Convention, an international treaty governing air travel. The backstory: Doe and Roe are in a 33-year relationship and married in 2013. They lived together in Saudi Arabia, where one is a citizen; the other is a U.S. citizen whose business is in Saudi Arabia. Due to the intense legal and social homophobia in Saudi Arabia (death penalty for gay sex), they kept the nature of their relationship a secret there. They occasionally visited the U.S., where the U.S. citizen has a home in

California. Restrictions on international travel due to the COVID pandemic left them stuck in Saudi Arabia for a while, but when an exception was created for family members of U.S. citizens they planned to fly back to California in May 2021. They booked on Lufthansa under the impression that the German airline would handle the matter of their marital relationship discretely, but things blew up at the Lufthansa desk in the airport in Riyadh when local employees (who were Saudis) refused to believe they were married (which was crucial to their being able to travel together to the U.S. under the restrictive travel rules in effect). The locals made a scene, Lufthansa officials in Germany were consulted, and the man were allowed to board the plane. Doe and Roe are convinced that their status was reported to the Saudi government, despite Lufthansa's commitment to confidentiality of passenger information, so the Saudi citizen is now stuck in California, unable to return home for fear of persecution or worse. They are convinced that the leaked information came from Lufthansa's employees and filed suit against the airline San Francisco Superior Court, asserting state law claims for public disclosure of private facts, intentional infliction of emotional distress, breach of contract, negligent infliction of emotional distress, and loss of consortium. Lufthansa removed to the U.S. District Court for the Northern District of California, where the case was initially dismissed by the district judge, who determined lack of personal jurisdiction over Lufthansa. This was reversed by the 9th Circuit, 157 F.4th 1103, 9th Cir. (2025), where *en banc* reconsideration, requested by Lufthansa, was denied. The case was remanded, with mandate issuing on March 2, 2026. Then plaintiffs sought to file an amended complaint focused on Lufthansa as sole defendant and adding new factual allegations. In her April 28 decision, Judge Illston rejected Lufthansa's attempt to get the case tossed based on the various Conventions, authorizing plaintiffs to file their First Amended Complaint (FAC) by May 1. The on-line docket does not indicate whether the FAC has been filed. Plaintiffs are represented by Donald J. Putterman. Senior Judge Illston was appointed by President Clinton.

Connecticut – U.S. District Judge Victor A. Bolden granted a motion for preliminary injunction in *Gordon v. Aetna Life Insurance Company*, 2026 WL 643134 (D. Conn., March 8, 2026), and denied defendant's motion to stay the preliminary injunction pending an appeal to the 2nd Circuit on May 15, 2026, see 2026 WL 1362184. However, defendant filed an appeal of the preliminary injunction order to the 2nd Circuit on April 2, 2026, and sought a stay there pending a decision on its appeal. As of the end of June, the 2nd Circuit had not acted on the motion to stay, which was being briefed by the parties. The underlying dispute concerns a provision in health insurance policies sold to employers by Aetna categorically precluding coverage for gender transition medical procedures. A group of transgender individuals covered by such policies sued, claiming that under the Affordable Care Act's antidiscrimination provision, such a categorical coverage exclusion is an impermissible discrimination because of sex. Aetna argues that the Supreme Court's decision in *U.S. v. Skrmetti*, 605 U.S.495 (2025), precludes that argument, having held that Tennessee's prohibition on gender-affirming care for minors for purposes of gender transition does not discriminate on the basis of sex in violation of the14th Amendment's Equal Protection Clause. Two of the plaintiffs sought this preliminary injunction requiring Aetna to evaluate their benefit claims on the individual basis of medical necessity. They persuaded Judge Bolden that Aetna's reliance on *Skrmetti* is misplaced, because the Supreme Court was not considering a statutory sex discrimination claim in that case and, through its convoluted reasoning, found that the state restriction in that case was based on age and medical diagnosis, not sex *per se*. Aetna asserted that several courts of appeals have followed Skrmetti in rejecting sex discrimination claims in similar cases, but Judge Bolden was not persuaded that by that argument in the absence of a 2nd Circuit precedent. The plaintiffs argued, and seem to have persuaded Judge Bolden, that for purposes of deciding this motion, the correct precedent is *Bostock v. Clayton County*, 590 U.S. 644 (2020), in which the Supreme Court held that discrimination because of "transgender status" was necessarily discrimination because of sex under Title

VII of the Civil Rights Act of 1964. The judge concluded that a stay would irreparably harm the plaintiffs by delaying their ability to finance their gender-affirming care, and that denial of a stay would not cause irreparable harm to Aetna at this stage of the litigation. Judge Bolden was appointed by President Barack Obama.

District of Columbia – In *Robert F. Kennedy Center for Justice and Human Rights v. McMahon*, 2026 WL 1893511 (D.D.C. June 30 2026), U.S. District Judge Amir H. Ali issued an order vacating a final rule adopted by the Secretary of Education that sought to effectuate an Executive Order by President Trump imposing a disqualification under the federal public service loan forgiveness program for any time spent working for an organization that engaged in activities that were the target of President Trump's social obsessions. Under the statute, working for a charitable 501(c)(3) organization would qualify as public service employment for purposes of qualifying for loan forgiveness, but the regulation expressly disqualified such organizations if, for example, they provided gender-affirming care to minors for purposes of gender transition (although, of course, the final rule uses Trump Administration nomenclature, terming such procedures as "child abuse, including the chemical and surgical castration or mutilation of children or the trafficking of children to so-called transgender sanctuary States"). As a practical matter, this could mean that a student loan debtor employed at a non-profit 501(c)(3) medical organization that provide gender-affirming care to minors in a state where that is legal would not be able to use such employment to gain student loan forgiveness. After determining that the plaintiff public service organizations had standing to sue, Judge Ali found that "the challenged rule is contrary to law and exceeds the Secretary's Statutory Authority." The Administrative Procedure Act authorizes federal courts to "vacate" final rules adopted by federal agencies upon such a finding. Counsel for plaintiffs included lawyers from the National Student Legal Defense Network, Public Citizen Litigation Group, and Public Citizen. Amicus support for the litigation came from GLBTQ Legal Advocates and Defenders, Lambda Legal Defense, Outfront Minnesota, Equality California, PFLAG Greater Boston, and SAGE, as well as the ACLU and other civil rights organizations. Judge Ali was appointed by President Biden. * * * A similar ruling was also issued on June 30 by U.S. District Judge Myong J. Joun (also appointed by President Biden) in *National Council of Nonprofits v. McMahon*, 2026 WL 1876366 (D. Mass. June 30, 2026).

District of Columbia – U.S. Senior District Judge Royce C. Lamberth is dealing with consolidated cases brought by fourteen transgender plaintiffs who are incarcerated in the U.S. Bureau of Prisons. The Bureau of Prisons had determined that the plaintiffs should be housed in women's prisons, but President Trump's anti-trans Executive Order 14168 led the Bureau to notify them that they would be returned to men's prisons, and they sought injunctive relief, which Judge Lamberth wanted to give them. But his order was vacated and remanded by the D.C. Circuit, 172 F.4th 901 (Apr. 17, 2026), with instructions to "assess whether each Plaintiff possesses certain characteristics (such as the effects of gender affirmative care or history of surviving assault or self-harm in men's prisons) that make them likely to face a substantial risk of serious harm rising to the level of an Eighth Amendment violation if they are transferred to a men's facility." In *Doe v. Blanche*, 2026 WL 1642068 (D.D.C., June 7, 2026), Judge Lamberth explained his finding that "each Plaintiff has provided evidence demonstrating that they are likely to prevail on their Eighth Amendment claim." The opinion provides plenty of explanation for the court's conclusions, but the Individual Findings section is redacted from the opinion as published on Westlaw. The court rejected the government's suggestion that the Court could "order BOP to undertake additional safety measures to protect Plaintiffs in men's facilities, such as housing Plaintiffs 'in a dedicated facility, unit, or win.'" The Plaintiffs argued that "the least intrusive relief 'is to preserve the housing placements BOP itself established and has maintained for years." Lamberth agreed with the Plaintiffs. Lamberth described the preliminary relief as "narrowly tailored because, as stated elsewhere in this opinion, nothing in this injunction prevents the government from separating

transgender female inmates from cisgender female inmates within women's prisons if it becomes necessary to do so." Of course, the simplest solution of all would be to create a separate facility just for incarcerated transgender women in the federal prison system. The government appealed this ruling to the D.C. Circuit on June 24. Judge Lamberth, who has been a senior judge since 2013, was appointed by President Ronald Reagan. As one might expect with consolidated cases involving individual plaintiffs dispersed through the federal prison system, individual counsel are too numerous to name here, except to note that two LGBT civil rights firms (GLAD and NCLR) are listed as counsel to one or more of the plaintiffs, and several private law firms are represented as well.

District of Columbia – In *Endocrine Society v. Federal Trade Commission*, 832 F. Supp. 3d 1 (May 7, 2026), Chief U.S. District Judge James E. Boasberg, an appointee of President Barack Obama, granted a motion by the Endocrine Society, one of the professional medical associations involved in formulating guidelines for treatment of gender dysphoria and as part of a regimen for gender transition and maintenance, for a preliminary injunction against a wide-ranging Civil Investigative Demand (CID) that FTC had served upon the Society as part of an "investigation" of "unfair marketing practices." Based on the public rhetoric of various FTC officials, echoing the rhetoric of President Trump's anti-transgender executive orders, Judge Boasberg found plentiful evidence to support the Society's contention that this so-called investigation and CID were issued in retaliation for the Society's constitutionally protected First Amendment activity. The Society is a non-profit institution that issues guidelines for medical treatment, not a commercial enterprise seeking to promote or market particular goods or services. Attorneys from Cooley LLP's Washington Office represent the Society; amicus parties represented by Lambda Legal; numerous professional medical associations joined in amicus brief spearheaded by Aaron Martin Panner, of Kellogg, Hansen, Todd, Fige & Frederick PLLC, and amicus curiae states were represented by the Office of the Massachusetts Attorney General. * * * In *World Professional Association for Transgender Health v. Federal Trade Commission*, 2026 WL 1257321 (D.D.C. May 7, 2026), Judge Boasberg ruled on the same date as the above-described case in a suit by WPATH, the leading professional association on gender dysphoria treatment, seeking injunctive relief against a wide-ranging Civil Investigative Demand by the FTC. As in the Endocrine Society's case, the court found that WPATH was likely to succeed on its First Amendment retaliation claim against the FTC and awarded similar preliminary relief in this case. The same attorneys from the Endocrine Society case are listed for plaintiffs here.

Idaho – Idaho enacted a law, codified at Idaho Code Sec. 18-8901, prohibiting the use of public funds to pay for medical interventions that "alter the appearance of an individual in order to affirm the individual's perception of the individual's sex in a way that is inconsistent with the individual's biological sex." This is, of course, a roundabout way to say that nobody with gender dysphoria can have their hormone therapy paid for by the state. People in the world outside state institutions can still get their hormones if they can find a way to pay for them, but what about people living in state institutions, such as prisons? In *Robinson v. Labrador*, 2026 WL 1493689 (D. Idaho, May 28, 2026), US. District Judge David C. Nye granted a motion from a class of transgender individuals "in custody of the Idaho Department of Corrections" to get a temporary restraining order to fill the gap between the expiring seventh preliminary injunction in their ongoing 8th Amendment case challenging the law's application to them and an eighth preliminary injunction, whose issuance was then pending. Judge Nye has found repeatedly that plaintiffs are likely to win their 8th Amendment case, rebuffing the state's argument that the named defendants cannot be found to be "deliberately indifferent" to the "serious medical needs" of plaintiffs to receive this medication if they are denying it in compliance with a state law. The defendants also introduced a new "expert report" purporting to show that these hormone treatments are not necessary, but "the Court does not find State Defendants' newly disclosed report dispositive on its face," wrote Judge

Nye. Under the Prison Litigation Reform Act, preliminary injunctions expire in 90 days unless extended by the court. The preliminary injunction in this case, requiring the state to continue providing hormone treatment, had been extended more than half a dozen times as the litigation continues in order to preserve the status quo and prevent irreparable injury to the plaintiffs. The court issued the 8th preliminary injunction on June 12, see 2026 WL 1707249, and subsequently granted a motion to dismiss some, but not all, of the defendants from the case, including Governor Little. The national ACLU and its Idaho affiliate are on the case for plaintiffs together with plenty of cooperating attorneys. Judge Nye was appointed by President Trump.

Illinois – Florida Attorney General James Uthmeier, a loud critic of gender-affirming are for minors, filed suit in Florida state court against the American Academy of Pediatrics (AAP), the World Professional Association for Transgender Health (WPATH), and the Endocrine Society, three professional associations that have published guidelines approving gender-affirming care for minors, claiming that their publications violated various laws, including Florida's version of RICO and antitrust laws. The AAP, headquartered in Illinois, filed *American Academy of Pediatrics v. Uthmeier*, 2026 WL 1552734 (N.D. Ill., June 2, 2026), claiming that Uthmeier's suit was filed in bad faith in violation of AAP's First Amendment rights. They persuaded Senior U.S. District Judge Matthew F. Kennelly (an appointee of President Clinton) that the court had jurisdiction to enjoin the Florida lawsuit. Uthmeier claimed that the court lacked jurisdiction and was required to leave the field under the *Younger* abstention doctrine. Kennelly disagreed with this argument, finding that there is a bad faith exception to *Younger* abstention for which this case qualified, denied Uthmeier's motion to dismiss, and issued a preliminary injunction ordering Uthmeier to desist from his lawsuit. Uthmeier sought to have the preliminary injunction stayed. Uthmeier had filed an appeal of Kennelly's order to the 7th Circuit, which responded by vacating Kennelly's decision and ordering *en banc* review. This last action occurred during July and will be covered in 2026 Law Notes Volume 4. Judge Kennelly produced an extensive opinion analyzing the *Younger* abstention issue, explained his conclusion that this was probably a bad faith retaliatory lawsuit in violation of the First Amendment, and finding that AAP was likely to prevail on the merits of its 1st Amendment claim.

Illinois – A transgender woman, proceeding *pro se*, alleged that she suffered retaliation and discrimination in violation of Title VII of the Civil Rights Act of 1964 and the Illinois Human Rights Act in *Williams v. P4 Security Solutions*, 2026 WL 1283897 (N.D. Ill. May 11, 2026). She sued several employees and the company. District Judge Sunil R. Harjani dismissed the claims against the employees, since neither Title VII nor the IHRA provide a cause of action against employees. However, Judge Harjani refused to dismiss the claims against the company under Title VII, finding that plaintiff plausibly alleged that the company was informed of her gender identity and that her constructive dismissal could be traced to complaints she made about her pay and assignments. Judge Harjani bent over backwards to sustain the pro se complaint, especially as to plaintiff's failure to make the necessary allegations regarding exhaustion of administrative remedies under the Illinois statute. The judge was appointed by President Biden.

Illinois – On April 15, U.S. District Judge Nancy J. Rosenstengel issued an order denying a petition for habeas corpus in *Helvey v. Rudolph*, 831 F.Supp.3d 781 (S.D.Ill.). Terry Helvey remains infamous as the brutal murderer of Allen Schindler, Jr., a fellow active-duty member of the Navy when they encountered each other in a public restroom in Sasebo, Japan, while on shore leave. As summarized by Judge Rosenstengel, "Helvey and another sailor cornered Schindler in a public restroom and brutally assaulted him, without provocation. Evidence in the record demonstrated that Helvey knew Schindler was gay and dislike him for that reason. During the course of the beating, Helvey repeatedly stomped on Schindler's head, upper body, chest, abdomen, and groin. Helvey then 'stepped down hard' on Schindler's throat for several seconds." Helvey and his accomplice later assaulted two shore patrolmen attempting to escape arrest and fled to their

ship. Schindler died from his injuries, and Helvey subsequently avoided the possibility of the death penalty by pleading guilty to charges of unpremeditated murder, assaulting the patrolmen, and making false statements under oath to investigators. He was sentenced to life in prison and dishonorable discharge. His sentence was affirmed by the Navy-Marine Corps Court of Criminal Appeals. He began to serve his sentence in U.S. Disciplinary Barracks but was later transferred to the U.S. Bureau of Prisons (BOP) under an agreement between the Defense Department and BOP. In 2021, he sought to be released on parole under 18 USC Sec. 4206(d), which authorizes parole "after serving thirty years of each consecutive term or terms of more than forty-five years including any life term" unless the U.S. Parole Commission determines the prisoner "has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State or local crime." Applying this standard, an examiner recommended that Helvey be released on parole, but the Commission rejected the recommendation. Although he was apparently a model prisoner, they relied on the "highly aggravated nature" of his offense, "lack of remorse" and evidence that his actions were motivated by homophobia. After this decision, Helvey was notified that that Navy Clemency and Parole Board would take over his parole review, and the Board reached the same conclusion as the Commission, saying in a notice to Helvey that releasing him "would depreciate the seriousness of your offenses, promote disrespect for the law and that the retributive and deterrent portion of the sentence to confinement has not yet been served." Subsequent parole requests in 2023 and 2024 were similarly denied, as was a 2025 request, leading to Helvey filing the habeas corpus petition, claiming that there were procedural and constitutional problems with the application of the parole system to him. Judge Rosenstengel didn't buy it. The opinion takes on each of his statutory and constitutional claims and demolishes them. The judge dismissed his petition with prejudice and directed the Clerk of the Court to close the case. Helvey can, of course, seek to appeal to the 7th Circuit, but there is no indication that he has done so. Helvey represents himself *pro se* in this lawsuit. Interestingly, one of his claims was that the denial was politically motivated, referring to lobbying by LGTBQ groups who were determined to see that he was never released, and he claimed other military "lifers" had been granted parole, but he failed to provide evidence that anybody guilty of a horrific crime equal to his had been paroled, and Judge Rosenstengel rejected the proposition that the Navy's decision was improperly influenced. She did note that supporters of his petition include "several gay or bisexual inmates who attest that Helvey has no ill will towards them or members of the LGBT Community," which she comments "speaks well for Helvey," but notes the limited scope of her review. There is no indication that an appeal has been filed. Judge Rosenstengel was appointed by President Obama.

Illinois – In *Cortes-Yepez v. Avelar*, 2026 IL App (1st) 260657 (App.Ct.Ill, 1st Dist. June 12, 2026), the appellate court reversed the trial court and directed it to issue a plenary "stalking no contact order" (SNCO) against respondent. The petitioner is a gay man who alleged that due to his sexual orientation he was subjected to severe misconduct by the respondent that fell within the ambit of the anti-stalking statute. He sought an SNCO immediately upon filing suit, and the trial judge issued an emergency order prohibiting the defendant from committing acts of stalking, having any contact with the petitioner, and knowingly coming with 100 feet of the petitioner's residence and then-place of employment. However, the petitioner then left his employment in the restaurant owned by the respondent's father, and the trial judge declined to grant a plenary SNCO in place of the emergency order, upon petitioner's testimony that he had no contact with the respondent after leaving his job. The petitioner appealed urging that under the circumstances he still needed the protection of the SNCO, and the appellate court agreed with him, in a unanimous three-judge panel decision announced in an opinion by Justice Pucinski. The petitioner was represented by several counsel and the court noted that no brief was filed for the respondent on appeal.

Indiana – An HIV-positive man who was terminated from a research position in the Department of Chemistry and Biochemistry at Indiana University

filed a *pro se* discrimination suit in *Anokhin v. Board of Trustees of Indiana University*, 2026 WL 1349374 (S.D. Indiana, May 14, 2026), asserting claims of discrimination based on sexual orientation, age, and disability, pursuant to Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). His complaint did not specify what his sexual orientation is and does not specify his age and premises his ADA coverage on his HIV status as well as other impairments. He sought to proceed in *forma pauperis* status, which U.S. District Judge Justin R. Olson granted, then proceeding to screen the complaint. Judge Olson authorized the case to proceed under Title VII and the ADA, but not the ADEA, since that Act applies only to persons age 40 or over. Because the judge gave leave for Mr. Anokhin to file an amended complaint to cure pleading flaws, he may be able to get the ADEA claim restored if he alleges he falls within the protected class and can assert some facts suggesting his age was a factor in the discrimination he suffered. He alleges that he found flaws in a particular research project and brought them to the attention of his supervisor, who disagreed with him, and his troubles in the workplace then ensued. Among other things, he alleges failure of the University to provide a reasonable accommodation with respect to restroom access under the ADA. This is the kind of case where "going it alone" rather than finding counsel is inadvisable due to the complexities of employment discrimination law. Judge Olson attached to the opinion detailed instructions for repleading, including a template. Judge Olson was appointed by President Trump.

Maryland – In *Royall v. Dicks*, 357 A.3d 859, 270 Md. App. 1 (App. Ct. Md., April 3, 2026; reconsideration denied, May 29, 2026), the court considered whether false statements about sexual orientation are defamatory *per se*, noting appellant's reliance on a 1968 opinion, *M.S. Furniture Sales Co. v. Edward J. Bartolo Corp.*, 249 Md. 540, 241 A.2d 126, in which the court held that such statements were defamatory per se because "their injurious character is a self-evident fact of common knowledge of which the court takes judicial notice and need not be pleaded or proved." Well, no longer. Wrote Chief Judge Wells, "We hold that under Maryland law, false statements about sexual orientation are not defamatory *per se*. Because 'our "common experience" has evolved as a result of public and private measures reflecting current attitudes' toward sexual orientation, *see Conover v. Conover*, 450 Md. 51, 77, 146 A.3d 433 (2016), statements falsely imputing that an individual is gay are not so inevitably and obviously harmful to the reputation of a non-public figure that Maryland courts will excuse defamation plaintiffs from pleading and proving their injuries." Furthermore, Wells wrote, "Examining the statements alleged here – pejoratively calling Charles M. Royall, appellant, a 'fag' to his former co-workers – we also conclude they were not defamatory *per quod*." The court affirmed the Circuit Court of Prince George's County's judgment dismissing without prejudice Royall's complaint against his former supervisors and his former employer. Royall represented himself *pro se*.

Maryland – Upon taking office in 2025, President Trump issued an executive order declaring the "policy" of the United States to recognize only two genders, male and female, and instructed federal agencies not to support "gender ideology," which in the eyes of the Administration consists of any recognition of the existence of transgender people. Effectuating Trump's order, the Equal Employment Opportunity Commission announced that it would stop investigating charges of discrimination based on gender identity. It soon revised this policy decision, in recognition of the Supreme Court having ruled on *Bostock* that employment discrimination against a person because of their transgender status would violate Title VII's ban on discrimination because of sex, announcing that it would process charges of gender-identity discrimination occurring during "hiring, firing and promotion," but not claims of hostile environment harassment or retaliation based on gender identity." Freestate Justice is a Maryland organization that provides legal representation to LGBTI people. It sued the EEOC in federal court, claiming that the agency could not refuse to process such claims. In *FreeState Justice v. Equal Employment Opportunity Commission*, 2026 WL

1703707 (D. Md. June 12, 2026), Chief U.S. District Judge George L. Russell, III, granted defendant's motion to dismiss, finding that decision about which charges to investigate and pursue are purely executive actions that are within the discretion of the agency, not subject to judicial review. The court found to be "instructive" the Supreme Court's ruling in *United States v. Texas*, 599 U.S. 670 (2023), in which the Court found non-reviewable the Trump Administration's decision to change immigration enforcement priorities. Enforcement priorities were deemed to be within the discretionary function of the agency. Judge Russell was appointed by President Obama.

Maryland – As part of the Trump Administration's goal of ending all gender-affirming care for minors, the Justice Department served administrative subpoenas on about twenty health care institutions that provide such care, seeking a wide range of information, including patient records of all minors receiving such treatment, their treatment providers, and other information that the respondent, in this case National Children's Hospital (NCH), objected to providing. Plaintiffs, including minors receiving gender-affirming care at NCH as well as NCH itself, sued seeking an injunction quashing the subpoena and class certification. Ruling on the plaintiffs' motion for class certification and seeking preliminary injunctive relief in *In re: Administrative Subpoenas to Children's Hospitals*, 2026 WL 1660098 (D. Md., June 9, 2026), U.S. District Judge Julie R. Rubin, while denying class certification, ruled that the subpoena to NCH lacked "a proper investigative purpose," that the movants (transgender minors and their parents) "have a constitutional right to expect privacy of the medical records," and that the government had not raised a sovereign immunity defense. Her conclusion: "The NCH Subpoena bears no credible connection to an investigation of any violation by NCH. Rather, the NCH Subpoena appears to have no purpose other than to intimidate and harass Movants and those similarly situated. The Government seeks to fulfill its policy agenda through compliance born of fear. Moreover, in the view of the court, the NCH Subpoena is the classic impermissible fishing expedition." The court rejected the government's proposal, made during oral argument on the motion, that "anonymizing responsive NCH patient records cures the Subpoena's defects." Judge Rubin asserted that since the Subpoena "lacks a legitimate purpose," the defects identified by the court could not be "ameliorated by providing patient records in redacted form." The Movants are represented by Donovan C. Bendana and Joshua D. Rovenger, GLBTQ Legal Advocates & Defenders, Boston, MA; Rachel H. Berg and Shannon Minter, National Center for LGBTQ Rights, Sacramento, CA, and local counsel Eve Lynne Hill, of Brown Goldstein & Levy LLP, Baltimore, MD. Judge Rubin was appointed by President Biden.

Maryland – The Appellate Court of Maryland ruled in *Turner v. Abelle-Kiser*, 2026 WL 1145820 (April 28, 2026), that the Montgomery County Circuit Court did not abuse its discretion in its custody rulings concerning Z., a child of the marriage of AST and BAK. AST is a cisgender woman. BAK is transgender. They were divorced in June 2022, with joint custody awarded. BAK filed a petition to modify custody after several cross-state moves. It seems that Z "had begun exploring their gender identity, had requested that they be referred to by a new name and pronouns, and that BAK, the trans parent, had supported Z's exploration." After hearing the petition, the court awarded joint physical custody, child support, a portion of BAK's attorney's fees, and "most relevant to this appeal, joint legal custody with conditional tiebreaking authority vested in BAK," wrote Judge Douglas Nazarian in the Appellate Court decision. AST filed a motion to reconsider, asking the circuit court to "carve out the issue of Z's gender identity from BAK's tiebreaking authority and to reconsider its decision to award attorney fees." AST filed a motion to reconsider, which was denied. AST argued an abuse of discretion by the trial court, claimed that it gave BAK "unilateral" and "plenary" power. "She complains that because Z has begun exploring their gender identity, because BAK is trans, and because BAK has been supportive in that exploration, the circuit court abused its discretion by establishing legal custody as the court did. Importantly, AST does not challenge BAK having

tiebreaking authority generally but asks instead that the court carve gender identity-related parenting decisions out of the tiebreaker. She contends, in essence, that allowing a trans parent to have tiebreaking authority when a child has begun exploring their gender identity is inherently an abuse of discretion. We disagree," wrote Nazarian. The court rejected AST's characterization that BAK was given unilateral or plenary tiebreaking power, noting the procedures established in Maryland for assisting disputing ex-spouses in resolving their differences through mediation. And, Nazarian wrote, "the circuit court didn't abuse its discretion in deciding not to separate decisions relating to gender identity from the rest of the custody structure. . . The custody plan ordered by the court recognizes the complexities and fluidity of parenting and retains the opportunity and incentives for the parents to work together to make all the decisions Z will need them to make." The court evaluator did not find that BAK had influenced Z to decide to explore their gender identity, and according to their family therapist, "supporting Z's gender identity formation and exploration is affirmatively in their best interest." The court rejected any contention that there should be a *per se* rule against giving a trans parent tiebreaking power in a custody situation. The Appellate Court panel was unanimous.

Massachusetts – Massachusetts and a group of other states in which gender-affirming care for minors is legal and/or specifically protected combined to sue President Trump and then-Attorney General Pam Bondi in their official capacities and the Department of Justice, seeking declaratory and injunctive relief against the Trump Administration's efforts to end gender-affirming care for minors, focusing on Trump's Executive Order 14187 and subsequent memoranda issued by Bondi and other DOJ officials. On June 3, 2026, U.S. District Judge Angel Kelly denied the defendants' motions to dismiss the case. *Commonwealth of Massachusetts v. Trump*, 836 F.Supp.3d 385 (D. Mass.). Judge Kelly found that plaintiff states have standing to challenge the EO and the Departmental memoranda that adopted unprecedented interpretations of the statutes upon which they purported to rely (Female Genital Mutilation Act, Food Drug and Cosmetic Act, False Claims Act, and to seek preliminary injunctive relief against the enforcement of these interpretations while the case is pending. The claims regarding Defense Department actions are challenged under the Administrative Procedure Act, and the 10th Amendment is invoked to support the argument that the regulation of the practice of medicine is the province of the states, which license health care providers and institutions, and not the federal government. A key part of the government's actions which is contrary to settled medical practice in the United States is that any use of drugs for purposes not specified in the FDA's label when it licensed the drugs (so-called "off label use") is illegal. The Supreme Court has recognized that off-label use is not illegal as a matter of federal law, but Supreme Court precedents don't seem to faze the Trump Justice Department. Judge Kelly concluded: "Plaintiff states have standing to bring their claims, issuance of the Memos was a final agency action, the Memos' policy pronouncements are not committed to agency discretion by law, and Plaintiffs state a claim under the Tenth Amendment." Counsel are listed on the complaint from the Attorney General Offices of Massachusetts, California, New York, Connecticut, Illinois, Delaware, District of Columbia, Hawaii, Maine, Maryland, Michigan, Nevada, New Jersey, New Mexico, Rhode Island, and Wisconsin, as well as the Office of General Counsel of Pennsylvania. Judge Kelley was appointed by President Joe Biden.

Massachusetts – In *Commonwealth of Massachusetts v. U.S. Department of Agriculture*, 2026 WL 1815807 (D. Mass. June 24, 2026), U.S. District Judge Myong J. Joun issued an opinion explaining his prior action issuing a preliminary injunction against a newly imposed requirement adopted by the Secretary of Agriculture that states receiving federal funding for certain agriculture-related purposes must "acquiesce" to the Trump Administration's "policies and preferences about social issues that have little to do with the aims of the Department." These include the various anti-transgender (i.e., "gender ideology") executive orders. For example, a state that allows transgender girls to

participate in high school sports would be disqualified from receiving funds authorized by Congress for various programs administered through the Agriculture Department. Given the billions of dollars at stake, the consequences if states are disqualified by the Department for failing to meet these new conditions, and the clear and inescapable conclusion that the way in which the conditions were imposed violated the Administrative Procedure Act's express requirements for adoption of new final rules, and upon the finding that the Secretary did not have discretionary authority to impose these conditions that were not authorized by Congress in the various relevant statutes, the court issued a preliminary injunction in June 2, 2026, with opinion to follow. Judge Joun was appointed by President Joe Biden. Evidently the second Trump Administration has not learned from the president's Administrative Procedure Act losses during the first Trump Administration.

Massachusetts – The Appeals Court of Massachusetts affirmed a probate court decision denying a transgender woman's petition for a legal name change in *Davis, Petitioner*, 106 Mass. App.Ct. 1134, 280 N.E.3d 389 (Table,)2026 WL 1297693 (May 12, 2026). While normally name-change petitions are routinely granted, the decision whether to do so is subject to the discretion of the trial judge. In this case, the petitioner has a substantial criminal record in several states. She asserts that she has been using her requested name for five years and has frequently encountered problems because it is not her legal name, especially in dealing with government agencies and financial institutions as well as potential employers. While acknowledging as legitimate the petitioner's reasons for needing to legalize her name change, the trial judge concluded that the "full scope of local, state and federal criminal databases that maintain a record on the Petitioner is unclear," and despite the Petitioner's representation that her requested name appears in criminal records of other states, she was unable to confirm this with admissible evidence. The appeals court ruled that "It was within the judge's discretion under G.L. c. 210, sec. 13, to assess whether the proposed change would create confusion or impair the petitioner's traceability within the criminal just system," and affirmed the trial court's decree denying the petition. The appeals court panel, consisting of Judges Neyman, Hershfang & Toone, specified that the opinion will not appear in a printed volume. The Westlaw report of the case does not list counsel, although a footnote to the opinion mentions an attorney for petitioner, but not by name.

Nevada – Opponents of transgender women competing in women's sports proposed an amendment to the Nevada Constitution's Equal Protection Clause, in an attempt to keep the Nevada Constitution from providing a basis for supports of transgender participation in sport to challenge an exclusionary policy. An opponent of the proposed amendment, Sue Burtch, filed suit advancing several objections to the proposed amendment, all of which were rejected by the Supreme Court of Nevada in *Burtch v. Aguilar*, 2026 WL 1765944 (June 18, 2026). This "Order of Affirmance" upholds a trial court's order denying declaratory or injunctive relief. The opinion was signed by Chief Justice Herndon and Justice Pickering.

New Jersey – In yet another case involving Christian religious folks upset about losing their foster care license (called in New Jersey "licensed resource parents" because of their religious beliefs regarding sexuality, Judge Georgette Castner ruled in *Lasche v. New Jersey Department of Children and Families*, 2026 WL 1441719 (D.N.J., May 22, 2026), that some of the motion to dismiss by New Jersey state officials should be granted, but that a federal claim against the Commissioner of the Department would not be dismissed, and the motion to dismiss a supplementary public accommodation claim under the New Jersey Law Against Discrimination would be denied, allowing that claim to continue in the case. Much of Judge Castner's ruling deals with standing issues. The litigation was sparked when a child in foster care with the plaintiffs was removed from their home because the Department thought it better to have her, together with siblings placed in other homes, to be adopted by a wealthy gay male couple from Illinois who were interested in adopting all the siblings. But in the course of the removal drama being played out, some individual defendants made comments about the

plaintiffs' religious beliefs as underlying the officials' concerns for the child, and that the parents' resistance to the child being removed had led to the non-renewal of their license. They didn't apply to renew, in light of the remarks about their religious beliefs that they had heard. Those interested should read the court's opinion, which goes into considerable detail. The plaintiffs are represented by the Becket Fund for Religious Liberty and local N.J. counsel. Judge Castner was appointed by President Biden.

New Jersey – In *S.M. o/b/o H.M. v. Board of Education of the Township of Monroe*, 2026 WL 1378105 (N.J. App. Div., May 18, 2026), the defendant sought a new trial after a jury unanimously ruled for the plaintiff, a student who was subjected to harassment because of his sexual orientation by another student which devolved into a physical fight in a locker room. The fight was documented in a video (presumably taken by another student witness) that was shown to the jury. The school district was sued under the N.J. Law Against Discrimination, NOT Title IX, so only New Jersey law was applied in the lengthy written charge that was given to the jurors after the trial judge's oral charge. The school district had submitted a list of seven questions to be posed to the jury, essentially breaking down all the elements of a NJLAD claim to receive individual answers. The plaintiff had proposed only three questions for the jury. The trial judge decided to collapse these proposed questions into one all-purpose, omnibus question: "Do you find [plaintiff] has proved by a preponderance of the evidence that the Monroe Township Board of Education defendants subjected [the plaintiff] to discrimination and harassment while a student at the Monroe Township High School?" After 75 minutes of deliberation, the jury returned a unanimous verdict for plaintiff and awarded him $500,000 in compensatory damages. The Board moved for a new trial, arguing that the verdict sheet was deficient and misleading and that the verdict was against the weight of the evidence, but the trial judge denied the motion and entered a final judgment of $1,397.487.00, covering the jury award plus attorney fees. In this opinion, the Appellate Division rejected the Board's appeal of the trial judge's denial of its motion for new trial. The Per Curiam opinion points out that defendants didn't really put on much of a case, as the evidentiary record consisted entirely of evidence from the plaintiff and his witnesses and the video of the locker room fight. Of course, counsel for the Board cross-examined the witnesses. Everything turned on the credibility of the plaintiff and his witnesses, and the Appellate Division found that this record was sufficient to support plaintiff's claims of hostile classroom environment, gender-sexual orientation discrimination, and negligence by the school employees. The final jury question composed by the trial judge was deemed sufficient, when taken together with the Middlesex County trial judge's verbal charge and written charge. The litigation generated a series of pretrial rulings by the trial judge.

New York – As part of the Trump Administration's war on gender-affirming care for minors, the Justice Department subpoenaed some New York City hospitals to obtain records of minors who had been provided with gender-affirming care at Langone or Mt. Sinai hospitals during a specified period of time, including personally identifying information about minors, their healthcare providers and their treatment. On June 24, 2026, in *Coe v. Blanche*, 2-25 WL 1815507 (S.D.N.Y.), U.S. District Judge Katherine Polk Failla granted an emergency temporary restraining order and class certification covering "all individuals who received any medical treatment for gender dysphoria . . . for the purpose of aligning with or affirming a minor's asserted gender identity rather than the minor's birth sex, while they were under 18 years of age, from January 1, 2020, through May 5, 2026, at a healthcare institute located in New York City, including NYU Langone Hospitals (and any other NYU entity) and Mount Sinai Health System." DOJ and its officers, agents, successors, servants, employees, and attorneys and "any other persons who are in active concert or participation with them" are restrained and enjoined from "seeking, receiving, using, retaining, or disseminating any identifying or sensitive health information of Plaintiffs and member of the Class through the Subpoenas at issue or substantially similar administrative or grant jury subpoenas as part of the U.S. Department of Justice's

claimed investigations into health care offenses related to gender-affirming medical care." NYU is named as a codefendant and is restrained and enjoined from providing the demanded information to the government. The government's pretextual basis for demanding the information is to determine whether fraudulent claims are being submitted for payment, the government arguing that claims submitted which are not disclosed to be for gender-affirming care are fraudulent. Judge Failla also ordered that any requirement for security be waived because the government will not suffer any costs from the preliminary injunction. The court granted the plaintiffs' motion for preliminary injunction and extension of the temporary class certification on July 6, see 2026 WL 1951390. The government filed an appeal in the 2nd Circuit on July 13. Plaintiffs are represented by attorneys from the NY Civil Liberties Union and Lambda Legal Defense & Education Fund. Judge Failla was appointed by President Obama.

New York – Senior U.S. District Judge Colleen McMahon, an appointee of President Bill Clinton, issued an opinion and order on May 7 in *American Council of Learned Societies v. National Endowment of the Humanities & The Authors Guild v. National Endowment for the Humanities*, 2026 WL 1256545 (S.D.N.Y.), granting summary judgment to plaintiffs and against defendants on claims that the Trump Administration unlawfully terminated more than 1400 NEH grants to scholars, writers, research institutions and other humanities organizations on April 2025 using terse uniform communications with rote recitation that grants were no longer consistent with the priorities of the Trump Administration. The plaintiffs alleged the agency action was arbitrary and capricious as an en masse action without individualized consideration of the merits of each grant award, made without statutory authorization allowing Trump's Department of Government Efficiency to dictate a process under which a database of grant awards was researched using key terms to eliminate projects associated with "diversity, equity, and inclusion," "gender ideology" and other obsessions of the MAGA movement. Of course, another claim was a massive application of viewpoint discrimination. The court issued a declaratory judgment that the mass termination of grants was unlawful, violated the 1st and 5th Amendments, and DOGE officials lacked statutory authority to identify, select, or direction termination of NEH grants, the resulting terminations being ultra vires. The court issued a permanent injunction against the mass termination and retained jurisdiction to enforce its order. An appeal is pending at the 2nd Circuit. Our review of the docket raises questions about who is appealing what, although it is possible to speculate that plaintiffs are appealing the way the court has dealt with remedial issues and fee award issues as the case unfolds.

New York – Responding to a perception that public school board meetings were being disrupted during debates about transgender issues in the schools, N.Y. Attorney General Letitia James, Commissioner of Education Betty Rosa, and other state officials published a letter that was distributed to school boards setting out New York law concerning transgender rights and criticizing the conduct of those who use transphobic language and otherwise disrupt school board meetings during discussion of these issues. Some school board members and parents joined in a lawsuit in the US. District Court for the Northern District of New York represented by the conservative Southeastern Legal Foundation, naming James, Rosa and other officials and defendants, challenging the letter on free speech grounds. They sought a preliminary injunction, arguing that they are being threatened with stifling of their speech on issues of public concern and face threats of removal from school board positions or suppression of their right to speak out, also invoking their religiously based views. They sought a preliminary injunction against defendants, who cross-moved for dismissal. In *Wachter v. James*, 2026 WL 1649135 (N.D. N.Y., June 8, 2026), U.S. District Judge Anne M. Nardacci denied the motion for preliminary injunction and granted the motion to dismiss, finding that the letter did not convey a credible threat of enforcement, and by their own admission plaintiffs had suffered no enforcement attempts against them and not shown that such was imminent, even though they had continued

to articulate their views at public school board meetings. Thus, the case was dismissed for lack of standing. Judge Nardacci was appointed by President Joe Biden.

Ohio – The Supreme Court of Ohio unanimously reversed a ruling by the Ohio First District Court of Appeals that had suggested that a parental rights dispute between a lesbian couple whose relationship had terminated prior to the U.S. Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. 644 (2013), should be remanded to the Juvenile Court of Hamilton County for a determination whether the couple would have been married at the time their children were born if it had been legally possible, which might provide a basis for recognizing the non-birth mother under the state's "non-spousal artificial insemination stature." *In re L.E.S., E.S., and N.S.*, 182 Ohio St.3d 185, -- N.E.3d -- , 2026 WL 1141506 (April 28, 2026). The court of appeals decision is reported at 233 N.E.3d 1259 (Tex. App. 1st Dist., Jan. 19, 2-24). In *Obergfell*, the U.S. Supreme Court found that same-sex couples had a 14th Amendment right to marry, premised on equal protection and due process arguments, but did not address the question whether its holding had any retroactive application to cohabiting same-sex couples who would have married earlier had it been legally possible at the time. There have subsequently been decisions by some lower courts in other jurisdictions applying the constitutional rule of *Obergefell* retroactively to deal with disputes of various kinds between former same-sex couples where a party asserts that at the time of the dispute they would have been married had they not been unconstitutionally barred from that status. The Juvenile Court in this case rejected the non-birth mother's claim to legal parental status, but the Court of Appeals held that the Juvenile Court should have investigated whether the couple would have been married when the children were born. The Ohio Supreme Court's opinion by Justice DeWine held that the non-birth mother is "not entitled to relief under the plain terms of Ohio's Parentage Statutes" and "United States Supreme Court precedent does not empower Ohio courts to retroactively apply the non-spousal Artificial Insemination Statute to Unmarried Couples" (quoting the section headings in the opinion). The ACLU of Ohio filed an amicus brief urging affirmance of the of the court of appeals' decision, joined by the National Association of Social Workers and its Ohio Chapter.

Ohio – In *In re Z.H.H., M.H.H.*, 2026 WL 1196021, 2026-Ohio-1595 (May 1, 20260, the Ohio 6th District Court of Appeals largely affirmed a judgment of the Lucas County Court of Common Pleas in a dispute between two women over parenting rights concerning two adopted children. The Common Pleas judge concluded that the women had an unwritten co-parenting agreement, even though they were never married to each other and the children, whom they had been fostering together, were adopted only by the respondent. The Court of Appeals rejected the adoptive mother's assignments of error as to all but a fee award provision. This is an intensely fact-specific decision. The opinion by Court of Appeals Judge Zmuda goes into detail about the testimony on the record of the parties and other witnesses. The opinion reflects a liberal view of the circumstances when it is appropriate to recognize parental rights in somebody who has acted as a co-parent, where one party adopted the children on the understanding that that other party would actively co-parent, even though their own cohabiting relationship had ended before the adoptions were formalized and the co-parent had been hesitant about the idea of marrying. The adoptive parent subsequently married another woman, and the unwritten agreement about visitation by the non-adoptive parent deteriorated, resulting in the trial judge finding that denial of visitation constituted contempt of the court's interim orders in the case. The adoptive parent was represented by Stephen M. Szuch. The co-parent was represented by Laurel A. Kendall.

Oregon – In *State of Oregon v. Kennedy*, 831 F.Supp.3d 1048 (D. Ore. April 18, 2026), U.S. District Judge Mustafa T. Kasubhai granted summary judgment to plaintiffs, a group of states and the District of Columbia, who contested the lawfulness of a Declaration issued by Secretary of Health and Human Services Robert F. Kennedy, Jr. in December 2025, in which he proclaimed that medical gender-affirming care for minors with gender dysphoria was unsafe, ineffective, and a violation of professional standards,

and threatening to terminate eligibility for participation in federal health care payment programs (such as Medicaid) for any health care institution that provided such care to minors. Kennedy's Declaration led to many major health care organizations that had been providing such care in those states that did not prohibit it, to suspend their programs without advance notice leaving minors with gender dysphoria and their families in the breach. The state of Oregon put together a coalition of states to file suit claiming a violation of the Administrative Procedure Act and won summary judgment and injunctive relief. Judge Kasubhai's scathing introductory section tells you everything you need to know: "Unserious leaders are unsafe. There is nothing more serious than our leaders' dedication to the rule of law so that we might maintain the integrity of our constitutional democracy. This case highlights a leader's unserious regard for the rule of law. This case demonstrates how disregard for the rule of law does not merely result in an abstract infraction. Rather, and tragically, this case is one of a long list of examples of how a leader's wanton disregard for the rule of law causes very real harm to very real people. This Court can and does judge the lawfulness of the process (or lack thereof) by which any policy choice might be made. Here, the Secretary of Health and Human Services, Robert F. Kennedy, Jr., unlawfully issued a declaration threatening to cut federal funding to medical providers who provided gender-affirming care to minors. If such a declaration could have been enacted lawfully, there might have been ample time and opportunity for medical providers, families, and children—all people and institutions of our great nation—to seek out other alternatives and options. Secretary Kennedy's utter failure to promulgate rules in accordance with statutory authority, but instead [to] threaten to cease federal funding to medical providers almost immediately after the declaration, caused chaos and terror for all those people and institutions of our great nation. Secretary Kennedy's unlawful declaration harmed children. This case illustrates that when a leader acts without authority and in the absence of the rule of law, he acts with cruelty." The court held that Secretary Kennedy lacked authority to make the policy pronouncements and "findings" of his Declaration without following the requirements of the Administrative Procedure Act. The judge rejected the government's argument that the Declaration was not subject to the Administrative Procedure Act because it was not a "final agency action" to actually terminate funding to anybody. But the reaction of hospitals quickly rushing to protect their federal funding streams demonstrated otherwise. Judge Kasubhai was appointed by President Joe Biden. His Senate confirmation, on a party-line vote, took place shortly after Donald Trump was elected, during President Biden's lame duck period. He is the first Muslim to serve as a federal judge and was opposed by the Senate Republican minority on the ground that he was too liberal to be a federal judge.

Pennsylvania – Chief U.S. District Judge Cathy Bissoon denied the employer's motion to dismiss an employment discrimination claim in *Bragg v. Eat N Park Hospitality Group, Inc.*, 2026 WL 1282738 (W.D. Pa. May 11, 2026), but dismissed a retaliation claim. In his complaint, the plaintiff wrote that he "openly identifies with the LGBTQ+ community," that he served for three years with no disciplinary warnings, but was subjected to numerous offensive comments by his manager, even though he "routinely" asked the manager to "cease talking to him in that manner." He contracted COVID-19 and had to stay home for several days, but at first the manager did not believe him and when he did return, the manager conditioned his continued employment on accepting a new schedule that would significantly reduce his pay. He refused to accept the new schedule and was taken off the work schedule altogether. Represented by counsel, Probhu Narahari of Manes & Narahari, LLC (Pittsburg), he sued under Title VII for sex discrimination and retaliation. Judge Bissoon found that the allegations fell short of stating a retaliation claim, but they were sufficient to assert a discrimination claim that survived the motion to dismiss. Rather ludicrously, the employer argued that Bragg's complaint failed to specify his sexual orientation. Judge Bissoon responded: "Contrary to Defendant's suggestion, whether Plaintiff identifies as gay, bisexual, pansexual, polysexual, omnisexual, queer or otherwise does not defeat the allegation that

Plaintiff suffered discrimination because he is not straight, which necessarily constitutes sex discrimination, as prohibited by Title VII," citing *Bostock v. Clayton County*, 590 U.S. 644 (2020).

Pennsylvania – The Superior Court of Pennsylvania (an appellate court) has reiterated and applied the "doctrine of intent-based parentage" in *C.M.D. v. H.M.*, 2026 PA Super 126, 2026 WL 1757788 (June 18, 2026), in which a lesbian former couple did battle over custody of a child conceived through donor insemination. The trial court in Philadelphia found the birth mother and her same-sex partner had intended for both to be parents of the child, and ordered that the birth mother have primary physical custody and the other mother have partial physical custody "every other weekend" and overnight on Wednesdays. The lengthy opinion affirming the Common Pleas court is by Judge Jack Anthony Panella.

Texas – The Texas Supreme Court ruled in *Muth v. Voe*, 69 Tex. Sup. Ct. J. 537, 2026 WL 1108685 (Apr. 24, 2026), that pending lawsuits challenging the state government's announced opinion that performing gender-affirming care on minors for gender transition was a form of "child abuse" requiring mandatory reporting by health care providers and investigation of caregivers and parents preliminary to prosecution for child abuse, had been mooted by events. Thus, preliminary injunctions against the investigations issued by trial judges and affirmed by the Court of Appeals in Austin must be reversed and the cases dismissed. The intervening events were decisions by the Texas Department of Family and Protective Services to close the investigations it had initiated of the plaintiff families, thus depriving those plaintiffs of standing. The DFPS had issued a statement about the closure which indicated that it would not initiate child abuse investigations in similar situations in the future. A child psychologist, also a plaintiff, was argued by Chief Justice Blacklock to still have standing to challenge the mandatory reporting obligation, which the psychologist argued had undermined her relationship with her minor patients, but on the merits Blacklock asserted that she didn't have a case in light of Texas's enactment of a ban on licensed health care providers conducting gender affirming care on minors for purposes of gender transition, whose constitutionality was bolstered by the U.S. Supreme Court's decision in *U.S. v. Skrmetti*, 605 U.S. 495 (2025).

Washington – Chief U.S. District Judge David G. Estudillo denied the University of Washington Tacoma's motion for summary judgment in an action by Claudia Arias, who was dismissed from the University's Bachelor of Arts in Social Welfare Program, sparked by a referral to the Professional Standards Committee by a faculty member who raised concerns about Arias' proposal to focus a writing project on "the issue of 'trans' people sexually assaulting others in prison," a topic the faculty member found "so many issues with." The faculty member believed that Arias's proposed topic relied for a source on an article that was "full of TERF and far right dog whistles." The faculty member characterized the article in question as "extremely anti-trans," that Arias "did not believe that her proposed topic was misaligned with social work values," and that she "sees women's & trans rights as competing issues." Arias challenged her dismissal from the program on three theories: retaliation in violation of the 1st Amendment, breach of contract, and tortious interference with prospective relationships. The court granted the University's summary judgment motion on the tortious interference claim but refused to grant its motion as to the 1st Amendment and Contract claims, finding that the basis for the dismissal could violate Arias's 1st Amendment rights as well as violating representations in the program's handbook that could be held to be contractual binding on the relationship between the student and the University. *Arias v. University of Washington Tacoma*, 2026 WL 1283523 (W.D. Wash. May 11, 2026). Both parties filed appeals in the 9th Circuit, but the appeals were voluntarily dismissed by that court on July 1, see 2026 WL 2415238. Thus, the tortious interference claim is dead, and the parties continue to litigate the 1st Amendment and contract claims before Judge Estudillo, who was appointed by President Biden.

Washington – In *DeGross v. Senn*, 2026 WL 1408880 (W.D. Wash., May 20, 2026), a Christian couple who were certified as foster parents by the Washington Department of Children, Youth and Families (DCYF) lost their certification because they could not comply, based on their religious beliefs, with new regulations under which foster parents were supposed to use preferred pronouns of foster children who might be trans or non-binary. When they protested, the Department offered to extend a waiver to them under which they would have a restricted license. They were unwilling to accept this and ran into federal court represented by Alliance Defending Freedom claiming that any restrictions violated their 1st Amendment rights. In this ruling, Chief U.S. District Judge David G. Estudillo approved a settlement agreement worked out between ADF and the state's attorneys under which the Department modified its rules. The net of it is that the Department can inquire about foster parents' views on sexual orientation, gender identity and expression issues, and can decide about placements of particular children accordingly. One provision of the settlement agreement states: "Nothing within this Order vests within foster families any right to placement of a specific child. Because DCYF is responsible for protecting children's constitutional rights to be free from unreasonable risk of harm, including to their physical and emotional wellbeing, nothing in this Order changes DCYF's authority or obligation under applicable law to exercise its sole discretion concerning children's foster placements. Nothing in this Order prohibits DCYF from deciding a child's placements based on its individualized consideration of the child's needs and of a foster parent's concerns or limitations (including where religiously motivated) on their ability or willingness to meet the child's specific needs, including with regard to their SOGIE [sexual orientation, gender identity or expression]." This includes the ability to remove a child from a foster placement if the continued placement may result in harm to the child. "The intent of this Order is that DCFY may not exclude from full licensure applicants or foster families solely because of their sincerely held religious beliefs concerning marriage, gender, or sexual relationships or because they seek to speak and act consistently with these beliefs."

Criminal Litigation Notes

By Arthur S. Leonard

California – *People v. Avram*, 2026 WL 1178052 (Cal. 2nd Dist. Ct. App., April 30, 2026) (not officially published), concerns the prosecution of a transgender woman who was convicted of assault with a deadly weapon after a jury trial, and who appealed the conviction and the trial court's sentence. The defendant-appellant, Joshua Peter Avram, a.k.a. Aphrodite Avram, was a homeless transgender woman who had been using a women's restroom in Griffith Park. Upon leaving the restroom she encountered John Doe (the victim), who Avram claims "threatened her very aggressively," stating "It's a tranny pedophile. How can I stop you from molesting more kids? Oh, I know, I'm going to shoot you," and he told Avram he had a loaded gun in his backpack and said "I'm going to put a bullet in your skull" in an angry, aggressive and threatening tone. Avram testified that she did not want to provoke Doe, so she didn't speak to him and tried to move away. But later that day she perceived Doe walking behind her, continuing to threaten her. Avram testified that Doe stated, "You want to hunt for little girls in bathrooms. Well, I'm going to hunt you back" and "just one bullet and your pedophile career is over." Avram crossed the street, took a knife out of her bag and approached Doe, asking him to "please just leave me alone." Avram testified that Doe then said, "Bullet in your skull, pedo" and began removing his backpack. Avram testified that she unsheathed her knife, Doe "stumbled and fell back," and she "reached over with the knife" and "moved the knife horizontally" across his "upper left chest." Doe "made a very angry noise" and "he reached for his backpack," so Avram "stabbed him once only in the stomach and fled the scene." Other witnesses said that Doe was "bleeding a lot" from "the lower abdomen" and "he was holding his intestines with one hand." There was testimony about multiple other wounds, beyond those described by Avram. Doe, who appears to also have also been homeless, was not identified at trial and did not testify, but was

not killed in the incident, having been transported to a hospital for emergency surgery. Avram was convicted and the court imposed a sentence enhancement but, according to the court of appeal, erred in not providing adequate instructions to the jury about the fact issues relevant to the enhancement. The court of appeal upheld the assault conviction, as the jury apparently rejected Avram's claim of having acted in self-defense. But as to the sentencing, the court held that errors in jury instructions required vacating the sentence and allowing the prosecution "an opportunity to retry the aggravating factors and for resentencing in accordance with amended section 1170, subdivision (b), and any other applicable ameliorative legislation." The three-judge panel was unanimous, with an opinion by Presiding Judge Gonzalo Martinez. Court-appointed counsel Nate Crowley represented Avram on appeal.

California – *People v. West*, 2026 WL 1660333 (Calif. Ct. App. 6th Dist., June 9, 2026) (not officially published) – burglary/rape defendant knew he was HIV-positive and was convicted on multiple counts. Sentencing included a 6-year enhancement under Penal Code Sec. 12022.85, which applies to sexual offenses where the perpetrator knew they were HIV-positive. Defendant argued that due to anti-retroviral treatment his viral load was well under the transmissibility cutoff and it would be unconstitutional to apply the enhancements to his sentence. Expert witness doctor for the Santa Clara County jail system who also worked in the county's HIV clinic offered testimony that defendant's treatment history showed it was unlikely he could transmit HIV. Trial judge kept this testimony from the jury on the ground that it was irrelevant under the statute as written. Defendant tried several constitutional arguments to challenge the enhancement to his sentence, to no avail, and the enhancement was affirmed by the 6th District Court of Appeal, which opined that it was up to the legislature, not the courts, to recognize a non-transmissibility defense to a statute that imposed strict liability. Justice Lie also noted that some time period had gone by between commission of the crime and testing, so defendant's viral load at the time of the offense was unknown, even if it was likely below the transmissibility level, so it could not be said that there was no risk of transmission to the victim. Court rejected equal protection and cruel & unusual punishment arguments in an extended discussion.

California – *United States v. Butler*, 2026 WL 1707641 (N.D. Cal., June 12, 2026), involves a convicted transgender defendant's motion for compassionate release in the midst of serving a 60-month sentence based on her conviction for voluntary manslaughter. She was transferred to the custody of the U.S. Bureau of Prisons in November 2025 and has been continuously housed in all-male prisons, where she has "been repeatedly threatened with violences and physically and sexually assaulted by male inmates," according to the court's summary of her factual allegations. She asserts that the BOP has been unable to ensure her safety and denied all requests to be transferred to a women's prison. Her basis for seeking compassionate release is her documented diagnosis with intellectual and neurocognitive impairments, which Senior U.S. District Judge Susan Illston concluded made it impossible for her to continue living in an all-male prison setting safely. The parties' cross-appeals from her conviction are pending in the 9th Circuit, but she asks the district court for an "indicative ruling" that it would grant her motion for compassionate release if the 9th Circuit were to remand for that purpose. Arrangements have already been made for a release plan with close supervision in a supportive therapeutic facility. Judge Illston granted the motion, having concluded that "an abusive carceral setting" was not providing Butler with "correctional treatment in the most effective manner." There is no indication in the report of this ruling that Butler is represented by counsel. Judge Illston was appointed by President Clinton.

Michigan – In *U.S. v. Lambert*, 2026 WL 1408772 (E.D. Mich., May 20, 2026), U.S. District Judge Judith E. Levy denied a motion by a person who was sentenced in 2016 to serve 480 months (40 years) in custody upon conviction of production of child pornography, distribution of child pornography, and possession of child pornography, to have their name changed on the Judgement to conform with their new legal name after having been diagnosed with Gender

Dysphoria while incarcerated. Judge Levy concluded that she had no authority to grant such a motion, even though Lambert's legal name has changed. Although a statute, 18 U.S.C. Sec. 3582(c), gives the court authority to modify "a term of imprisonment" in certain circumstances, this has to do with clerical errors or errors resulting from "oversight or omission." However, the statute does not authorize changing the name by which the defendant was identified in the Judgment. "Defendant was diagnosed with Gender Dysphoria and changed her name years after the judgment was entered," wrote Judge Levy. "There is no indication – nor does Defendant argue – that the name on the judgment was incorrect at the time it was entered." While taking noting that denying this motion may result in "significant exacerbation of her Gender Dysphoria and associated harm," the judge disclaimed any authority to grant the motion. The movant filed the motion *pro se*. Judge Levy was appointed by President Obama.

Virginia – In *Correa v. Rector and Visitors of the University of Virginia*, 2026 WL 1755496 (W.D. Va. June 18, 2026), a gay architecture tenured professor at the University of Virginia was challenging his termination under Title VII, Title IX, the Equal Protection Clause, and a supplementary claim of breach of contract. He had hooked up with one male graduate student through GRINDR and they had sex twice, but Correa terminated the relationship. Another male graduate student complained about Correa subjecting him to fondling and then treating the student adversely after the student had rejected his sexual advances. The two students made formal allegations of sexual misconduct in a meeting with the dean of the architecture school, which triggered an investigation and a recommendation that Correa be terminated. The investigator recommended dismissal of some charges, but termination for violation of sexual harassment policy as to the second student and conflict of interest policy as to both students. Correa alleged various procedural irregularities, claimed the adjudicator was biased as an alumnus of the University, and claimed that his sexual orientation had something to do with the termination. U.S. District Judge Robert S. Ballou granted the University's motion for summary judgment and dismissed all of Correa's claims with prejudice. In an earlier decision, 2025 WL 2076480 (2025), Judge Ballou dismissed Correa's claims under the Virginia Human Rights Act, which specifically bans sexual orientation discrimination, and his personal capacity claims against the University's Title IX coordinator, who had filed the disciplinary charges against Correa. Correa is represented by Joshua Tyler Farmer, of Farmer Legal PLLC, Glen Allen, VA; and Kristen Mohr, Andrew T. Miltenberg, Stuart Bernstsein, and Tara Jill Davis, of Nesenoff & Miltenberg LLP, New York, NY. Judge Ballou was appointed by President Biden.

Incarcerated Persons Litigation Notes

By Arthur S. Leonard

Illinois – Represented by numerous counsel, Niyeh Higgins, a transgender woman formerly incarcerated in the Illinois prison system, sought damages against several IDOC employees for violating her 8th Amendment rights when she was imprisoned. *Higgins v. Jeffreys*, 2026 WL 1266186 (N.D. Ill. May 8, 2026). Although finding many of plaintiff's claims were time-barred or defeated by qualified immunity for some of the defendants, but Senior U.S. District Judge Rebecca R. Pallmeyer requested supplemental briefing from the parties on the qualified immunity defense to Higgins' "failure to protect" claim, which arose from assaults she suffered from other inmates while housed in a men's prison. In particular, Higgins alleged that defendant Michelle Victum "violated her rights by persistently misgendering her, by failing to protect her from sexual abuse, and by inciting another inmate to assault her." While the court found that Victum was entitled to qualified immunity on the misgendering claim, she wrote that "the remaining claims against Victum survive this motion and will proceed to trial." Higgins is represented by Maria Makar, of Hale and Monico LLC, New York, NY, Eliana Arielle Green, of Northwestern Pritzker School of Law, Community Justice & Civil Rights Clinic, Chicago, IL, Kara Celeste Crutcher, New Orleans, LA, Sheila A. Bedi, Roderick Macarthur Justice Center, Chicago, IL, Wallace Bertram Hilke, Northwestern

Pritzker School of Law - Community Justice and, Chicago, IL, Kara Celeste Crutcher, Bluhm Legal Clinic, Chicago, IL. Judge Pallmeyer was appointed by President Bill Clinton.

Nevada - *Pace v. Williams*, 2026 WL 1870921 (D. Nev., June 26, 2025) – Incarcerated gay man was in a medium security prison for sex offenders. He was assigned as a cellmate a man known to prison authorities as a member of a gang known to prey on sex defenders. The cellmate seriously assaulted him and threatened his family if he reported the incident. He filed a Prison Rape Elimination At report but was generally ignored as was his request for more than minimal evaluation for rape, medical care for the physical abuse and mental health trauma intervention. His pro se claim partially survived screening, for 8th Amendment claims against prison employee responsible for the cell placement and medical staff regarding lack of mental health treatment. However, complaint regarding physical injuries was screened out due to non-specific allegations in the pro se complaint. An equal protection claim was also screened out, as well as claims against the state based on state law as non-justiciable in federal court under 11th Amendment. Opinion by U.S District Juge Anne R. Traum, D. Nevada. Judge Traum was appointed by President Joe Biden.

New Jersey – *Douglas v. County of Atlantic*, 2026 WL 1493805 (D.N.J., May 28, 2026). – Incarcerated transgender person states Monell claim against Atlantic County Jail for practice of housing vulnerable transgender women with male cellmates resulted in repeated sexual assaults and rapes. Deliberate indifference to serious medical needs sufficiently alleged against mental health staff for failing to identify plaintiff as a "member of vulnerable population," failure to complete a "history of victimization" form at time of intake screening and denying multiple requests to speak with a psychiatrist.

Oregon – *S.D. & J.F. v. Rees*, 2026 WL 1146591 (D. Ore., April 28, 2026). This case was initially tried before U.S. Magistrate Judge Mark D. Clarke. It was filed by two transgender plaintiffs seeking class certification, contending that their constitutional rights were violated by the Oregon prison system's alleged unwritten "default presumption" that incarcerated transgender women were to be housed in men's prisons, where they would be vulnerable to harassment and physical attacks by male inmates and staff. Plaintiffs alleged that although the prison system purported to make individualized assessments of suitable placements, few transgender women ended up in women's prisons. Judge Clarke issued the requested preliminary injunction, in an order setting forth a detailed description of how the Oregon prison system was to determine placement of transgender inmates, reversing the "default presumption" described by the plaintiffs and imposing various rules responsive to Plaintiffs' allegations. (For example, "Prohibit housing transgender women with cisgender cellmates know to have a history of sexual or serious physical violence.") The state sought reconsideration and clarification, which Judge Clarke issued on July 7 – see 2026 WL 1960717 – but only slightly modifying the preliminary injunction. The state then sought a stay of the preliminary injunction while it appealed to the 9th Circuit, which was granted by a three-judge panel of the circuit court on August 20, which asserted that most of Judge Clarke's findings were "clearly erroneous." The three-judge panel consisted entirely of Trump appointees: Daniel Collins, Lawrence VanDyke, and Eric Tung.

Pennsylvania – *Lee v. Houser*, 2026 WL 1507821 (M.D. Pa., May 29, 2026) – Incarcerated transgender person – deliberate indifference to serious medical need survives motion to dismiss; numerous other claims dismissed either asserting non-actionable claims.

Wisconsin – *Wilson v. C.O. Gregory et al.,* 2026 WL 1786355 (E.D. Wis., June 22, 2026) – Incarcerated transgender person told multiple correction officers they were suicidal and were going to self-harm. Plaintiff alleges they ignored pleas for help and placed plaintiff on "controlled status" for cover the cell window. Plaintiff continued to self-harm, banging their head on the cell window and cutting their arm. A nurse dressed the injury and finally Plaintiff was placed on suicide watch, but no

staff member told plaintiff to stop self-harming, which plaintiff believe is due to their transgender status. U.S. District Judge J.P. Stadtmueller, screening the pro se complaint, holds that plaintiff can proceed on an 8th Amendment deliberate-indifference claims against a list of named defendants. "Prison staff have a duty to prevent inmates from causing serious harms to themselves," wrote the judge, finding that plaintiff's allegations were sufficient to surviving screening. However, plaintiff also named the jail as a defendant, which claim had to be dismissed as the jail is a non-suable entity for purposes of Section 1983, which only supports actions against government actors. Judge Stadtmueller was appointed by President Reagan.

Habeas Corpus Petitions by LGBTQ Persons Detained by ICE (US Immigration & Customs Enforcement)

By Arthur S. Leonard

U.S. Court of Appeals, 6th Circuit – *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. May 11, 2026), petition for certiorari filed with U.S. Supreme Court, docketed on June 24, 2026, consolidating appeals by the government from numerous rulings by district judges within the 6th Circuit on habeas corpus petitions by non-citizens being detained by ICE (Immigration Customs and Enforcement), a panel of the 6th Circuit took on the hotly disputed issue of which statutory provisions apply to the situation where ICE arrests and detains persons who entered the United States surreptitiously many years ago and detains them seeking to remove them to their home countries or third countries if humanitarian laws preclude sending them to their home countries because of the harm they might encounter there. The government takes the position that these cases are governed by 8 U.S.C. Sec. 1225(b)(2)(B), which requires mandatory detention of those seeking entry without a visa, while the Petitioners, with the approval of the district court judges, maintain that the where people are unlawfully present – sometimes for many years – they may be detained under 8 U.S.C. sec. 1226 for a reasonable period of time while a determination of removability is being made, or released on bond or probation if a court determines that they don't present a danger to the public or a flight risk. There is considerable precedent that if they don't have a serious criminal record and are being detained too long with no likelihood of imminent removal, they have a right to a habeas corpus order or at least a bond or probation hearing. As ICE arrests of peaceable long-term residents have mounted, the trial courts have been flooded with habeas corpus petitions, and the circuit courts are divided on which provision applies. In these consolidated cases, the government is appealing habeas corpus orders by the district courts. The 6th Circuit panel affirms the district courts' determination that Sec. 1226 applies, with a dissenting opinion. The government petitioned for certiorari at the end of June. There is a split of circuit authority. Writing for the majority of the panel, Circuit Judge Eric Clay (a Clinton appointee) states: "To date, hundreds of district courts and five of our sister circuits have already addressed this statutory interpretation issue," followed by a string cite of opinions from the 11th, 2nd, 8th, 5th, and 7th Circuits. "For the reasons discussed below, we join the Second and Eleventh Circuit… in holding that Sec. 1225(b)(2)(A) does not apply to noncitizens like petitioners." This issue has particular salience for Law Notes because in many of the cases the detainees seeking release are either LGBTQ or living with HIV and have proved difficult for the government to place in a third country because the third countries with which the government has made deals on deportation tend to be countries that are inhospitable to LGBTQ people. The other judges on the panel are Circuit Judge Eric Murphy (a Trump appointee, who dissents) and Senior Circuit Judge R. Guy Cole, Jr. (a Clinton appointee). Most of the Petitioners below are represented by lawyers affiliated with the national ACLU or its state affiliates

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Thousands of people being detailed by ICE as part of the Trump Administration's mass deportation campaign have filed petitions for habeas corpus. Some of them are LGBTQ and/or HIV-positive individuals who seek protection against removal to

their home countries due to fear of persecution or series mistreatment, and some have been held longer than a reasonable period time due to the difficulties ICE has in getting third countries with which the U.S. has deportation agreements to accept LGBTQ or HIV-positive people. Many of these petitions are from people who have not been convicted of committing serious crimes in the U.S., and some are longtime residents, in some cases with U.S. citizen spouses and children. Here are some cases that have come to our attention from court opinions issued during April, May or June 2026. In most cases, the petitions for habeas corpus have been granted, either directing release from ICE custody or requiring that a bond hearing be held to determine if the individual's release would be harmful to the community or if there is serious concern that upon release, they would disappear into the community and be lost to ICE (flight risk).

Example: California – *Carlos L. v. Warden*, 2026 WL 1816189 (E.D. Calif., June 24, 2026) – Petitioner who claims to be a transgender woman entered U.S. in 2023 and has a U.S. citizen spouse. Notice to appear for removal proceedings was issued to her on July 16, 2023. Petitioner was arrested on April 21, 2026, for offering/committing/engaging in prostitution under Florida law. Upon booking at Polk County, FL, Jail, Tampa Enforcement Removal Officers conducted a record check and issued her an I-247 detainer, delivering her to ICE custody in California City Correctional Facility. U.S. District Judge Rebecca L. Pennell granted the petition to the extent of ordering the government to afford petitioner an individualized bond hearing at which the government must prove by clear and convincing evidence that she is a flight risk or a danger to the community if released. Failing such proof, she is to be released without bond. Otherwise, the immigration judge should set an appropriate bond amount in light of her economic circumstances. Failure to provide a bond hearing within 14 days will require her release. Within two days of the date of the bond hearing, the government is directed to file a notice in the court certifying compliance with the order. Judge Pennell was appointed by President Biden.

California – *Victor (Vicky) Alfonso Velazquez v. Larose*, 2026 WL 1480806 (S.D. Calif., May 26, 2026) – Citizen of Mexico, asylum seeker based on sexual orientation and gender identity, application for asylum pending, petition for habeas corpus granted.

California – *Ffriend v. Albarran*, 2026 WL 1196635 (N.D. Calif., May 2, 2026) – Native and citizen of Jamaica came to U.S in 2022 seeking asylum. He is "a member of the LGBTQ community" and "feared harm in his native Jamacia." In 2024, he was granted Convention against Torture (CAT) withholding of removal, "after an Immigration Judge concluded it was more likely than not that he would suffer persecution if removed to Jamaica" because of his sexual orientation. He had been free under an "order of supervision" requiring regular in-person and virtual ICE check-ins. He complied with all requirements, but he was detained in April 2026 for no apparent reason than ICE trying to fill its quota of arrests, and he was put into detention in San Francisco, where he remained at the time the court ruled. He was told that he would be removed to St. Kitts, a county with which he has no connection, since the IJ found that he could not be safely removed to Jamaica. He filed a *habeas* action in U.S. District Court, accompanied by an *ex parte* motion for a temporary restraining order, which was granted by Senior U.S. District Judge William H. Orrick on May 2. Judge Orrick credited plaintiff's due process arguments, and found that a *status quo* order, directing his release, was appropriate, together with a restriction of moving him out of the Northern District of California. ICE had not responded to the motion and was ordered to file a response to Ffriend's motion. He is represented by Nicole Alicia Gorney, Vidas, Santa Rosa, CA. Judge Orrick was appointed by President Obama.

Nevada – *Gallardo v. Mullin*, 2026 WL 1229083 D. Nev. May 5, 2026) – At the time of decision this gay Mexican citizen had been detained by ICE for about five months. He entered the U.S. in 2024. An Immigration Judge ordered him removed but granted withholding to block any removal back to Mexico, where had a reasonable fear of persecution on account of his sexual orientation. Over those five months, there was no indication that ICE was doing anything

to identify a third country to which to remove him, and he filed a habeas petition seeing his release, noting that he had received no Due Process with respect to this detention; i.e. no adjudication that he is a flight risk or a danger to the community. The petition was granted by Chief U.S. District Judge Miranda M. Du, an Obama appointee. The Petitioner is represented by Drianna Dimatulac, Gabriela Dorado Rivera, Michael G. Kagan, Thomas & Mack Legal Clinic, Boyd School of Law at UNLV, Las Vegas, NV.

Legislative & Administrative Notes

By Arthur S. Leonard

Illinois – At the end of Pride Month, Governor JB Pritzker of Illinois signed three bills intended to protect transgender people from out-of-state attacks. Among other things, one of the bills removed testosterone, a hormone commonly used for gender-affirming care for transgender males, from an official list of prescriptions that are legally required to be included in a government database, called the Illinois Prescription Monitoring Program (ILPMP). The purpose of the database is to track prescriptions in order to curb drug abuse. The bill is H.B. 4834. Another bill, HB 5492, mandates pharmacies to fill prescriptions for hormone therapy with a six-month supply when either a pharmacist or other health care provide considers it appropriate for the patient. A press release announcing the bill signing explained that prescribing in bulk is helpful if an individual will be traveling and may find themselves in a jurisdiction were getting such a prescription filled would be a problem. Finally, H.B. 5095 codifies a simplified policy, previously adopted by the state's Secretary of State, for individual to select their gender marks on state identification forms and cards. In his signing statement, Pritzker commented: "HB5095 preserves gender markers on state IDs; HB5492 expands access to hormone therapy; and HV4834 shields our most private medical information from surveillance. These are not small victories. They are a declaration that in this state, LGBTQ+ lives matter." Information for this paragraph was sourced from the substack Erin-in-the-morning on July 7.

Missouri – At the end of June, Missouri Governor Mike Kehoe signed H.B. 2009, a comprehensive appropriations bill for the Missouri Department of Corrections, which provides, among other things: "No funds shall be expended for any cross-sex hormones, or gender transition surgery understand for the purpose of gender transition." Apart from bizarre verbal redundancy, this is criticized as mandating that incarcerated transgender people in Missouri prisons who have been receiving hormone therapy will be denied further treatment, forcing "detransition." Unless, of course, somebody gets a court to step in and stop this violation of the 8th Amendment.

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