

3/4/2020



March 4, 2020

Via Email

Idaho State Senate Health & Welfare Committee  
Idaho House of Representatives Health & Welfare Committee  
P.O. Box 83720  
Boise, ID 83720-0081

Re: Statement for the Record on Rules Governing Completion and Correction of  
Certificates; Vital Statistics Rules 16.02.08

Dear Chairman Wood, Chairman Martin, and Committee Members,

As members of the legal team that represented the Plaintiffs in *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho 2018), we write to submit a statement for record regarding the rules governing the Completion and Correction of Certificates. We write in support of these rules, which were a direct response to, and in compliance with, the U.S. District Court's March 5, 2018 decision in *F.V.* ordering the Idaho Department of Health and Welfare (IDHW) to accept applications made by transgender people for the purpose of correcting their gender markers to reflect their gender identity.

These rules are a straightforward means for IDHW to comply with the Court's order: they replace the previous, unconstitutional policy with a new, constitutionally sound procedure for amendment of birth certificates. In invalidating the previous policy as violating the equal protection clause of the U.S. Constitution, the Court noted the "potential implications of restrictions and restraints IDHW may place on the ability of transgender people to . . . change the sex listed on their birth certificates" and cautioned that "any new rule must not subject one class of people to any more onerous burdens than the burdens placed on others without constitutionally-appropriate justification." *Id.* at 1141-1142. The Court also explained that "any constitutionally sound rule must not include the revision history as to sex or name." *Id.* at 1135. Finally, the Court chose as its remedy to permanently enjoin the Department from enforcing the prior unconstitutional policy, and to order the Department to "begin accepting applications made by transgender people . . . through a constitutionally-sound approval process." *Id.* at 1146.

These rules are a direct response to the Court's order in *F.V.* They allow a transgender person to apply to have the gender marker on their birth certificate corrected in order to reflect their gender identity, and require that the amended certificate will not include any indication of amendment or revision history. In doing so, the rules comply with the order in *F.V.* without imposing burdens on transgender people in violation of the equal protection clause. *Id.* at 1141.

Indeed, in the nearly two years since these rules first took effect in April of 2018, transgender people with Idaho birth certificates have been able to correct their gender designation without issue. These rules are *necessary* to alleviate the immense harm and risk to the health and safety of transgender people who are not able to correct the gender designation on their birth certificate. Transgender people are at intense risk for discrimination, including verbal harassment and physical assault, especially when they are perceived or identified as transgender.<sup>1</sup>

In particular, transgender people with identity documents that do not match their gender identity are frequently publicly identified as transgender, exposing them to harassment and discrimination.<sup>2</sup> These numbers are even worse in Idaho—thirty-six percent of transgender Idahoans who showed identity documents that did not match their presentation were verbally harassed, denied benefits or services, asked to leave an establishment, or assaulted.<sup>3</sup>

Additionally, in the two years since implementation of these rules, nothing has transpired whatsoever to suggest that the rules pose any risk of confusion, fraud, or any other conceivable harm to an identifiable public interest. The status quo, upon which transgender people born in Idaho have already relied for nearly two years, should be maintained. To ensure continued compliance with the Court's order, and in the interest of protecting the safety and well-being of all transgender people born in Idaho, we urge that these rules remain in place as a

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<sup>1</sup> About half of all transgender people surveyed in the landmark 2015 U.S. Transgender Survey reported that they had been verbally harassed due to their gender identity, and nearly one in ten had been physically assaulted due to their gender identity. James, et al., *The Report of the 2015 U.S. Transgender Survey*, 198 (2016),

<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

<sup>2</sup> Overall, about a third of transgender respondents who have shown IDs with a name or gender that did not match their presentation reported negative experiences, with about a quarter reporting verbal harassment. *Id.* at 89.

<sup>3</sup> Nat'l Ctr. For Transgender Equality, *2015 U.S. Transgender Survey: Idaho State Report 3* (2017),

<http://www.transequality.org/sites/default/files/docs/usts/USTSIDStateReport%281017%29.pdf>.

constitutionally required remedy to the previous, unconstitutional policy which prevented transgender people from correcting their Idaho birth certificates.

We appreciate the opportunity to provide comment on these important rules and to help ensure the health and safety of all Idahoans, including those who are transgender.

Sincerely,

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