

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STEPHANIE LEIGH WHITAKER,)
et al.,)
)
Plaintiffs,)
) Case No. 1:18-cv-540-WOB
v.)
)
JUDGE JOSEPH W. KIRBY,)
)
Defendant.)
)
)

BRIEF OF AMICUS CURIAE THE TREVOR PROJECT
IN SUPPORT OF PLAINTIFFS' REQUEST
FOR DECLARATORY RELIEF

/s/ Brandon D. Cox
Brandon D. Cox (0089815)
*Counsel of Record

Chad M. Eggspuehler (0094094)
Tucker Ellis LLP
950 Main Avenue
Suite 1100
Cleveland, OH 44113
Tel: 216.592.5000
Fax: 216.592.5009

Brandon.Cox@tuckerellis.com

*Attorneys for The Trevor Project,
Amicus Curiae*

**DISCLOSURE OF CORPORATE AFFILIATIONS AND
FINANCIAL INTEREST**

Pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1.1: The Trevor Project hereby certifies that it has no parent corporation and no publicly held corporation owns ten percent or more of its stock.

Nor does it, or any affiliated entity, have a financial interest in the outcome of this litigation.

I. STATEMENT OF INTEREST

The Trevor Project, the nation's largest lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) youth crisis intervention and suicide prevention organization, respectfully submits this *amicus curiae* brief in support of Plaintiffs, the parents of transgender minors who have sought legal name changes in Ohio.

Founded in 1998, The Trevor Project offers the only accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of individuals each month. The Trevor Project also runs TrevorSpace, the world's largest safe space social networking site for LGBTQ youth. By monitoring, analyzing, and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new knowledge and clinical implications for issues affecting LGBTQ youth. The Trevor Project also provides training and other educational resources to youth-serving professionals, such as counselors, educators, and school nurses, to teach them how to act as allies to LGBTQ youth and to provide support to young people.

The Trevor Project has a substantial interest in opposing government discrimination against the transgender youth it serves, and in ensuring that

such youth have fair and equal access to legal name changes where necessary to reflect their gender identity. The Trevor Project has worked firsthand with transgender youth for two decades, thereby developing significant expertise on the issues that affect the community.

The Trevor Project constantly bears witness to the resounding strength of transgender youth, and to the life-saving results of accepting them for who they are. Such acceptance begins with respect for their gender identities and expressions, and especially their chosen names.

II. ARGUMENT

The Trevor Project has more than two decades' experience observing the power of acceptance and respect in supporting the health and well-being of LGBTQ youth. Conversely, The Trevor Project has also witnessed the devastating and lasting harm caused by discriminatory treatment. For transgender youth, discrimination often manifests in a refusal to recognize their chosen names and gender identity.

A transgender teen's chosen name is an essential part of the social transition process that is vital to mental health. Further, trans youth, like their peers, require accurate legal documents to participate fully—and authentically, as themselves—in society. Time and again, research

demonstrates that trans youth thrive when given the familial and community support for their gender identities that many of us take for granted.

But transgender youth in today's society must overcome systemic discrimination. Official acts of discrimination by the government are particularly harmful because, as courts have long recognized, they reinforce and even beget acts of private discrimination, all the while sending an unmistakable message of public disapproval. *See, e.g., Frontiero v. Richardson*, 411 U.S. 677, 684–86 (1973) (plurality) (discussing how history of legal discrimination against women led to “pervasive, although at times more subtle, discrimination in our educational institutions, in the job market and, perhaps most conspicuously, in the political arena”); *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 494 (1954) (explaining how legally mandated segregation of public school children “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone”).

In the case of the arbitrary and systematic denial of legal name changes by judicial officers, the harm to transgender youth is two-fold, in that they: (1) are denied legal names consistent with their gender identities; and (2) suffer the serious practical, emotional, and dignitary harms of being denied equal access to name-change proceedings, despite complying with all

the legal prerequisites. The damage is compounded when the judge disregards the views of supporting parents and medical professionals.

Judicial statements suggesting that a young person's transgender identity is the result of a social "trend" or media coverage send a demeaning and harmful message to transgender youth. Here, the judge added insult to injury by (i) telling multiple applicants to "Age. Develop. Mature," and (ii) unlawfully barring them from legal name changes until they reach the age of majority. Doc. 1, Compl. Exs. B–D, Decisions at 3, PageID 51, 55, 59 (concluding each decision with the instruction that the applicant should "ask this Court again once [he] become[s] an adult"). This is precisely the kind of invalidation and disrespect that drives transgender youth to contact The Trevor Project every day.

A. Legal Recognition of Transgender People's Chosen Names Is Part of Social Transition, and Benefits Their Mental Health.

For transgender people, including transgender youth, transitioning socially is an important means of protecting their mental health and well-being and addressing gender dysphoria.¹ Social transition refers to living in

¹ The Diagnostic and Statistical Manual of Mental Disorders, fifth edition ("DSM-5"), codifies the diagnostic criteria for gender dysphoria in adolescents and adults as follows: "A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two" out of six criteria, and "clinically significant distress or impairment in social, occupational, or other important areas of functioning." Am. Psychiatric Ass'n, Diagnostic and Statistical Manual

accord with one's gender identity in all aspects of life, and typically involves publicly identifying as that gender, adopting a name consistent with the individual's gender identity, and changing pronouns and manner of dress to reflect the person's gender.² Leading medical and mental health organizations stress the critical importance of a successful social transition to a transgender young person's health and well-being.

And for good reason. Ample social science confirms the importance of successful social transitions. Recent studies show that transgender youth who have socially transitioned have significantly lower rates of depression compared to those who do not live in accordance with their gender identities.³ The evidence also speaks powerfully to the resilience and overall

of Mental Disorders 452–53 (5th ed. 2013). If untreated, gender dysphoria can contribute to depression, functional impairment, substance abuse, self-injurious behaviors, and suicide. Brief for the American Academy of Pediatrics, et al., as Amici Curiae Supporting Respondents, *Gloucester County School Board v. G.G.*, No. 16-273 (U.S. Mar. 2, 2017), at 13, available at https://www.aclu.org/sites/default/files/field_document/16-273_bsac_american_academy_of_pediatrics.pdf (last visited Sept. 14, 2018).

² APA, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 *Am. Psychologist* 840 (2015); see also David A. Levine & Comm. on Adolescence, *Am. Acad. of Pediatrics Technical Report, Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 *Pediatrics* 297, 308 (2013) (discussing social transition as the first, “reversible” phase of transition).

³ *E.g.*, Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 *J. Am. Acad. Child & Adolescent Psychiatry* 116, 120 (2017) (“Our findings of normative levels of depression, slightly higher rates of anxiety, and high self-worth in socially transitioned transgender children stand in marked contrast with previous work with gender-nonconforming children who had not socially transitioned. Those studies overwhelmingly reported markedly higher rates of anxiety and depression

health of transgender youth who are supported in their gender identity. When transgender youth are supported by their families, “results provide clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings and peers.”⁴

Recent studies also underscore the importance of using transgender youths’ chosen names, which results in reduced depressive symptoms, suicidal ideation, and suicidal behavior.⁵ Depressive symptoms and suicidal behavior were at the lowest levels when chosen names could be used in the four studied contexts: at home, school, work, and with friends.⁶ Many institutions, including schools and employers, have policies or legal obligations that require use of legal names. As a result, transgender youth who are unable to obtain a legal name change are continually “outed” in these settings, which invades their privacy and puts them at risk of discrimination and harassment.

and lower self-worth, with disproportionate numbers of children in the clinical range.”) (footnotes omitted).

⁴ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* 1, 7 (2016), available at <http://pediatrics.aappublications.org/content/pediatrics/early/2016/02/24/peds.2015-3223.full.pdf> (last visited Sept. 14, 2018).

⁵ Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, *Journal of Adolescent Health* (2018).

⁶ See *id.* at 2.

Not surprisingly, the American Psychological Association (APA) recommends “us[ing] names and pronouns that are appropriate to [a] person’s gender presentation and identity.”⁷ The APA also encourages psychologists caring for transgender and gender non-conforming individuals

to be sensitive to the challenges of attaining gender-affirming identity documentation and how the receipt or denial of such documentation may affect social and psychological well-being, the person’s ability to obtain education and employment, find safe housing, access public benefits, obtain student loans, and access health insurance.⁸

This aligns with the guidance of the World Professional Association for Transgender Health (WPATH), the organization that publishes the community-consensus treatment protocols for gender dysphoria followed by major medical and mental health groups in the United States.⁹ WPATH recommends identity documents consistent with an individual’s gender identity as “essential to the ability of all people to enjoy rights and

⁷ <http://www.apa.org/topics/lgbt/transgender.aspx> (last visited Sept. 14, 2018) (select “How can I be supportive of transgender family members, friends, or significant others?” tab).

⁸ APA, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, American Psychologist (December 2015), at 841, available at <https://www.apa.org/practice/guidelines/transgender.pdf> (last visited Sept. 14, 2018).

⁹ WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th ed.), available at <https://www.wpath.org/media/cms/Documents/Web%20Transfer/SOC/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf> (last visited Sept. 14, 2018); see *id.* at 10 (recommending, as effective treatments, “[c]hanges in name and gender marker on identity documents”).

opportunities equal to those available to others; to access accommodation, education, employment, and health care; to travel; to navigate everyday transactions; and to enjoy safety.”¹⁰

Beyond the evident benefits of social transition, many healthcare practitioners require transgender individuals to complete social transition before they will be able to access gender-confirming medical treatments. The WPATH protocols call for 12 continuous months of living in a gender role congruent with gender identity prior to referral for certain surgical procedures.¹¹

The inability to access a legal name change and matching identification documents represents a significant barrier to transgender people living consistently as who they are. Delaying an adolescent’s ability to complete social transition can also delay any necessary medical care. Such a delay is not without risk or consequence, as WPATH emphasizes that

[r]efusing timely medical interventions for adolescents might prolong gender dysphoria and contribute to an appearance that could provoke abuse and stigmatization. As the level of gender-related abuse is strongly associated with the degree of psychiatric distress during adolescence (Nuttbrock et al., 2010), withholding puberty suppression and subsequent feminizing or

¹⁰ WPATH, WPATH Identity Recognition Statement, Nov. 15, 2017, *available at* <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf> (last visited Sept. 14, 2018).

¹¹ WPATH Standards of Care, *supra* note 9, at 61.

masculinizing hormone therapy is not a neutral option for adolescents.¹²

B. Transgender Teens Need Legal Documents Reflecting Their Chosen Names to Participate Fully in Society.

Transgender teens, like their non-transgender peers, require legal documents that accurately reflect their identity as they move through the world. As teenagers mature, they increasingly take on responsibilities tied to their personal identities rather than those of their parents or guardians. Every day, teenagers under the age of majority apply for learners' permits and drivers' licenses, bank accounts, college admissions, part-time jobs, passports, and voter registration cards, all of which require legal names. Every time transgender youth are compelled to use legal names and identification documents that conflict with their gender identities, it "outs" the individual as transgender and creates a lasting paper trail that will hamper future adult transactions.

Having records or documentation that conflict with the name they use or their apparent gender can result in transgender people experiencing discrimination and harassment. The 2015 U.S. Transgender Survey report found that 32 percent of respondents who offered identification with a name or gender marker that did not match their presentation reported negative

¹² WPATH Standards of Care, *supra* note 9, at 21.

experiences, including being denied service, verbally harassed, or physically assaulted.¹³ This is particularly concerning in the school context, where many transgender students report that their schools are unwilling to treat them in accordance with their gender identity, such that 51 percent of transgender student respondents to GLSEN's 2015 National School Climate Survey stated that they were unable to use their preferred name or pronouns in school.¹⁴ Of the approximately 4,600 two- and four-year colleges in the United States,¹⁵ Campus Pride has found that only 254 (or 5.5 percent) enable students to use a chosen name, instead of a legal name, on campus records and documents.¹⁶ Whenever transgender youth are compelled to show school identification or records that are not consistent with their names and gender

¹³ Sandy E. James et al, *The Report of the 2015 U.S. Transgender Survey: Executive Summary* (2016), at 7.

Such experiences should not come as a surprise, in light of the well-documented history of discrimination experienced by transgender adults. *See, e.g., EEOC v. R.G. & G.R. Harris Funeral Homes*, – F.3d – (6th Cir. 2018) (transgender employee fired when she began social transition, after six years' employment with funeral home), *available at* <http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0045p-06.pdf>; *Smith v. City of Salem*, 369 F.3d 912, 922 (6th Cir.), *as amended*, 378 F.3d 566 (6th Cir. 2004) (suspension of transgender fire department employee); *Bd. of Educ. Highland Local Sch. Dist. v. Dep't of Educ.*, 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016) (citing history of persecution and discrimination against transgender persons); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139–40 (S.D.N.Y. 2015) (same).

¹⁴ Joseph G. Kosciw et al., *The 2015 National School Climate Survey* (2016), at xvii (50.9%), 37 (52.9%), 38 (50.9%).

¹⁵ *See* National Center for Education Statistics, *Fast Facts*, Data for 2014–2015, *available at* <https://nces.ed.gov/fastfacts/display.asp?id=84> (last visited Sept. 14, 2018).

¹⁶ <https://www.campuspride.org/tpc/records/> (last visited Sept. 14, 2018).

presentations—for instance, when transferring to another high school or university—it puts them at greater risk for discrimination and harassment at a time of critical development. Such incidents can result in lasting harm.

C. The Trevor Project Witnesses Daily the Negative Effects of Denying Transgender Youths' Chosen Names.

Despite great strides made in recent years, many transgender people—especially trans youth—are still subject to rank discrimination and harassment. The Trevor Project recognizes and attempts to heal the wounds caused by discrimination against the LGBTQ community by providing several crisis intervention and suicide prevention services. Specifically, TrevorLifeline is a telephone hotline that LGBTQ youth can call for support in times of stress and trouble, and TrevorChat and TrevorText are online chat and text messaging services, respectively, that LGBTQ youth can use as an alternative to speaking on the telephone.

The Trevor Project maintains statistical data regarding the people who use its crisis and suicide prevention services. This data, consistent with the studies described above, shows that discrimination—particularly discrimination by the government—creates stress for transgender youth. During its twenty-year history, The Trevor Project has seen spikes in the demand for its youth support services in response to new discriminatory laws

and discriminatory statements by government officials and prominent public figures.

Many of the trans youth who reach out to The Trevor Project in moments of crisis describe concerns or stresses associated with the use of their chosen names, trying to obtain legal name changes, or being outed by documents listing their names at birth. Supervisors for The Trevor Project's crisis services, such as TrevorText and TrevorChat, report that name-change issues come up on a daily basis, multiple times a day. These impressions are borne out by data collected on TrevorLifeline, TrevorText, and TrevorChat, as terms like "name change," "wrong name," "dead named," and "legal identification" have appeared almost 3,000 times since 2010.

Frequently youth will describe the possibility of completing a legal name change as a source of hope; indeed, many ask The Trevor Project counselors for advice on how to complete a name change, or talk about having received help from others who are supporting them through the process. Having completed a legal name change is described as helping youth to improve mental health and well-being and allowing them to live as their true selves, despite ongoing challenges.

Others, however, experience the type of discrimination challenged in this case. Many express fear and frustration at barriers they encounter

during a legal name-change process and the intimidating prospect of making their case in court, only to have it denied. Youth who have been denied legal name changes or who have encountered delays or obstructions have contacted The Trevor Project in severe distress.

Not having government-issued ID documents that accurately identify their name and gender also causes distress. For example, youth contacting The Trevor Project have expressed severe frustration at being outed every time they use their debit cards. For older youth, the list of problematic interactions increases considerably, as legal names and/or identification are required for a variety of events, ranging from college applications and healthcare services to something as simple as getting carded at a bar. Counseling supervisors at The Trevor Project hear these concerns frequently and witness firsthand their association with higher rates of suicidal thoughts or behaviors.

Transgender youth care deeply about having their chosen names recognized by the world around them. Such recognition is a source of validation for who they are and their most deep-seated personal experiences. When such recognition is denied, the trans youth who contact The Trevor Project sometimes express hopelessness that their identities will ever be

accepted and well-founded fears about how that denial will affect their safety and ability to participate in the world.

As the Trevor Project knows from firsthand experience, being treated fairly and equally in the legal system—especially in legal name-change proceedings—is vital to the health and well-being of these youth, and being denied that equal treatment can have severe consequences. These youth deserve the same chance as others to be who they are and to participate fully in our society.

III. CONCLUSION

For the foregoing reasons, The Trevor Project supports Plaintiffs' request to expedite the hearing and for declaratory relief in this case.

Respectfully submitted,

/s/ Brandon D. Cox
Brandon D. Cox (0089815)
*Counsel of Record

Chad M. Eggspuehler (0094094)
Tucker Ellis LLP
950 Main Avenue
Suite 1100
Cleveland, OH 44113
Tel: 216.592.5000
Fax: 216.592.5009
E-mail: Brandon.Cox@tuckerellis.com

*Attorneys for The Trevor Project,
Amicus Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Brandon D. Cox

Brandon D. Cox

*Attorney for The Trevor Project,
Amicus Curiae*