

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of

JONES DAVID HOLLISTER,

Petitioner-Appellant.

CA No. A171609

Lane County Circuit Court Case
No. 19CV20980

**BRIEF OF *AMICI CURIAE* BASIC RIGHTS OREGON
AND AMERICAN CIVIL LIBERTIES UNION OF OREGON**

Appeal from the Order and General Judgment
of the Circuit Court for Lane County
The Honorable Judge Charles D. Carlson, Circuit Court Judge

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GLOSSARY OF TERMS*

Assigned sex or gender at birth: The sex or gender assigned to a child at birth, generally based on the child's external physical anatomy. Also referred to as birth sex or biological sex.

Cisgender: A term for people whose gender identity generally matches the gender assigned for the sex with their external physical anatomy. The word is derived from the Latin root "cis" meaning "on this side."

Gender affirmation: A term used to refer to societal behaviors, actions, or policies, as well as therapeutic approaches, that affirm and recognize a person's gender identity.

Gender binary: The classification of gender into two discrete categories of male and female.

Gender dysphoria: Clinically significant distress about person's assigned sex or gender being different from the person's gender identity.

Gender expression: External expression of a person's gender identity, which may or may not conform to socially defined behaviors and characteristics traditionally associated with being either masculine or feminine.

Gender identity: An individual's inner sense of being male, female, or another gender, or how an individual perceives their own gender. Gender identity is not necessarily the same as the sex or gender assigned or presumed at birth.

Gender non-conforming: A term used to describe people who have a gender expression that does not conform to traditional gender norms.

Genderqueer: Another term for people who identify outside of the male and female gender binary, which may include identifying as being both male and female, neither male nor female, or as falling completely outside these categories. Genderqueer and nonbinary generally are synonymous terms.

Intersex: An umbrella term used to describe a wide range of natural bodily variations. Intersex people are born with sex characteristics that do not fit typical binary notions of bodies designated as male or female. Some people who are intersex have gender identities of male or female, and some have nonbinary gender identities.

Nonbinary: An umbrella term for people whose gender identity falls outside the binary gender categories of male and female. A nonbinary person may define their gender as falling somewhere in between male and female, or they may define it as wholly different from these terms. A nonbinary person may or may not identify as transgender.

Sexual orientation: A term that describes a person's enduring physical, romantic, or emotional attraction to another person, such as straight, gay, lesbian, or bisexual.

Transgender: An umbrella term for people whose gender identity does not match the sex that they were assigned at birth. Transgender people may have male, female, or nonbinary gender identities.

Transition: An individualized process in which transgender or nonbinary people move from living aligned with the sex they were assigned at birth to living aligned with their gender identity. Each person's transition path is unique. One aspect of transitioning may include making legal changes to align with a person's gender identity, such as changing a person's gender marker and name on legal documents and identification.

*** This glossary of terms relating to gender identity is compiled from glossaries created by Lambda Legal, John Hopkins Medicine, Human Rights Campaign, and the American Psychological Association, including:**

Lambda Legal, *Glossary of LGBTQ Terms*, available at: https://www.lambdalegal.org/know-your-rights/article/youth-glossary-lgbtq-terms?gclid=EAIaIQobChMIjsG_6MK_5QIVyR6tBh0-ng3BEAAYASAAEgK0MPD_BwE (last visited on Oct. 28, 2019).

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American Psychological Association, *Glossary Defining Transgender Terms*, available at: <https://www.apa.org/monitor/2018/09/ce-corner-glossary> (last visited on Oct. 28, 2019).

Human Rights Campaign, *Glossary of Terms*, available at: <https://www.hrc.org/resources/glossary-of-terms> (last visited on Oct. 28, 2019).

INTERESTS OF *AMICI CURIAE*

Amici curiae Basic Rights Oregon and American Civil Liberties Union of Oregon, Inc. (ACLU of Oregon) are non-profit, statewide organizations committed to protecting and advancing the civil rights and liberties of lesbian, gay, bisexual, transgender, and queer (LGBTQ) Oregonians. Pursuant to ORAP 8.15, Basic Rights Oregon and ACLU of Oregon appear as *amici curiae* because of the importance of the civil right to have legal recognition of an accurate gender marker under ORS 33.460,¹ including a nonbinary gender marker for Oregonians with gender identities that are not female or male.

As a leading organization promoting equality and justice for the breadth of LGBTQ communities in Oregon, Basic Rights Oregon works to ensure that LGBTQ Oregonians are able to thrive, experience full equality, and live free from discrimination in every part of the state. Among other things, Basic Rights Oregon engages in policy advocacy

¹ ORS 33.460 provides, in part:

“A circuit court may order a legal change of sex and enter a judgment indicating the change of sex if the individual attests that the individual has undergone surgical, hormonal or other treatment appropriate for the individual for the purpose of affirming gender identity.”

and educational outreach to protect and advance essential civil rights and liberties for all members of Oregon’s diverse LGBTQ communities. Basic Rights Oregon is committed to protecting the civil right of transgender and nonbinary Oregonians to have legal recognition of accurate gender markers under ORS 33.460.

ACLU of Oregon is a nonpartisan organization with over 33,000 members statewide, dedicated to defending and advancing important civil rights and liberties for Oregonians. Among other priorities, ACLU of Oregon works to ensure that LGBTQ Oregonians enjoy full equal civil rights, personal autonomy, and enjoyment of freedom of expression and association. ACLU of Oregon champions the right of transgender and nonbinary Oregonians to thrive and live authentically, without experiencing discrimination or denial of full equality. Like Basic Rights Oregon, ACLU of Oregon is committed to protecting the civil right of transgender and nonbinary Oregonians to have legal recognition of accurate gender markers under ORS 33.460.

SUMMARY OF ARGUMENT

ORS 33.460 provides the right to change a person’s legal sex designation, or gender marker, to affirm a person’s accurate gender

identity. For some, an accurate gender identity is nonbinary—that is, a gender identity that does not fall within the female and male binary classifications. When a person has a nonbinary gender identity, the text, context, and legislative history of ORS 33.460, as amended in 2017, show a clear intent to provide a right to change a person’s legal sex designation to nonbinary, as opposed to an inaccurate male or female designation. *See State v. Gaines*, 346 Or 160, 171-73, 206 P3d 1042 (2009) (goal of statutory interpretation is to determine intent of the legislature based on text, context, and legislative history). Given the constitutional implications of denying equal privileges to nonbinary Oregonians, that interpretation of ORS 33.460 also is consistent with the well-established maxim that “[s]tatutes should be interpreted and administered to be consistent with constitutional standards” whenever possible. *Salem College & Academy, Inc. v. Emp. Div.*, 298 Or 471, 481, 695 P2d 25 (1985); *State v. Stoneman*, 323 Or 536, 540 n 5, 920 P2d 535 (1996) (courts “give a statute such an interpretation as will avoid constitutional invalidity” whenever possible).

Starting in 2016, different circuit courts in Oregon have recognized that ORS 33.460 provides the right to obtain a change to a

nonbinary legal sex designation when that designation affirms a person's accurate gender identity.² The Oregon Judicial Department's (OJD) Office of the State Court Administrator (OSCA) has expressed the same understanding of the current version of ORS 33.460, with the OSCA listing female, male, and nonbinary as the three legally recognized gender markers in its approved forms under ORS 33.460.³

² See, e.g., BRO/ACLU-APP at 18-19 (*In re Shupe*, Multnomah County Circuit Court Case No. 16CV13991, General Judgment of Sex Change (June 10, 2016) (ordering a legal change of sex to nonbinary under ORS 33.460); *In re Nicholas*, Benton County Circuit Court Case No. 17CV01994, General Judgment of Sex Change (March 8, 2017) (ordering a legal change of sex to nonbinary under ORS 33.460).)

³ See BRO/ACLU-APP at 14-17 (Oregon Judicial Department, Office of State Court Administrator, Name and Sex Change Form, available at <https://www.courts.oregon.gov/programs/family/forms/Pages/name-sex-change.aspx> (last visited on Oct. 27, 2019)). In 2017, the Oregon Transportation Commission (OTC) also added a nonbinary option for gender identity in its administrative rules governing the issuance of driver licenses and identification cards, with its rules now providing the options of "M" for male, "F" for female or "X" for not-specified" for the description of the sex or gender of the license or card holder. OAR 735-062-0013(3)(c); see also *Oregon Becomes First State to Allow Nonbinary Drivers License*, Casey Parks, *Oregonian* (June 15, 2017), available at <https://www.oregonlive.com/portland/2017/06/oregon-becomes-first-state-to.html> (last visited on Oct. 27, 2019). More recently, in October 2019, Oregon Executive Order 19-08 issued "to reflect current law and understandings about sexual orientation and gender identity," with state agencies now required to "offer, in addition to 'Male' and 'Female,' at least a third option designated as 'Nonbinary/Other'" in their data collection. BRO/ACLU-APP-27-29.

But in this case—in direct contradiction to other circuit courts and the OSCA’s approved forms—the circuit court erroneously construed ORS 33.460 to authorize legal recognition of only male and female binary classifications. Based on that erroneous statutory interpretation, the circuit court wrongly denied petitioner Jones David Hollister’s (“petitioner”) petition to change their legal sex designation to nonbinary under ORS 33.460, even though petitioner met all statutory requirements for the change.

The circuit court’s erroneous interpretation of ORS 33.460 is unsupported by the statutory text, context, and relevant legislative history. For that reason, *amici* Basic Rights Oregon and ACLU of Oregon join the arguments for reversal presented in petitioner’s opening brief and in the other *amici* briefs submitted in support of petitioner. In addition to joining those arguments, Basic Rights Oregon and ACLU of Oregon offer this brief to provide additional information about gender identity and to provide perspectives from nonbinary Oregonians on the importance of the civil right to have legal recognition of an accurate gender marker under ORS 33.460. Because the circuit court erred as a matter of law in denying a nonbinary gender marker to

petitioner, the judgment should be reversed and remanded for a correct application of ORS 33.460.

ARGUMENT

I. ORS 33.460 and the Meaning of Gender Identity

ORS 33.460 provides the right to change a person's legal sex designation in cases where the person attests to having undergone treatment "appropriate for the individual for the purpose of affirming gender identity." ORS 33.460(1). By its plain terms, ORS 33.460 does not limit the right to obtain a change to a person's legal sex designation to only male or female binary designations, to the exclusion of a nonbinary designation that encompasses other gender identities. *See* ORS 174.010 (goal of statutory interpretation under Oregon law is "to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted"). Instead, ORS 33.460 provides more broadly that a person may obtain a legal change to the person's legal sex designation in order to affirm the person's accurate gender identity. Interpreting ORS 33.460 to exclude a nonbinary legal sex designation, or gender marker, would be contrary to the very purpose of the statute. *Peterson and*

Peterson, 132 Or App 190, 201, 888 P2d 23 (1994) (en banc) (in resolving ambiguities in statutes, courts “discern the legislature’s intent and interpret the statute in a manner that will be reasonable and consistent with the legislature’s general policy”); *see also, e.g.*, BRO/ACLU-APP at 7-9, *Testimony of Brook Shelley, Basic Rights Oregon in Support of HB 2673 (2017)*, April 24, 2017 (testifying that purpose of HB 2673 (2017) was, in part, to “reduce discrimination” and allow Oregonians to “obtain personal documentation that accurately reflects our gender identity”).

Gender identity refers to a person’s inner sense of being male, female, or a gender outside of those binary gender classifications. Gender identity is a core part of a person’s identity, and a person’s accurate gender identity is not necessarily the same as the sex or gender that was presumed or assigned at birth. *See* Shelby Hanssen, *Beyond Male or Female: Using Nonbinary Gender Identity to Confront Outdated Notions of Sex and Gender in the Law*, 96 Or Law Review 283, 285 (2017); *see also* Blaise Vanderhorst, *Whither Lies the Self: Intersex and Transgender Individuals and a Proposal for Brain-Based Legal Sex*, 9 Harv L & Pol’y Review 241, 244-46 (2015) (collecting scientific research on gender identity and observing that “[a] growing body of

evidence demonstrates that gender identity is the result of neurological phenomena, and thus is an innate characteristic”).

Although legal recognition of nonbinary gender identities in the United States is recent and inconsistent among different jurisdictions, gender identities outside of the male and female binary classifications have always existed. Julie A. Greenberg, *Defining Male and Female: Intersexuality and the Collision Between Law and Biology*, 41 *Ariz L Rev* 265, 267 (1999) (“[t]he law typically has operated under the assumption that the terms ‘male’ and ‘female’ are fixed and unambiguous despite medical literature demonstrating that these assumptions are not true” (internal footnote omitted)).⁴ The most comprehensive national survey of transgender and nonbinary people in the United States, conducted in 2016, reported that 35 percent of the respondents identified as nonbinary. See James, S.E., Herman, J.L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., *The Report of the 2015*

⁴ For an overview of the recognition and status of transgender, nonbinary, and intersex people in different societies throughout history, see Vanderhorst, *Whither Lies the Self: Intersex and Transgender Individuals and a Proposal for Brain-Based Legal Sex*, 9 *Harv. L & Pol’y Review* at 246-258. See also *id.* at 247 (observing that many societies historically recognized “a ‘third sex’ for those who did not fit neatly into the standard boxes” of male or female and providing overview of examples of the same).

U.S. Transgender Survey, at 23, 43, National Center for Transgender Equality, Washington, D.C. (2017) (stating same). If the percentage in that survey is representative, there are hundreds of thousands of people in the United States with nonbinary gender identities, including thousands in Oregon.⁵ See Jessica A. Clarke, *They, Them, and Theirs*, 132 Harv L Rev 894, 899 (2019) (noting same); see also Flores, A.R., Herman, J.L., Gates, G.J., and Brown, T.N.T., *How Many Adults Identify as Transgender in the United States?*, Williams Institute, University of California, Los Angeles, School of Law (2016) (providing most recent estimates of transgender and nonbinary populations in different states within the United States).

⁵ That estimated number of people in the United States who have nonbinary gender identities is likely far too low, as discrimination strongly affects population data for transgender and nonbinary people. See, e.g., Jan Hoffman, *Estimate of U.S. Transgender Population Doubles to 1.4 Million Adults*, The New York Times, June 30, 2016, available at: <https://www.nytimes.com/2016/07/01/health/transgender-population.html> (last visited on Oct. 28, 2019). Although significantly underrepresentative of the true number of people in Oregon with nonbinary gender identities, the Oregon Department of Motor Vehicles (DMV) reports that the DMV has issued a total of 4,374 state driver licenses or identification cards with the “X” gender designation as of September 23, 2019. BRO/ACLU-APP-31-32. The Oregon Education Department (OED) also reports that a total of 182 students in Oregon have reported nonbinary gender identities in school enrollment data. BRO/ACLU-APP-30.

In recent years, laws in different jurisdictions have begun to recognize that gender identity is not limited to only the male or female binary classifications and that accurate gender identities should be affirmed in the law. Outside of the United States, Canada has joined other countries—including Australia, Bangladesh, Germany, India, Malta, Nepal, New Zealand, and Pakistan—in offering some form of a nonbinary gender marker on government birth and identification documents. *See* Clarke, 132 Harv L Rev at 899 n 8 (noting same). Within the United States, numerous jurisdictions—including Arkansas, California, Colorado, District of Columbia, Hawai'i, Illinois, Indiana, Maine, Maryland, Minnesota, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Vermont, and Washington—also provide some form of legal recognition of nonbinary gender markers.⁶

⁶ *See, e.g.*, Cal. Health & Safety Code § 103426 (2018) (providing right to change birth certificate gender marker to nonbinary without court order); Colo. Code Regs. § 204-32 (2018) (providing for intersex gender designation for driver's licenses); D.C. Code § 50-1401 (2018) (providing right to designate gender as nonbinary on driver licenses); Haw. Rev. Stat. § 286-109 (2019) (providing for "X" option for driver's license gender designations, effective Jul 1, 2020); 15 Ill. Comp. Stat 335/5 (2019) (providing for "nonbinary" option for driver's license gender designations, effective January 1, 2020); N.H. Rev. Stat. 260:21 (2019) (providing for "X" option for driver's license gender designations, effective January 1, 2020); N.J. Stat. Ann. § 26:8-40.12 (2018)

See id. at 899 n 7 (listing examples of state laws expressly providing for nonbinary gender markers in government identification documents); *How Transfriendly Is the Driver’s License Gender Change Policy in Your State?*, National Center for Transgender Equality, available at <https://transequality.org/sites/default/files/docs/id/Drivers%20License%20Grades%20Sep%202019.docx.pdf> (last visited on Oct. 28, 2019).⁷

Oregon has been a leader in providing legal recognition of nonbinary gender identities and in recognizing the civil right to obtain an accurate gender marker. As noted, starting in 2016, different

(providing right to change birth certificate gender markers to nonbinary effective February 2019); N.Y.C., N.Y. Admin. Code § 17-167.1 (2018) (expressly authorizing “X” designation on birth records to designate “a sex that is not exclusively male or female”); Wash. Admin. Code § 246-490-075 (2018) (providing right to identify sex or gender as X, M, or F on birth certificates).

⁷ Other aspects of American society also increasingly have recognized gender diversity. As just one example, Merriam-Webster Dictionary now recognizes the use of the pronoun “they” as a pronoun that is “used to refer to a single person whose gender identity is nonbinary.” *Merriam-Webster Dictionary, Definition of “They”* (2019), available at: <https://www.merriam-webster.com/dictionary/they> (last visited on Oct. 29, 2019); *see also Merriam-Webster, Singular They* (2019) (“*they* has been in consistent use as a singular pronoun since the late 1300s ... *They* is taking on a new use, however: as a pronoun of choice for someone who doesn’t identify as either male or female” (italics in original)), available at: <https://www.merriam-webster.com/words-at-play/singular-nonbinary-they> (last visited on Oct. 28, 2019).

Oregon circuit courts began to recognize that ORS 33.460 provided the right to change a person’s legal sex designation to non-binary. *See* BRO/ACLU-Appx at 21-22 (examples of judgments ordering same). Shortly after the first judgment ordering a change to nonbinary under ORS 33.460, the Oregon Legislative Assembly formally amended ORS 33.460 to eliminate references to completing “sexual reassignment” and, instead, to expressly grant the right to a legal change to sex or gender if the petitioner attests to having undergone treatment “appropriate for the individual for the purpose of affirming gender identity.” Or Laws 2017, ch 100, § 3 (provided at BRO/ACLU-Appx at 5); *see* BRO/ACLU-APP at 7-9, *Testimony of Brook Shelley, Basic Rights Oregon in Support of HB 2673 (2017)*, April 24, 2017 (testifying that purpose of HB 2673 (2017) was to allow Oregonians to “obtain personal documentation that accurately reflects our gender identity”).

As described in petitioner’s opening brief, the text, context, and legislative history of the 2017 amendments reflect an intent to affirm accurate gender identities and to provide the right to change a person’s legal sex designation for that purpose. The approved forms for ORS 33.460 created by the OSCA also recognize that an accurate gender

identity for some Oregonians may be nonbinary, with the forms recognizing the options of male, female, and nonbinary gender classifications for making legal changes to a person’s sex or gender under ORS 33.460. *See* BRO/ACLU-Appx at 7-8 (OSCA forms for legal changes to sex or gender under ORS 33.460). As noted, starting in 2017, the OTC also now provides the options of “M’ for male, ‘F’ for female or ‘X’ for not-specified” for the description of a person’s sex or gender on state driver licenses and identification cards in Oregon. OAR 735-062-0013(3)(c). And, “to reflect current law and understandings about sexual orientation and gender identity,” Oregon Executive Order 19-08 issued in October 2019 to require state agencies to “offer, in addition to ‘Male’ and ‘Female,’ at least a third option designated as ‘Nonbinary/Other’” in data collection. *See* BRO/ACLU-APP-27-29.

II. ORS 33.460 and Affirmance of Gender Identity

The civil right to have legal recognition of an accurate gender marker under ORS 33.460 is critical to people who have gender identities different from their presumed or assigned gender at birth. With gender identity being a core part of human identity, gender-affirming laws and policies—or laws and policies that respect and

affirm a person's accurate gender identity, such as ORS 33.460— recognize the existence of gender diversity and are essential to promote physical and emotional wellbeing. As one example, in a recent survey of transgender and nonbinary Oregonians, 36 percent of the respondents reported that they had experienced verbal harassment, denial of benefits or service, forced exclusion, or physical assaults from showing a driver license or identification card that did not match their gender presentation. *2015 U.S. Transgender Survey: Oregon State Report*, National Center for Transgender Equality, Washington D.C. (2017) (provided at BRO/ACLU-Appx at 23-26). Leading mental-health organizations also recognize the serious damaging impacts of laws and policies that do not affirm accurate gender identity,⁸ stating that “[e]ncountering messages and behaviors that discourage and are hostile to gender diversity creates the experience of repeated trauma with physical and psychological effects.” *American Psychiatric Association*,

⁸ See also, e.g., *American Psychological Association, Guidelines for Psychological Practice with Transgender and Gender Nonconforming People* (2015) (“A nonbinary understanding of gender is fundamental to the provision of affirmative care ... Respecting and supporting [transgender and gender-conforming] people in authentically articulating their gender identity and gender expression, as well as their lived experience, can improve [their] health, well-being, and quality of life.”).

Transgender and Non-Conforming Guide, Gender-Affirming Therapy (2017), at <https://www.apa.org/practice/guidelines/transgender.pdf> (last visited on Oct. 28, 2019).

The importance of gender-affirming laws and policies—including specifically the civil right to obtain a legal change to an accurate gender marker under ORS 33.460—was reiterated by numerous nonbinary Oregonians in interviews for this *amici* brief.⁹ The interviewees included people from different communities across Oregon, having a range of different ages, places of origin, and racial and ethnic identities. The interviewees also possessed a wide range of different educational, professional, and personal backgrounds—including students, a writer, persons with disabilities, a nuclear engineer, a creative marketing professional, a receptionist, an Episcopal priest, a retail salesperson, advocates for LGBTQ rights, a full-time parent, an expert in trauma-informed care, a social worker, a volunteer with a national citizen crisis response team, a journalist, and other backgrounds—with different

⁹⁹ For privacy, this *amici* brief uses only initials, or first names and last initials, for the interviewees unless the interviewee specifically asked for the use of their full name. All interviews were conducted by counsel Sara Kobak and Jessica Schuh for this brief, with the interviews recorded and transcribed for accuracy.

personal interests and family status. For all, the right to have legal recognition of an accurate gender identity was a critical civil right.

To start, some interviewees shared emotional distress and harm, as well as other difficulties, experienced from having identification documents that did not conform to their gender identity and expression.

Among other things, they explained:

“If people perceive you as a gender nonconforming person, it can be stressful to have to interact with people ... When you have to fill out forms or register in some way using a binary gender marker, if you’re nonbinary, it feels like you’re being forced to lie. It feels inauthentic and just inaccurate.” *M.M.*

“I’m a nuclear engineer. I fill out a lot of paperwork with like name and gender and everything, and it ends up on a lot of stuff that gets tracked. And so it’s something that I constantly see. ... Every time I was marking down the wrong gender marker, it’s just a little bit of a reminder that I don’t belong.” *Emory Colvin*

“My background is actually working with youth experiencing homelessness, and I worked a lot with trans youth. There’s so many reasons why folks wind up experiencing homelessness, and some of it is—‘Well I don’t have the money to change my gender marker and change my name, and then I go into this job and I look different than everything.’ ... Just our gender markers on our IDs should not be a reason why we’re not able to get a job and get housing. Those are basic rights. Those are like the most vital things that we need in this society.” *Kennedy Sparrow*

“I come from ... a very conservative part of the U.S. And, so for a majority of my life, despite the fact that I’ve always

known that I'm gender-nonconforming—since I could look in a mirror. It's something that I was born with. ... It's always been understood that, if you want to survive—and don't want to be seen as a freak, or a degenerate, or whatever other terrible name these kind of people call you—if you don't want to be seen as less than a person, then you will hide. And, so for the first part of my life, socially, everything, my big goal was to be normal and to hide who I was. And I can't really—I mean, if anybody has ever tried to like fit into a box that didn't necessarily define them, they understand how difficult that is. But there's also an extra added fear of if people find out you will lose your rights and you will be on crazy people's hit list... just for being who you are. ... So, I came here to Oregon, and Portland specifically, because I was told that it was safe, it was welcoming, and it totally has been.” **Max Sprague**

“I feel like people are programmed to put people and everything into a box. And ... by the legal system and the ID, I was being put into the wrong box without a choice to correct it. Previously, it always made me kind of angry, upset that I couldn't have my correct box. ... Before I got the legal recognition, it was always just kind of this background—or, I guess, more of a foreground thing—bugging me: ‘Oh, this doesn't match, this doesn't match.’ Constantly thinking about it. Realizing that I'm not being looked at correctly by the law. So, ... a weight was lifted when I got that court order that I didn't even realize was there until I got the court order.” **Courtney Nicholas**

“Just a decade ago, people weren't even talking about it ... or even saying, ‘you know that I want to use X, or call me they and them.’ Language has changed. ... Because it's only always been—either you're a male or you're a female, right? That was the option that I had to choose. And I definitely didn't feel like that was my true self either.” **I.C.**

“Mom and my stepdad were divorced when I was about 11. Within the last ten years or so, they both independently

confessed that they knew I was probably transgender by the time I was five. Not that that's required for people to be transgender, that was just my experience. ... So I spent my entire life observing and trying to figure out why do people do what they do. So I didn't learn the word transgender from my parents. I didn't learn it until I was in university. And by that time I'd already survived a suicide attempt. So, a friend of mine stepped in and offered to teach me how to be a guy on the weekends. He taught me about sitting like a guy and walking like a guy and talking like a guy. And, by the second day, I told him it didn't feel any different than people trying to teach me how to be a girl. I just didn't have whatever it was inside of me that people who had genders seemed to have inside of them. And it turns out that there's a word for that, and it's agender. And it's just one of the many different experiences categorized under the umbrella term nonbinary." *Amiku Gabriel Blue*

Some interviewees who had obtained, or had considered, a legal change to their gender marker to nonbinary—either by court order or by an administrative change to the gender listed on their driver license or identification card—expressed the benefits of being able to live authentically and with greater ease in public interactions requiring identification cards.

"I didn't have to try to—when traveling—try to present in a certain way just to match what the ID said. I could just be me. I could just travel as myself." *A.J. Buckley*

"I have seen so many really hard emotional responses to people having to choose only one [gender] and sometimes having to choose the wrong one. ... It creates so many institutional barriers as well. ... It seems really superficial

to people who don't experience it—just the changing of gender markers—but it's not. It's actually hugely impactful.”
Kennedy Sparrow

“For me the most important thing that has changed is the way people refer to me in public settings. ... Now they see the X. ... It might be out of like confusion—[they] don't know what gender, what pronouns to use—but, still, they either ... refrain from using pronouns and find a work around, or they use they/them pronouns. It's nice to not have the wrong pronouns hurled at me constantly.” ***J.L.***

“Having that nonbinary option creates space for people to be themselves. That feels really important.” ***M.M.***

“[People often] start by getting ... an application form or ... forms setting me up in some system, and so the first thing they see of me is that collection of ... biographical data. So, if it's starting off with the wrong marker on it, it's hard to get past that—that first thing is how you end up in somebody's head.” ***Emory Colvin***

“It just makes a person's life just so much more easier, just be able to do things legally. Get the proper documentation to make them legal, to be able to work, to be able to get insurance, rent an apartment, maybe buy a house. Because so many things ask for gender ... it's just something that we're just used to doing in our culture, ... asking people 'what gender are you, what's your sexuality.' It's just something we do as a culture. And so just having the X designation makes it a lot easier for people to just be able to flow through their lives. ... A lot of trans people are afraid to go to the doctor because their documents don't match what their insurance card says, or they don't look what their gender marker is on their ID. And so they just don't even go to the doctor to receive health care. I think that having the X marker can help ease that pain for a lot of

people. So that they can just go get a regular physical. So they can make sure that they're OK." *I.C.*

"Knowing that that is possible, for when I am ready to do that, gives me a sense of freedom, of validation, of support, of feeling like—'Oh yes, I did choose the right state to move to. ... That Oregon is a good place for me to live and for me to raise my children.' It feels good. With the rest of the world—not all of it—but with much of the world being kind of weird about gender identity and especially nonbinary, it's nice just to know that that's an option and a possibility. Helps you feel—I don't know—safer and like you belong as opposed to being a weird outsider who's not ever going to fit in anywhere." *Joanna Bartlett*

In discussing legal recognition of an accurate gender marker, a number of interviewees expressed that the importance and meaningfulness of having an accurate gender marker could not be overstated. Some comments include:

"I remember seeing it for the first time on the documents and just getting this overall main feeling of: 'Finally.' I felt more whole in that moment than I had in many other parts of my life. Because so much of being a nonbinary person is constantly having to prove their identity. It is something that I—and my friends and my loved ones—we have to do that constantly, on a daily basis. And to have a piece of paper that validates that and shows: 'Yes I am here, I exist.' ... It really is life changing." *Atlas Willow*

"It feels fabulous to have something to have, to have validation. To be seen." *Zeloselos Marchandt*

"It may seem like nothing, but it's a big first step for somebody to affirm their gender identity in a meaningful

way. Especially as an adult and especially in a community where we are not necessarily visibly, easily, recognizable all the time as being gender-nonconforming. To be able to have something that is constantly there, I can always say—‘Yeah, look, this is real, I’m real, this is me.’ It was huge, and the fact that [the DMV process to change legal gender designation to nonbinary] was so easy was just fantastic. I mean it wasn’t weird – I freaked out a little bit heading out to it, but the DMV people didn’t care because they’re working at the DMV, and they’re doing their jobs, you know, ... they were fantastic.” *Max Sprague*

“It’s like just this affirmation that I exist ... Just the anxiety of all the forms that I’ve had to fill out for different things ... where you have to say your gender, and there’s not this option for me. ... There’s just something about looking at a legal document that says ‘your gender’s recognized’—and how that affects the mind and the heart, and everything. That I’m recognized.” *A.J. Buckley*

“When I got the court orders, when I filed it, I felt like confetti. I got the opportunity to regain the identity that was meant for me... I felt like I was given a key to unlock many locks. To be able to really live my truth.” *H.H.*

Some interviewees shared that they had not obtained legal changes to reflect their accurate gender identity on some records or identification documents because of improper denials and concerns about safety, discrimination, and other issues.

“Getting a gender identity marker like this at this moment—where our rights are kind of up in the air—and you don’t know ... whether you’re going to get that one judge who doesn’t feel like we’re people. And so ... it’s: ‘Should I go ahead and go through that kind of stuff on a more

substantial level?’ ... I have to think about: ‘Is this going to put me in danger or take away my rights?’ You know, in really basic, awful ways—like whether I’m going to be able to rent later on, that kind of stuff.” *Max Sprague*

“In January of this year ... I went to the Lane County courthouse with the name and gender marker legal forms. And the judge denied the gender marker to be changed to the X. He said that Lane County courthouse does not acknowledge a sex or gender beyond male or female, and it doesn’t do that kind of ruling. ... He was really dismissive and condescending.” *Kennedy Sparrow*

“There are institutions that have sensitive information—like our gender markers, and our names and addresses. My family was interned during World War II, and there are times when I think our government can use this sensitive information to harm us and people we love.” *M.M.*

“In 2015, I petitioned the court in Jackson County to recognize me as gender neutral. I didn’t use the word nonbinary or agender at the time. I doubted that the judge would even know what those were, but gender neutral seemed pretty self-explanatory. So, that’s what I put on my form. The cost though was so prohibitive—being disabled, I live on less than \$10,000 a year, so the \$114 or so dollars for the petition, it was a steep price tag. Fortunately, my friends pitched in to help cover what I couldn’t. When I was looking at the form, there was no box for nonbinary, only male and female. So, what I ended up doing was drawing my own boxes in pen, and I wrote what was accurate and checked the boxes. ... I was scared. I didn’t really know what to expect. The clerks at the courthouse—they were actually really nice. They just gave me whatever information I needed, and I didn’t get any dirty looks. But what would the judge’s reaction would be? ... What I wasn’t expecting was a judge who wanted to say yes, but felt like his hands were tied. And so he rejected my petition. And

then a friend of mine who is also nonbinary, they tried, and they were also denied. And this time a third judge was really rude to them. ... So, in other places in Oregon, people were having their petitions approved. We were really happy for them. And we were also really sad and frustrated that it wasn't for us." *Amiko Gabriel Blue*

Whether or not they had obtained legal changes to documents to reflect an accurate gender identity, interviewees uniformly described the importance of having legal recognition of accurate gender identities. Among other things, interviewees described feeling empowered and validated from having legal recognition of their accurate gender identity, as well as emotional relief and inner peace.

"Before the gender X marker was added, I kind of felt alone, ... I was living in a more conservative community, and it just felt like I was alone in this, and I was the only person who didn't feel good picking one of the two other gender markers, and it just always felt like an outsider. Now it feels more normal and more welcome, and that feels good. It feels good to just be not an anomaly, but part of the norm." *J.L.*

"It gets tiring saying: 'Hey, I'm a person.' I'm just not having the same gender experiences as you. And gender—there are all of these gates to all of these things in society, and these gates are marked with gender. ... If you are kept out, if you are not allowed any sort of validation, there's that relational isolation." *Amiko Gabriel Blue*

"I've known that my pronouns are they/them for 11 years ... but it took me a really long time to even understand what that meant for me. ... It's done a marvelous amount of

things for my emotional well-being. I was in a state of months of depression, and I got tired of that, and I said: ‘OK, I’m going to shove myself out of this depression.’ And that was the night that I started to fill out the paperwork to change my name and gender marker. And, honestly, that was me choosing to continue to see what life could be. So yeah. It’s been incredibly powerful.” ***Kennedy Sparrow***

“There have been nonbinary people for many generations who have had to ... make our way in our families and communities, and ... make our way in terms of creating spaces where our genders can be validated by people that we know and love. ... Extending that into the public sphere, ... it has a big impact on people.” ***M.M.***

“We know who we are. We know how we walk through this world. ... There is a lot of trauma that nonbinary folks, specifically with X gender markers, have to go through previously in our lives to come to terms with their identity and to go through life in the way we have to in a binary society. ... I can’t explain to you the validation I felt with just going ... being like I need this changed over, and [the DMV] really did make it so simple. ... I think it’s vital for future generations of nonbinary people that they have that option too.... It helped to heal a lot of old wounds that were there—of not feeling of being or heard in any way shape or form. And I think that gender marker being changed that. I’ve been able to find more of my voice, and really own who I am and my identity more than I ever was able to in my past. ... Being allowed to have an X gender marker on my documents really gives me a sense of peace that I don’t think I could access otherwise.” ***Atlas Willow***

“It’s validating. It resonates when you can say: ‘Oh yeah that’s me, that’s that.’ I mean, that’s the most human thing. So, that’s how fabulous it feels to have, you know ... when I started to embrace that, when I made a conscious decision to claim that, to own it.” ***Zeloszelos Marchandt***

“Because we are so marginalized, and because we are such a group of people who aren’t necessarily visible, ... we can become defined as a community by our shared trauma—or by secondary issues, or by the same problems that plague any other marginalized group. And, instead of framing this or any kind of transgender issue, or as a mental health or trauma—and, instead, seeing us as who we are: Human beings, and people who come from a variety of backgrounds, who are diverse, who have many things to offer our community, who are good citizens, who care very much about this place where we live and this country. We just want to contribute. To be able to frame it that way—to be a person instead of a condition. I just can’t really describe how huge that is.” *Max Sprague*

“I felt really exhilarated because I felt that even though I was still going to have my old name on there at least I knew I could show people if I needed to that I was neither male nor female. I could have that option.” *H.H.*

In addition to the benefits to their own wellbeing, some interviewees reported that legal recognition of an accurate gender marker was an important tool to educate others about the diversity of gender identity, as well as to fight discrimination based on gender identity and expression.

“It was really important to me and meaningful because it kind of added a little bit more legitimacy to my identity. ... It’s an official concrete way of saying—‘Look. It’s on paper. It’s real. I’m not floating in between two genders, I’m not in mid-transition, ... I’m settled. This is it. This is my identity. X is my identity, non-binary. I don’t need to put myself into one of the categories, it’s not going to fit. I can make my

own category. ... I always felt like I was just making my own category, but not now—it's an actual category, that's actually validated. It feels really validating for others to see it as a category of its own and not just me making up my own thing because I don't like the others." **J.L.**

"For me it was mostly important because there are a lot of people that are like—'Nonbinary? Is it real? Like there's only two genders.' And just people not being accepting. And it was really helpful and validating for me to be: 'No, look, right here it says on this paper that I'm legally nonbinary.' Because I was just – it was a thing that felt validating to me." **Ben Bartlett**

"I think that the X marker for me would be a way of claiming and taking ownership over my own personal agency to say that: 'Hey, these two boxes don't work for me, and these two boxes of male and female don't work for many people.' And, to exemplify that, every time I have to show my ID to someone, [the X] would be a great way to start conversations. It would be a great way to educate people who didn't have an understanding around this, and it would just be a great way for me to feel like I've been represented in a way that feels authentic to who I know myself to be." **Tazha W.**

"I feel that the correct marker on my ID ... is really important. I don't want to ever have to hand my ID to anybody and not have it match who I am. I don't like people making assumptions about me based on a piece of plastic that isn't correct. ... I have traveled on a plane once since I have had that ID. It was just domestically, so I just had my ID rather than a passport. ... Being able to hand over my ID to them, and have it reflect my correct gender, released a lot of the anxiety that I had around the whole experience with the TSA—just knowing that at least that one thing was correct." **Courtney Nicholas**

“I’ve faced transphobia. I’ve faced many issues within the workplace, within social circles, I mean the list just goes on. But when you have a document saying: ‘No. I exist. You cannot deny me.’ It creates another level of a barrier for people, so that they don’t have the chance to do that or, if they do, it stops them at that point. And ... it’s not like I have my documents in my backpack, and I pull them out and I say: ‘See, here it is.’ I don’t necessarily do that, but it’s another level of like peace in my mind as I walk through the world. I know I can walk in this society in this state of being: ‘I am valid, I am here, I am worthy.’” *Atlas Willow*

“We in particular, as nonbinary people, fall into this weird crack of gender expression. And what does that mean? ... There are all those issues of—can you discriminate against somebody based on how they look? No. But can you discriminate based on how they present gender-wise? Maybe. ... If I want to rent, and I realize that, if my landlord finds out later that I am trans, they can kick me out. And, so I would be living in fear the whole time. ... Every day, am I going to get kicked out? Are they going to figure it out? Do I look too weird? Am I passing? That kind of stuff. ... Employers, that’s the other thing. ... Am I going to get into some kind of legal trouble for existing as the person that I am? ... So, being able to fall back on having this marker—where it’s not ... just my personal preference, it’s not just that I felt like I was going to dress weird today, it’s not because I’m going through a phase. It’s that legally I am a person, I have this designation. This isn’t a subjective area. It makes it very clear cut. And having that kind of ability to fall back on that, it helps me equip myself better. ... And it makes it more likely for me to go out and to contribute more to the community because I feel like I’m not going to a hostile territory.” *Max Sprague*

“I can say I’m nonbinary all I want, and it can be 100% true, but who else and what else is saying it’s true? That’s consideration. ... And so with what’s been happening, you

know, more people are becoming aware that the word nonbinary exists and that we exist. People start attacking me, and I'm just like: 'Here you go, here's an article.' And so, their abuse is not sustained for as long. They usually go away. And so it's brought some peace of mind and really the stress level has gone down. ... In a lot of ways, just getting the X marker has been, it's been a relief. ... I could be like ... 'It doesn't matter what you think, it matters what's on your ID. And I can be like, yeah, that's what's on my ID.' It's satisfactory. It's an exhale." *Amiko Gabriel Blue*

"The psychological toll it takes on the people who live under the trans umbrella—nonbinary people—to just constantly have to talk, and tell people and explain to people what these gender designations mean, you know what the X means, what the pronouns they and them means. It's a lot. It's similar to a black person having to explain to white people all the time about racism and discrimination. It wears you out when you go home after a long day of work because you're constantly having to tell people—hey, this right here, what you just did to me, it didn't feel really good, and so I just want you to know that, and then the person is like well, exactly what didn't feel good, so imagine having to do that 20 or 30 times a day. You know, it's a lot of work. ... I remember when I first had my marker changed to male. People would just like: 'Oh, so you really are a guy now?' And it was that kind of simple for some people, because it was legal. ... Just knowing that something is legal changes people's opinions a lot. ... The law can change a lot of things. ... It doesn't necessary change a person's heart, but it changes the way they act in public. So I definitely think that having the X as a legal gender designation definitely changes the way people behave in public." *I.C.*

"Having that larger like organizational body—the state in this case—validate and affirm your identity and give you backup about it. So, that if there are issues you can say:

‘No, this is a legal fact. It is what it is. Your opinion about it doesn’t matter.’ And as a parent ... being able to say look, ... here’s more support for it, ... my kid has an X gender marker on their ID with their new legal name, and you can’t make your system reflect that, and you need to. Because this is part of their right is to be correctly identified in the computer system. And, so you know, it’s just helpful to have additional support and validation and affirmation for your own or your child’s legal status, name, and gender. To be able to sort of push back a little against the people who disagree, who are bigoted or who don’t understand or whatever their issue is.” *Joanna Bartlett*

Finally, interviewees uniformly shared a view that legal recognition of an accurate gender marker was an essential civil and human right. Some comments include:

“People, as they walk through this world, should be able to be seen as who they are. It is a basic civil right. We deserve to be seen because we deserve to be heard. If all people are supposed to be given access to opportunities in this country, this is a piece of that for us. And if that piece is missing, then my community does not flourish. And all communities deserve to have the right to flourish.” *Atlas Willow*

“People have been turned away from voting because they don’t look like you know what their ID says who they are. ... Just that simple thing, being able to put X on your marker and getting that ID that validates you as a human being with basic human rights. That you are a member of society and a citizen of this state is huge, because all of those things that we take for granted, you know, like being able to vote or driving a car, and getting insurance to drive a car, a lot of trans people don’t have those rights because of not being able to get a proper ID.” *I.C.*

“We have many examples in our western context, and the history of the United States of America, of times when we’ve told people: ‘You are not a human being, or you are a portion of a human being, because of your identity, because of whatever your skin color, because of your place of origin—that you’re not one of us.’ ... That’s again one example of many ways in which the powers that be, or folks in positions of authority, get to decide who gets to be what, who gets to be a human, who gets to vote, who gets to have representation on a driver’s license. ... And so, having these different options for our gender markers is great, it’s a step in the right direction. And that X represents so much. That X represents something different for each and every person who is choosing that X.” *Tazha W.*

“When people ... say validation, I’m not surprised to hear that. ... My relationship to myself and to other people got healthier. That’s something that happened for me and that I definitely hear from other people in my category and in my world. It’s not just me. When people who don’t understand your validation, they’re thinking: ‘Well, that that’s nice.’ You know, they’re thinking that it is maybe like when they get a bouquet of flowers, or something: ‘Oh, I feel so seen.’ No. It’s much more powerful than that. Your relationships change when you are getting what you need. And that goes for anybody, including somebody like me. So, I think that’s the validation factor: ‘Oh, I see myself reflected back. I have support systems that want me to thrive.’ And you don’t have to worry about one thing. It’s one less thing to worry about.”
Zeloszelos Marchandt

As the above testimony demonstrates, the civil right to obtain a legal change to an accurate gender marker under ORS 33.460 is a critical human right, with tremendous implications and impacts on the ability of people to thrive and experience physical and emotional wellbeing.

CONCLUSION

ORS 33.460 provides the civil right to change a person's legal sex designation to have an accurate gender marker, including a nonbinary gender marker, to affirm gender identity. In denying a nonbinary gender marker to petitioner, the circuit court misconstrued ORS 33.460 and erred as a matter of law. The judgment should be reversed and remanded for a correct application of ORS 33.460.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word-count limitation in ORAP 5.05(2)(b) and that the word count of this brief, as described in ORAP 5.02(2)(a), is 8,462 words.

I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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- (13) Oregon Department of Education, Enrollment Data for
2018-19APP-30
- (14) Declaration of Nancy Haque, Executive Director, Basic
Rights Oregon (Nov. 2019).....APP-31

ORS 33.460: Jurisdiction; grounds; procedure.

(1) Application for legal change of sex of a person may be heard and determined by any circuit court in this state. A circuit court may order a legal change of sex and enter a judgment indicating the change of sex if the individual attests that the individual has undergone surgical, hormonal or other treatment appropriate for the individual for the purpose of affirming gender identity.

(2) The court may order a legal change of sex and enter the judgment in the same manner as that provided for change of name of a person under ORS 33.410.

(3) If a person applies for a change of name under ORS 33.410 at the time the person applies for a legal change of sex under this section, the court may order change of name and legal change of sex at the same time and in the same proceeding.

History: 1981 c.221 § 1; 1997 c.872 § 23; 2003 c.576 § 309; 2013 c.366 § 52, effective June 13, 2013, operative January 1, 2014; 2017 c.100 § 3, effective October 6, 2017, operative January 1, 2018.

33.410: Jurisdiction; grounds.

Application for change of name of a person may be heard and determined by the probate court or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include this section pursuant to ORS 3.275 of the county in which the person resides. The change of name shall be granted by the court unless the court finds that the change is not consistent with the public interest.

History: Amended by 1967 c.534 § 11; 1975 c.733 § 1.

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

Enrolled
House Bill 2673

Sponsored by Representatives NOSSE, GREENLICK, Senator MONNES ANDERSON, Representative WILLIAMSON; Representatives FAHEY, GOMBERG, KENY-GUYER, LININGER, MARSH, MCLAIN, PARRISH, POWER, SMITH WARNER, Senators BURDICK, DEMBROW, DEVLIN, GELSER, MANNING JR, RILEY, ROBLAN, STEINER HAYWARD, TAYLOR (at the request of Basic Rights Oregon) (Presession filed.)

CHAPTER

AN ACT

Relating to processes required to change information by which a person may be identified; creating new provisions; amending ORS 33.420, 33.460, 109.360, 432.235 and 432.245; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:**SECTION 1.** ORS 432.235 is amended to read:

432.235. (1) A vital record registered under this chapter must be amended or corrected in accordance with this section or rules adopted by the State Registrar of the Center for Health Statistics for the purpose of protecting the integrity and accuracy of vital records.

(2)(a) A vital record that is amended **or corrected** under this section shall indicate that it has been amended **or corrected**, except as otherwise provided in this section or by rule of the state registrar.

(b) The state registrar shall keep and maintain:

(A) Documentation that identifies the evidence upon which an amendment or correction is based;

(B) The date of the amendment or correction; and

(C) The identity of the individual authorized by the Center for Health Statistics that made the amendment or correction.

[(3) Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in this state, and upon the request of a person 18 years of age or older or, if a person is younger than 18 years of age and is not an emancipated minor, by the person's parent, legal guardian or legal representative, the state registrar shall amend the record of live birth to show a new name.]

(3)(a) Upon the request of an applicant who is 18 years of age or older or an emancipated minor, or if the applicant is not 18 years of age or older or an emancipated minor, upon the request of an applicant's parent, legal guardian or legal representative, the state registrar shall amend a record of live birth that occurred in this state to change the name of the applicant if:

(A) The state registrar receives a certified copy of an order from a court of competent jurisdiction changing the name of the applicant; or

(B) The state registrar receives a request, on a form prescribed by the state registrar, from the applicant to change the name that includes:

(i) Documentation sufficient, as prescribed by the state registrar by rule, to allow the state registrar to confirm the identity of the applicant and identify the correct record of live birth to be amended; and

(ii) A statement signed by the applicant in which the applicant attests, as prescribed by the state registrar by rule, to making the request for the purpose of affirming the applicant's gender identity.

(b) Upon request, the state registrar shall amend a record of live birth that occurred in this state to change the sex of an applicant if the applicant is 18 years of age or older or an emancipated minor, or if the applicant is not 18 years of age or older or an emancipated minor, the applicant's parent, legal guardian or legal representative makes the request, and if:

(A) The state registrar receives a certified copy of an order from a court of competent jurisdiction changing the sex of the applicant; or

(B) The state registrar receives a request, on a form prescribed by the state registrar, from the applicant to change the sex that includes:

(i) Documentation sufficient, as prescribed by the state registrar by rule, to allow the state registrar to confirm the identity of the applicant and identify the correct record of live birth to be amended;

(ii) A statement signed by the applicant in which the applicant attests, as prescribed by the state registrar by rule, to making the request for the purpose of affirming the applicant's gender identity; and

(iii) Any other documentation as required by the state registrar by rule.

[(4)] (4)(a) When an applicant to amend a vital record does not submit the minimum documentation required to make an amendment, or when the state registrar has cause to question the validity or adequacy of *[the]* an application to amend a vital record, the state registrar, in the state registrar's discretion, may refuse to amend the vital record. *[and shall enter an order to that effect, stating the reasons for the action. The state registrar shall advise the applicant of the right to appeal under ORS 183.484.]* If the state registrar refuses to amend a vital record under this subsection, the state registrar shall:

(A) Enter an order denying the amendment and stating the reasons for the denial; and

(B) Advise the applicant of the applicant's right to appeal the order under ORS 183.484.

(b) The state registrar may not amend a record of live birth to change the name of an applicant under subsection (3)(a)(B) or the sex of an applicant under subsection (3)(b)(B) of this section more than once.

(5) When an amendment is made to a record of marriage or a record of domestic partnership by the county clerk or other county official who issues marriage licenses and registers domestic partnerships *[or, if], or when* an amendment changes the name, date of birth or birthplace of a party, *by the court that entered the]* to a judgment or final order of a dissolution of marriage or dissolution of domestic partnership by a court of competent jurisdiction, copies of the amendment must be forwarded to the state registrar and the state registrar shall amend the related record.

(6) If a judgment or final order of dissolution of marriage or dissolution of domestic partnership is set aside by *[the court that entered the judgment or order]* a court of competent jurisdiction, a copy of the notice setting aside the judgment or order must be forwarded to the state registrar and the state registrar shall void the related record.

SECTION 2. ORS 432.245 is amended to read:

432.245. (1) For a person born in this state, the State Registrar of the Center for Health Statistics shall amend a record of live birth and establish a replacement for the record of live birth if the state registrar receives one of the following:

(a) A report of adoption as provided in ORS 432.223 or a certified copy of the judgment of adoption **from a court of competent jurisdiction**, with the information necessary to identify the original record of live birth and to establish a replacement for the record **of live birth**, unless the court ordering the adoption requests that a replacement for the record **of live birth** not be established;

(b) A request that a replacement **for the** record of live birth be prepared to establish parentage, as prescribed by the state registrar by rule, or **as** ordered by a court of competent jurisdiction [*in this state*] that has determined the **parentage or biological** paternity of a person;

(c) A written and notarized request[,] **that a replacement for the record of live birth be prepared to establish parentage, if the request includes an acknowledgment of paternity signed by both biological parents[, acknowledging paternity; or];**

(d) A certified copy of a judgment [*that indicates that an individual born in this state has completed sexual reassignment and that the sex on the record of live birth must be changed.*] **from a court of competent jurisdiction changing a person's sex and, if applicable, name; or**

(e) **A request approved by the state registrar under ORS 432.235 (3)(b)(B).**

(2) To change a person's name under subsection (1) of this section, the request or court order must include **both** the name that [*currently*] appears **on** the record of live birth **at the time of the request** and the [*new*] name to be designated on the replacement for the record **of live birth**. The [*new*] **designated** name of the person [*shall be shown*] **must appear** on the replacement for the record **of live birth**.

(3) Upon receipt of a certified copy of a court order to change the name of a person born in this state as authorized by 18 U.S.C. 3521 et seq., the state registrar shall create a replacement for [*a*] **the** record of live birth to show the new information as specified in the court order.

(4) When a replacement for a record of live birth is prepared, the city, county and date of live birth **must be included** in the replacement **for the record of live birth**. The replacement for the record **of live birth** must be substituted for the original record of live birth. The original record of live birth and all evidence submitted with the request or court order for the replacement for the record **of live birth** must be placed under seal and is not subject to inspection, except upon the order of a court of competent jurisdiction in this state or as provided by rule of the state registrar.

(5) Upon receipt of an amended judgment of adoption, the record of live birth shall be amended by the state registrar as provided by the state registrar by rule.

(6) Upon receipt of a report of annulment of adoption or a court order annulling an adoption, the original record of live birth must be restored. The replacement for the record of live birth is not subject to inspection, except upon the order of a court of competent jurisdiction in this state or as provided by rule of the state registrar.

[(7) *If there is no record of live birth for a person for whom a replacement for the record is sought under this section and the court issues an order indicating a date of live birth more than one year from the date submitted to the Center for Health Statistics, the replacement for the record of live birth shall be created as a delayed record of live birth.*]

[(8)] (7) The state registrar shall prepare and register a record of foreign live birth for a person born in a foreign country who is not a citizen of the United States and for whom a judgment of adoption was issued by a court of competent jurisdiction in this state if the court, the parents adopting the child or the adopted person, if the adopted person is 18 years of age or older, requests the record. The record must be labeled "Record of Foreign Live Birth" and shall show the actual country of live birth. After registering the record of foreign live birth in the new name of the adopted person, the record must be placed under seal and is not subject to inspection, except upon the order of a court of competent jurisdiction [*in this state*] or as provided by rule of the state registrar.

(8) **If there is no record of live birth for a person for whom a replacement for the record of live birth is sought under this section, and if the court order indicates a date of live birth more than one year from the date submitted to the Center for Health Statistics, the replacement for the record of live birth must be created as a delayed record of live birth.**

(9) A replacement **for the** record of live birth may not be created under this section if the date and place of live birth have not been *[determined by the]* **indicated in the court order.**

SECTION 3. ORS 33.460 is amended to read:

33.460. (1) *[A court that has jurisdiction to determine an application for change of name of a person under ORS 33.410 and 33.420]* **Application for legal change of sex of a person may be heard and determined by any circuit court in this state. A circuit court** may order a legal change of sex and enter a judgment indicating the change of sex *[of a person if the court determines that the individual has undergone surgical, hormonal or other treatment appropriate for that individual for the purpose of gender transition and that sexual reassignment has been completed.]* **if the individual attests that the individual has undergone surgical, hormonal or other treatment appropriate for the individual for the purpose of affirming gender identity.**

(2) The court may order a legal change of sex and enter the judgment in the same manner as that provided for change of name of a person under ORS 33.410 *[and 33.420]*.

(3) If a person applies for a change of name under ORS 33.410 *[and 33.420]* at the time the person applies for a legal change of sex under this section, the court may order change of name and legal change of sex at the same time and in the same proceeding.

SECTION 4. ORS 33.420 is amended to read:

33.420. *[(1) Before entering a judgment for a change of name, except as provided in ORS 109.360, the court shall require public notice of the application to be given, that all persons may show cause why the same should not be granted. The court shall also require public notice to be given of the change after the entry of the judgment.]*

[(2)] **(1) Except as provided in ORS 109.360,** before entering a judgment for a change of name in the case of a minor child, the court shall require that, *[in addition to the notice required under subsection (1) of this section,]* written notice be given to the parents of the child, both custodial and noncustodial, and to any legal guardian of the child.

[(3)] **(2)** Notwithstanding subsection *[(2)]* (1) of this section, notice of an application for the change of name of a minor child *[need not]* **does not need to** be given to a parent of the child if the other parent of the child files a verified statement in the change of name proceeding that asserts that the minor child has not resided with the other parent and that the other parent has not contributed or **has not** tried to contribute to the support of the child.

[(4)(a) Upon the request of an applicant, the court shall waive the requirement of public notice of the application for or judgment for a change of name under subsection (1) of this section if the applicant is a certified adult program participant in the Address Confidentiality Program under ORS 192.826, unless the court issues an order pursuant to a finding of good cause under ORS 192.848.]

[(b) If the court grants an applicant's request to waive the public notice requirement under this subsection, the court shall seal the record of the case.]

[(c) If the court denies an applicant's request to waive the public notice requirement under this subsection, the court shall seal the record of the case unless the court finds that the interest of the public in the case outweighs the safety concerns of the applicant.]

(3)(a) In a case to determine an application for change of name of a person under ORS 33.410, if an applicant who is a certified adult program participant in the Address Confidentiality Program under ORS 192.826 requests the court to seal the record of the case, the court shall seal the record of the case unless the court issues an order pursuant to a finding of good cause under ORS 192.848.

[(d)] **(b)** This subsection does not apply to an adult applicant appearing as a guardian ad litem for a minor child.

(4) In a case to determine an application for legal change of sex of a person under ORS 33.460, if an applicant requests the court to seal the record of the case, the court shall seal the record of the case.

SECTION 5. ORS 109.360 is amended to read:

109.360. If in a petition for the adoption of a child a change of the child's name is requested, the court, upon entering a judgment granting the adoption, may also provide in the judgment for the change of the name without the [notices] notice required by ORS 33.420.

SECTION 6. The amendments to ORS 33.420, 33.460 and 109.360 by sections 3, 4 and 5 of this 2017 Act apply to proceedings commencing on or after the operative date specified in section 7 of this 2017 Act.

SECTION 7. (1) The amendments to ORS 33.420, 33.460, 109.360, 432.235 and 432.245 by sections 1 to 5 of this 2017 Act become operative on January 1, 2018.

(2) The Oregon Health Authority and the circuit courts of this state may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority and the courts to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, powers and functions conferred on the authority and the courts by the amendments to ORS 33.420, 33.460, 109.360, 432.235 and 432.245 by sections 1 to 5 of this 2017 Act.

SECTION 8. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by House March 15, 2017

Received by Governor:

.....M.,....., 2017

.....
Timothy G. Sekerak, Chief Clerk of House

Approved:

.....M.,....., 2017

.....
Tina Kotek, Speaker of House

.....
Kate Brown, Governor

Passed by Senate May 10, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Peter Courtney, President of Senate

.....
Dennis Richardson, Secretary of State



TO: Senate Judiciary Committee
FROM: Brook Shelley
RE: Vote YES on HB 2673
DATE: April 24, 2017

Chair Prozanski and members of the committee:

My name is Brook Shelley and I serve as Co-Chair of the Basic Rights Oregon Board of Directors. I am pleased to bring forward HB 2673 on behalf of transgender Oregonians across the state.

Basic Rights Oregon works to ensure that all lesbian, gay, bisexual, transgender, and queer Oregonians experience equality. This legislation is a necessary step in the right direction to ensure the rights of all Oregonians.

As the organizational sponsor of this bill, we strongly urge your support for HB 2673 with the -3 (dash three) amendment, because it will greatly reduce discrimination for transgender people by allowing us to safely, efficiently, and affordably obtain personal documentation that accurately reflects our gender identity.

While Oregon is on the forefront of LGBTQ equality nationally thanks to great work of the legislature, transgender Oregonians remain among our most vulnerable and misunderstood community members. For those unfamiliar, transgender is the term to describe a person whose gender is not the same as the sex they were assigned at birth.

Unfortunately, because of the lack of awareness and acceptance in society, more than 40 percent of us attempt suicide in our lifetimes, and we also are four times more likely to live in poverty than other residents of our state.

HB 2673 will mitigate this crisis, as identity documents are a crucial part of personal, social, and workforce acceptance. Unfortunately, the current court process is intrusive, expensive, and hard to navigate.

Currently, updating your birth certificate requires a transgender person to go through a court to request a legal name change or gender marker amendment. Next, we take the court order to the OHA's Center for Health Statistics Department, which administers vital records. Because of the current court process, many in our community are at risk of being asked sensitive, private medical information in open court, being outed to the public and consequently being discriminated against or harmed. Considering the harassment and discrimination transgender people continue to experience, this risk is an undue burden for many of us. Additionally, the court process is inconsistent from county to county, and quite expensive as it adds another layer of court and attorney fees. As many of us are impoverished, the price is often too high for us to access.

HB 2673 would make two simple fixes to existing Oregon law to ensure that transgender Oregonians can obtain accurate documentation that reflects their gender identity.

First, it would centralize the administrative process to change a name and gender marker on a birth certificate by creating a single, streamlined process at Oregon Health Authority (OHA) for transgender Oregonians. This proposed change would not eliminate the court order option, but would provide a safe, effective method for transgender people and remove our barriers to access. Our records would still be subject to

existing verification processes in OHA's Center for Health Statistics department. This process would closely resemble the federal process for updating social security documentation.

Second, the bill would modernize outdated public posting requirements in the court process. Currently, even if a court takes electronic petitions, a person may have to physically go to the court and post their petition on a public board twice. This onerous and outdated practice puts all Oregonians at risk of identity theft and adds logistical difficulty. However, it especially puts transgender individuals at risk of being publicly outed and discriminated against.

The -3 (dash three) amendment will allow the Health Authority and the Oregon Judicial Department sufficient time to prepare to implement the bill. It will also allow transgender Oregonians to access the court process for a gender marker amendment in any circuit court in the state and ensure that they can seal the record of their gender amendment petition for privacy and safety concerns.

As a senior engineer, I am one of the fortunate ones. When I decided to leave Texas, a state that does not recognize my gender, my skills were sought after by companies across the country. I chose Oregon because of the robust technology industry and the value our state puts on equality. However, we are not done.

Passing HB 2673 with the -3 (dash three) amendment is an important step in our effort to ensure that all Oregonians are treated with dignity and respect and can live free from discrimination. We strongly urge this committee to pass this bill.

Thank you for the opportunity to testify today.

OREGON ADMINISTRATIVE RULES
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION
CHAPTER 333

DIVISION 11

VITAL STATISTICS

333-011-0265

Amending Birth Records

(1) All amendments. Unless otherwise provided in these rules or in statute, all amendments to vital records shall be supported by:

(a) An affidavit setting forth:

(A) Information to identify the record;

(B) The incorrect data as it is listed on the record; and

(C) The correct data as it should appear.

(b) One or more original items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event and one year prior to the date of the requested amendment.

(2) The state registrar shall evaluate the evidence submitted in support of any amendment, and when the state registrar finds reason to doubt its validity or adequacy the amendment may be rejected and the applicant advised of the reasons for this action.

(3) Who may apply:

(a) To change the date of birth, time of birth or sex of the registrant, only the facility where the birth occurred or the individual who submitted the report of birth may apply to amend unless the medical record is no longer available at the facility. If the medical record is no longer available, other individuals, including the parents and the registrant, shall submit an application for amendment under section (1) of this rule. If the evidence is not sufficient, the applicant must present a certified copy of a court order ordering such amendment.

(b) To amend a record of live birth for items other than date of birth, time of birth or sex, application may be made by one of the parents, the legal guardian, the registrant if 18 years of age or over, or the individual responsible for filing the report of live birth.

(c) To amend the sex of a registrant on a record of live birth by court order or administrative request to affirm gender identity, an individual must submit documentation under OAR 333-011-0272 or OAR 333-011-0275.

(4) Amendment of registrant's first, middle or last names on records of live birth within the first year. Until the registrant reaches the age of one year, first, middle, or last names of the registrant may be amended upon written request of:

(a) Both parents; or

(b) One parent if only one parent appears on the record or if the other parent is deceased or incapacitated; or

(c) The legal guardian or agency having legal custody of the registrant.

(5) Amendment of registrant's first, middle or last names on records of live birth after the first year:

- (a) After one year from the date of birth the provisions of section (1) of this rule must be followed to amend a first, middle or last name if the name was misspelled on the birth record.
- (b) A legal change of name order must be submitted from a court of competent jurisdiction to change a first, middle or last name that appears on the birth record after one year from date of birth unless the change of name is made for gender identity purposes under OAR 333-011-0271.
- (6) Addition of first, middle or last name of a registrant on a record of live birth:
- (a) Until the registrant's seventh birthday, first, middle and last names, for a child whose birth was registered without such names, may be added to the record of live birth upon written request of:
- (A) Both parents; or
- (B) One parent if only one parent appears on the record or if the other parent is deceased or incapacitated; or
- (C) The legal guardian or agency having legal custody of the registrant.
- (b) After seven years the provisions of section (1) of this rule must be followed to add a first, middle or last name.
- (7) Amendment of parents' information on birth records. When a requested amendment to an item, in combination with previous amendments or concurrent requests for amendment, would appear to change the identity of the parent through cumulative changes to name, date of birth, or place of birth, the state registrar shall only make such an amendment upon receipt of a court order from a court of competent jurisdiction.
- (8) Original evidence documents submitted to correct errors in the spelling of a parent name, parent date of birth, or parent place of birth must be dated prior to the birth of the child.
- (9) Birthing facilities may correct typographical errors on birth records within the first year. After one year, only errors in the child's date of birth, time of birth or sex will be accepted directly from the birthing facility. The birthing facility must have access to the medical record when submitting the correction.
- (10) For births occurring outside a birthing facility, medical certifiers may only correct typographical errors within the first year with evidence from the medical record or the birth worksheet.
- (11) Amendment of minor errors on birth records. Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the state registrar either upon the state registrar's observation or upon request of one of the parents, the legal guardian, or the birthing facility or by the individual responsible for filing the report of live birth. The record shall not be marked "Amended". Corrections to names will not be considered minor errors.
- (12) In all cases where the record is amended, there shall be inserted on the record a statement identifying the affidavit or documentary evidence used as proof of the correct facts, the date the amendment was made, and the initials of the person making the change. As required by statute or rule, the record shall be marked "Amended".

Stat. Auth: ORS 432.235

Stats. Implemented: ORS 432.235

333-011-0271

Application to Change the Name on a Record of Live Birth to Support Gender Identity

(1)(a) An applicant may request an administrative change to the registrant's name on the record of live birth when the sex on the record of live birth does not match the gender identity of the registrant.

- (b) Change of name for gender identity may be requested by:
 - (A) The registrant, if the registrant is age 18 or older or an emancipated minor; or
 - (B) If the registrant is less than 18 years of age:
 - (i) A parent; or
 - (ii) The registrant's legal guardian; or
 - (C) The legal representative of the persons listed in paragraphs (A) or (B) of this subsection with a notarized statement from the person stating that the legal representative is authorized to act for them in this matter.
 - (2) A registrant may not request an administrative name change under this rule if the registrant's name on the record of live birth has previously been amended, except for clerical or typographical errors.
 - (3)(a) The administrative request shall be supported by a form prescribed by the state registrar of the Center for Health Statistics that provides the information needed to:
 - (A) Establish the identity of the applicant;
 - (B) Establish the relationship between the applicant and the registrant;
 - (C) Identify the record of live birth to be amended; and
 - (D) Specify the changes requested.
 - (b) Information required on the application to identify the correct record of live birth to amend shall be the same information required to purchase a certified copy of a vital record in OAR 333-011-0273.
 - (c) The form must clearly identify the current name on the record of the live birth and the new name as it will appear on the record.
 - (A) If a new first name is not specified, the first name will remain unchanged on the record of live birth.
 - (B) If a new middle name is not specified, the middle name will remain unchanged on the record of live birth.
 - (C) If a new last name is not specified, the last name, including suffix if any, will remain unchanged on the record of live birth.
 - (d) The applicant must affirm before a notary that the change is requested because the sex currently appearing on the record of live birth is different than the registrant's gender identity and the name requested supports the registrant's gender identity.
- Stat. Auth.: ORS 432.015 & 432.235
 Stats. Implemented: ORS 432.235

333-011-0272

Application to Change the Sex on a Record of Live Birth to Support Gender Identity

- (1)(a) An applicant may request an administrative change to the sex of a registrant on the record of live birth when the sex on the record of live birth does not match the gender identity of the registrant.
- (b) The change of sex may be requested by:
 - (A) The registrant if the registrant is age 18 or older or an emancipated minor; or
 - (B) If the registrant is less than 18 years of age:
 - (i) A parent; or
 - (ii) The registrant's legal guardian; or

(C) The legal representative of the persons listed in paragraphs (A) or (B) of this subsection with a notarized statement from the person stating that the legal representative is authorized to act for them in this matter.

(2) An applicant may not request an administrative change to the sex of the registrant on the record of live birth if the registrant's sex on the record of live birth has previously been amended, except for clerical and typographical errors.

(3)(a) The administrative request shall be supported by a form prescribed by the state registrar of the Center for Health Statistics that provides the information needed to:

(A) Establish the identity of the applicant;

(B) Establish the relationship between the applicant and the registrant;

(C) Identify the record of live birth to be amended; and

(D) Specify the changes requested.

(b) Information required on the application to identify the correct record of live birth to amend shall be the same information required to purchase a certified copy of a vital record in OAR 333-011-0273.

(c) The form must clearly identify the current sex on the record of live birth and the new sex to appear on the record.

(d) The applicant must affirm before a notary that the change is requested because the sex currently appearing on the record of live birth is different than the registrant's gender identity and the sex designation requested supports the registrant's gender identity.

Stat. Auth.: ORS 432.015, 432.235 & 432.245

Stats. Implemented: ORS 432.235 & 432.245

333-011-0273

Amended Records in Support of Gender Identity

(1) Upon receipt of an application to change the name of a registrant under OAR 333-011-0271 or to change the sex of a registrant under OAR 333-011-0272, including documentation required and payment of the amendment fee, the application will be reviewed by the Center for Health Statistics to determine if the record can be changed administratively. The record shall be changed administratively if all of the following are true:

(a) Applicant is qualified by their relationship to the registrant on the record of live birth;

(b) Registrant is born in Oregon;

(c) The record of live birth has been identified;

(d) All required documentation under OAR 333-011-0271 and 333-011-0272 has been submitted; and

(e) No amendment has previously occurred to the items requested to be changed under OAR 333-011-0271 or OAR 333-011-0272.

(2) If the request is only to change the name and the record can be changed administratively, the record of live birth will be amended to show the new name and a notation of the amendment will be placed on certified copies of the record of live birth. The notation will include what item was changed, that the change was made by administrative request, the date the change was made, and the name of the state registrar authorizing the amendment.

(3) If change of sex is requested, alone or in combination with change of name, and the record can be changed administratively, a new record of live birth will be created that includes the new sex and the new name if applicable. No notation of the change will appear on certified copies of the record of live birth.

(4) The applicant will be notified of the approval by correspondence that includes the previous information, the new information and the date of birth of the registrant. A copy of the application form used to request the change will be included with the correspondence prior to the file being sealed for use by the registrant in documenting the change in identity.

(5) All supporting documentation including the application form used to request the change and correspondence sent to the applicant will be placed in a sealed file. If a new record of live birth has been created, the previous record of live birth will also be placed in the sealed file.

(6) If eligibility is not confirmed, the applicant will receive written notice that the application is denied, the reason for the denial and the process to contest the agency decision.

Stat. Auth.: ORS 432.015, 432.235 & 432.245

Stats. Implemented: ORS 432.235 & 432.245

333-011-0275

New Record of Birth Following Adoption, Legitimation, Paternity Determination, and Paternity Acknowledgement or Change of Sex

(1) The state registrar shall amend a record of live birth and establish a replacement record of live birth for a person born in this state upon receipt of the following:

(a) Legitimation. If the mother is unmarried at the time of birth and the biological parents marry after the birth of a child, a new record of live birth shall be prepared by the state registrar for a child born in this state upon receipt of a sworn acknowledgement of paternity signed by the biological parents of said child together with a certified copy of the parents' marriage record. The mother's legal name can be amended to the name taken at marriage on the child's record of live birth if requested.

(b) Determination of paternity. A new record of live birth shall be prepared by the State Registrar for a child born in this state upon receipt of a certified copy of a court determination of paternity. If the birth mother's marital status was not unmarried at the time of birth or if another person is listed as the second parent, the court order must disestablish paternity as well as establish the new parent. If the surname of the child is not decreed by the court, the request for the new record received with the certified copy of the court determination shall specify the surname requested by both parents to be placed on the record.

(c) Acknowledgement of paternity. A new record of live birth shall be prepared by the state registrar for a child born to an unmarried birth mother in this state upon acceptance of a notarized voluntary acknowledgement of paternity signed by both parents if no second parent appears on the record. The child's surname may be changed through the voluntary acknowledgment of paternity.

(d) Adoption. A certified copy of a report of adoption as provided in ORS 432.223 or a certified copy of the decree of adoption, together with the information necessary to identify the original record of live birth and to establish a replacement record of live birth, except that a replacement record of live birth shall not be established if so requested by the court decreeing the adoption.

(e) Change of sex. A certified copy of an order of a court of competent jurisdiction indicating that an individual born in this state shall be changed or an accepted administrative request to change sex in support of gender identity under OAR 333-011-0272.

(2) The birth mother's marital status is unmarried at the time of birth if she was not married at conception, at birth, or within 300 days prior to the birth.

(3) New record:

(a) The new record of live birth prepared after adoption, legitimation, determination of paternity, or acknowledgment of paternity, or change of sex shall be on the form in use at the time of its preparation and shall include the following items and such other information necessary to complete the certification:

- (A) The name of the child;
- (B) The date and place of birth as transcribed from the original record;
- (C) The full names, dates of birth and places of birth of the adoptive parents or the biological parents whichever is appropriate;
- (D) The name of the attendant;
- (E) The state file number assigned to the original birth record; and
- (F) The original filing date.

(b) The information necessary to locate the existing record and to complete the new record shall be submitted to the state registrar on forms prescribed or approved by the state registrar.

(4) Existing record to be placed in a special file. After preparation of the new record, the existing record and the evidence upon which the new record was based are to be placed in a special file. Such file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the state registrar for purposes of properly administering the vital statistics program.

(a) A court order is not required before the release of a Voluntary Acknowledgment of Paternity form to any government agency responsible for the administration of child support enforcement programs created under Title IV-D of the Social Security Act, to a parent who signed the form or to the registrant if age 18 or older.

(b) A court order is not required before the release of the request to change name under OAR 333-011-0271 or to change sex under OAR 333-011-0272 to the applicant or to the registrant if age 18 or older.

Stat. Auth.: ORS 432.098, 432.245 & 432.289

Stats. Implemented: ORS 432.098, 432.245 & 432.289

333-011-0327

Acceptable Documentation to Establish Identity of Applicant and Relationship to Registrant

(1) Information required to identify the correct record of live birth includes:

- (a) The registrant's full name as it appears on the record;
- (b) The full names of both parents as they appear on the record of live birth;
- (c) The date of birth of the registrant;
- (d) The city or county where the birth occurred; and
- (e) The sex of the registrant as it appears on the current record of live birth.

(2) The relationship between the applicant and the registrant may be established by:

- (a) Comparing the name of the applicant to the registrant and parents listed on the current record of live birth;
- (b) Letter of guardianship issued by a court that documents the legal guardianship of registrant by applicant;
- (c) A written statement by an attorney accompanied with a notarized statement confirming the legal representation signed by:
 - (A) The registrant if age 18 or older or emancipated; or
 - (B) The registrant's parents or legal guardian if the registrant is under age 18.
- (d) Review of other documents determined by the state registrar.

(3) If the applicant is the registrant and the name of the applicant on identity documents does not match the name of the registrant on the record of live birth, additional evidence about the relationship of the applicant to the registrant will be required. Acceptable evidence includes:

- (a) A certified copy of an order of name change from a court within the United States;
- (b) A certified document from the government agency issuing drivers' license or identification that documents the change of name on the agency's record;
- (c) A certified Numident Report from the Social Security Administration that documents the change of name;
- (d) Two sequential passports issued by the United States with photographs of the same person and the same date of birth that shows the two names; or
- (e) Other documents as determined by the state registrar.

(4) An emancipated minor must provide a court-certified copy of the order of emancipation to the state registrar.

Stat. Auth.: ORS 432.015 & 432.380

Stats. Implemented: ORS 432.380

CHANGE OF NAME OR SEX



HOW DO I CHANGE MY NAME OR LEGAL SEX?

FOR YOURSELF:

Fill out the *Petition for Change of Name / Sex* and *Judgment for Change of Name/Sex* forms for adults. Choose the options that apply to you (name, sex, or both).

FOR A MINOR CHILD: (*You must be a parent, legal guardian, or legal representative for the child*)
Fill out the *Petition for Change of Name / Sex* and *Judgment for Change of Name/Sex* forms for minors. Choose the options that apply (name, sex, or both). You are the Petitioner.

If the *Petition* is for a name change for a minor child, then after you file your *Petition* and get a case number, you must send written notice to:

- the other parent (if you are a parent) *unless* the child has not lived with the other parent *and* the other parent does not contribute (and has not tried to contribute) to the support of the child
- both parents (if you are not a parent)
- all legal guardians

After you send notice, complete and file the *Declaration of Notice* form with the court

WHERE DO I FILE?

Name Change – If you are filing for yourself, file in the circuit court for the county where you live. If you are filing for a minor child, file in the county where the child lives.

Sex Change – You can file in any circuit court in Oregon. If you are also asking for a name change, file in the county where you live (or the child, if you are filing for a minor). If you want, you can file separate name and sex change forms in different counties. You will have to pay filing fees for both.

Go to www.courts.oregon.gov/courts/Pages/default.aspx for the location and address of each circuit court in the state

HOW MUCH DOES IT COST TO FILE?

Go to <http://www.courts.oregon.gov/Pages/fees.aspx> for the filing fee

DO I HAVE TO GO TO COURT AFTER I FILE?

Not unless the court tells you to or sends you a hearing notice. In some situations, a judge may want to talk to you or to the other parent if the *Petition* is for a minor child.

WHAT HAPPENS NEXT?

The court will enter the judgment into the court's records (called the Register of Actions). The judgment is effective once it's entered. The court will send you a *Notice of Entry of Judgment*. If you want a copy of the Judgment for yourself, call the court to find out how to get one.

NOTE: The court will not send the judgment to any other agencies or recipients. If you want your (or your child's) birth certificate, driver's license, Social Security card, or any other record changed, you must provide a copy of the signed Judgment to each provider according to their requirements.

DO I NEED A LAWYER?

You do not need a lawyer to file for a change of name or sex. If you have questions about how the law works or what other issues may arise from a name or sex change, you may want to talk to a lawyer. Court staff cannot give you legal advice. If you need help finding a lawyer, call the Oregon State Bar's Lawyer Referral Service at 503.684.3763 or 800.452.7636.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of:

Case No: _____

PETITION FOR CHANGE OF

NAME SEX

Petitioner (current name)

Adult

I am the Petitioner. I am at least 18 years old or I have been emancipated by court order. I ask the court for a judgment (check all that apply):

changing my name (use complete names. First, Middle, Last)

from: _____

to: _____

changing my sex

to: male female nonbinary

I have undergone surgical, hormonal, or other treatment appropriate to me for the purpose of affirming my gender identity

Public Interest (check all that apply in Oregon or any other state)

For any boxes you mark, explain, including the state and case numbers if available

I owe child support arrears or am currently ordered to pay child support _____

I have a protective order, stalking order, or restraining order in effect against me

I am currently on probation, parole, or under post-prison supervision _____

I am required to register as a sex offender _____

I have formerly used the following names (include all names you have used, whether legally or used by custom)

I ask that this record be SEALED by the court because: (check all that apply)

I am a participant in the Address Confidentiality Program under ORS 192.826

I am requesting a change of sex and I want the record to be sealed

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date

Signature

Name (printed) (*current name*)

Contact Address

City, State, ZIP

Contact Phone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of:

Case No: _____

Petitioner (current name)

GENERAL JUDGMENT RE:
CHANGE OF NAME SEX
Adult

For court use only:

This record is ordered SEALED at Petitioner's request because:

- Petitioner is a participant in the ORS 192.826 Address Confidentiality Program (ACP)
- Petitioner has requested a change of sex and that the record be sealed

or

Petitioner is a participant in the Address Confidentiality Program (ACP) and has requested a change of name only. The court finds good cause to not order the case record sealed (explain):

The court finds that the requested identity record changes are not against the public interest

The court orders, based on the application by Petitioner, the following:

Petitioner's name is changed: (use complete names, First, Middle, Last)

from: _____

to: _____

Petitioner's sex is changed to: male female nonbinary

Petitioner has attested to undergoing surgical, hormonal, or other appropriate treatment for the purpose of affirming gender identity

Other: _____

Judge Signature:

Certificate of Readiness per UTCR 5.100

This judgment is ready for signature because it is submitted ex parte as allowed by statute

Submitted by Petitioner

Date

Signature

Name (printed)

Contact Address

City, State, ZIP

Contact Phone

FORM 4

FILED

16 JUN 10 AM 11:18 THE CIRCUIT COURT OF THE STATE OF OREGON
4TH JUDICIAL DISTRICT FOR THE COUNTY OF MULTNOMAH

Probate Department

IN THE MATTER OF THE SEX CHANGE)	Case No.: 16CV13991
of)	
)	GENERAL JUDGMENT OF SEX
)	CHANGE
JAMIE SHUPE,)	
)	
Petitioner)	

Based on the Petition, and the court finding that proper notice to interested parties has been given; that the above-named person has undergone surgical, hormonal, or other treatment appropriate for this person for the purpose of gender transition; that sexual reassignment has been completed; and that no person has shown cause why the requested General Judgment should not be granted,

IT IS HEREBY ORDERED AND ADJUDGED:

The sex of Jamie Shupe is hereby changed from female to non-binary. Notice of this legal change shall be posted in a public place in Multnomah County as required by law.

6/10/16

Amy Holmes Hehn

AMY HOLMES HEHN
CIRCUIT COURT JUDGE

Verified Correct Copy of Original 6/13/2016

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BENTON

In the Matter of the Sex Change of:
JACKSON NICHOLAS,
Petitioner.

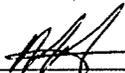
Case No.: 17CV01994
GENERAL JUDGMENT OF SEX
CHANGE

Based upon the Petition, and the Court finding that proper notice to interested parties has been given; that the above-named Petitioner has undergone surgical, hormonal, or other treatment appropriate for them for the purpose of gender transition; that sexual reassignment has been completed; and that no person has shown any cause why the requested General Judgment of Sex Change should not be granted,

IT IS HEREBY ORDERED AND ADJUDGED:

1. The sex of Petitioner is changed from male to non-binary.
2. Notice of these legal changes shall be posted in a public place in the Benton County Courthouse, as required by law.
3. Petitioner was born in Oregon. The sex on the record of live birth maintained by the Oregon State Registrar for the Center for Health Statistics shall be changed to reflect the judgment of this Court.

Signed: 3/8/2017 09:31 AM


Circuit Court Judge Matthew J. Donohue

Prepared and submitted by:
Lorena Reynolds, OSB No. 981319
Attorney for Petitioner

The Reynolds Law Firm, PC
225 SW Fourth Street
Corvallis, OR 97333-4872
(541) 738-1800 / (541) 738-1801 Fax
info@ReynoldsLaw.us



Oregon State Report

The 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents nationwide. The USTS was conducted by the National Center for Transgender Equality in the summer of 2015. Of respondents in the USTS, 1,152 were Oregon residents.¹ This report discusses the experiences of respondents living in Oregon.

Income and Employment Status

- 12% of respondents in Oregon were unemployed.²
- 30% were living in poverty.³

Employment and the Workplace

- 19% of respondents who have ever been employed reported losing a job in their lifetime because of their gender identity or expression.
- In the past year, 29% of those who held or applied for a job during that year reported being fired, being denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.
- Respondents who had a job in the past year reported being verbally harassed (15%) and sexually assaulted (1%) at work because of their gender identity or expression.
- 17% of those who had a job in the past year reported other forms of mistreatment based on their gender identity or expression during that year, such as being forced to use a restroom that did not match their gender identity, being told to present in the wrong gender in order to keep their job, or having a boss or coworker share private information about their transgender status with others without their permission.

Education

- 83% of those who were out or perceived as transgender at some point between Kindergarten and Grade 12 (K–12) experienced some form of mistreatment, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought they were transgender.
 - 63% of those who were out or perceived as transgender in K–12 were verbally harassed, 25% were physically attacked, and 15% were sexually assaulted in K–12 because of being transgender.
 - 23% faced such severe mistreatment as a transgender person that they left a K–12 school.
- 31% of respondents who were out or perceived as transgender in college or vocational school were verbally, physically, or sexually harassed because of being transgender.

Housing, Homelessness, and Shelter Access

- 24% of respondents experienced some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender.
- 37% have experienced homelessness at some point in their lives.
- 12% experienced homelessness in the past year because of being transgender.
- 32% of respondents who experienced homelessness in the past year avoided staying in a shelter because they feared being mistreated as a transgender person.

Public Accommodations

- Respondents reported being denied equal treatment or service, verbally harassed, or physically attacked at many places of public accommodation—places that provide services to the public, like retail stores, hotels, and government offices.
- Of respondents who visited a place of public accommodation where staff or employees thought or knew they were transgender, 33% experienced at least one type of mistreatment in the past year. This included 17% who were denied equal treatment or service, 25% who were verbally harassed, and 2% who were physically attacked because of being transgender.

Restrooms

- 8% of respondents reported that someone denied them access to a restroom in the past year.
- In the past year, respondents reported being verbally harassed (13%) and physically attacked (1%) when accessing a restroom.
- 62% of respondents avoided using a public restroom in the past year because they were afraid of confrontations or other problems they might experience.
- 37% of respondents limited the amount that they ate or drank to avoid using the restroom in the past year.

Police Interactions

- Respondents experienced high levels of mistreatment and harassment by police. In the past year, of respondents who interacted with police or other law enforcement officers who thought or knew they were transgender, 61% experienced some form of mistreatment. This included being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest.
- 58% of respondents said they would feel uncomfortable asking the police for help if they needed it.

Health

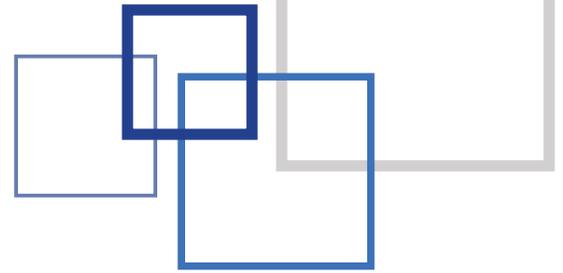
- 33% of respondents experienced a problem in the past year with their insurance related to being transgender, such as being denied coverage for care related to gender transition or being denied coverage for routine care because they were transgender.
- 36% of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender. This included being refused treatment, verbally harassed, or physically or sexually assaulted, or having to teach the provider about transgender people in order to get appropriate care.
- In the past year, 22% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person, and 35% did not see a doctor when needed because they could not afford it.
- 40% of respondents experienced serious psychological distress in the month before completing the survey (based on the Kessler 6 Psychological Distress Scale).⁴
- 15% of respondents reported that a professional, such as a psychologist, counselor, or religious advisor, tried to stop them from being transgender.

Identity Documents

- Only 13% of respondents reported that *all* of their IDs had the name and gender they preferred, while 60% reported that *none* of their IDs had the name and gender they preferred.
- The cost of changing IDs was one of the main barriers respondents faced, with 36% of those who have not changed their legal name and 37% of those who have not updated the gender on their IDs reporting that it was because they could not afford it.
- 36% of respondents who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.

ENDNOTES | OREGON STATE REPORT

1. The number of respondents in Oregon (n=1,152) is an unweighted value. All reported percentages are weighted. For more information on the weighting procedures used to report 2015 U.S. Transgender Survey data, see the full survey report, available at www.USTransSurvey.org.
2. For reference, the U.S. unemployment rate was 5% at the time of the survey, as reported by the Bureau of Labor Statistics. See the full report for more information about this calculation.
3. For reference, the U.S. poverty rate was 12% at the time of the survey. The research team calculated the USTS poverty measure using the official poverty measure, as defined by the U.S. Census Bureau. USTS respondents were designated as living in poverty if their total family income fell under 125% of the official U.S. poverty line. See the full report for more information about this calculation.
4. For reference, 5% of the U.S. population reported experiencing serious psychological distress during the prior month as reported in the 2015 National Survey on Drug Use and Health. See the full report for more information about this calculation.



2015 U.S. Transgender Survey

Oregon State Report

October 2017



The full report and Executive Summary of the 2015 U.S. Transgender Survey are available at www.USTransSurvey.org.

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Recommended Citation: *2015 U.S. Transgender Survey: Oregon State Report*. (2017). Washington, DC: National Center for Transgender Equality.

USTransSurvey.org | TransEquality.org

EXECUTIVE ORDER NO. 19-08

ENSURING EQUAL TREATMENT UNDER LAW TO OREGON'S LGBT+ COMMUNITY

Whereas, on October 15, 1987, Executive Order No. 87-20 was issued, which, for the first time in Oregon history, prohibited agencies within the Executive Branch of state government from discriminating on the basis of sexual orientation in employment and provision of services; and

Whereas, Executive Order 87-20 begins:

In the 200th year of our Constitution, Americans are reminded once again that each generation is obligated to preserve and extend both the right to live our private lives as we see fit, and the right to equal treatment under law. In America, to deny a person a job or access to vital social services for reason unrelated to his or her abilities or needs is a fundamental injustice;

and

Whereas, the aspiration of Executive Order 87-20 — to guarantee equal treatment under law for sexual minorities — remains as relevant, and indeed urgent, today as it was 32 years ago; and

Whereas, the requirements of Executive Order 87-20 must now be updated to reflect current law and understandings about sexual orientation and gender identity; and

Whereas, the State of Oregon must strive to be ever more inclusive and welcoming to all of its people, regardless of sexual orientation or gender identity.

NOW, THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. Definitions:

- a. “Sexual orientation or gender identity” means an individual’s actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual’s gender identity, appearance, expression, or behavior differs from that traditionally associated with the individual’s sex at birth.

EXECUTIVE ORDER NO. 19-08
PAGE TWO

- b. “State agency” means any agency within the Executive Department as defined in ORS 174.112, other than the Oregon Secretary of State, Oregon State Treasury, Oregon Department of Justice, and Oregon Bureau of Labor and Industries.
2. Non-discrimination in Employment.
No officer, employee, or agency within the executive branch of state government shall discriminate against any person on the basis of sexual orientation or gender identity in the recruitment, hiring, classification, assignment, compensation, promotion, discipline, or termination of any employee.
3. Non-discrimination in Discharging Government Functions.
No officer, employee, or agency within the executive branch of state government shall discriminate against any person on the basis of sexual orientation or gender identity in carrying out the duties of state government, in the provision of public services, or in state contracting or awarding of grants.
4. Treatment Consistent with Gender Identity.
State agencies shall treat all persons consistent with their gender identification, to the extent permitted by governing law, practicable, and consistent with the direction of the Office of the Governor.
5. Access to Gender-Designated Facilities.
State agencies shall permit persons to use restrooms and other gender-designated facilities consistent with their gender identity, to the extent permitted by governing law, practicable, and consistent with the direction of the Office of the Governor. The Department of Administrative Services shall develop and adopt policies and procedures related to management of buildings occupied by state agencies that ensures access to restrooms regardless of gender identity, including:
 - a. Buildings with existing single-stall restrooms shall designate them “all user” restrooms.

EXECUTIVE ORDER NO. 19-08
PAGE THREE

- b. Signage on multi-stall restrooms shall identify the nearest publicly accessible “all user” restroom, whether it be within the building or in another publicly-accessible location.
 - c. New construction shall include at least one single-stall “all user” restroom, to the extent practicable.
 - d. State agencies shall consider access to gender-designated facilities when negotiating, entering, and renewing leases.
6. Data.
When collecting demographic data on state employees or members of the public with regard to sex or gender, state agencies shall offer, in addition to “Male” and “Female,” at least a third option designated as “Nonbinary/Other” (or, as an alternative to the gender markers “M” and “F,” the marker “X”), to the extent practicable and permitted by governing law.
7. Employment Policies.
The Department of Administrative Services Chief Human Resource Office shall develop policies, standards, or other guidance to direct state agencies in respectfully accommodating state employees and members of the public who are transgender, nonbinary, or otherwise gender non-conforming.

Done at Salem, Oregon, this ____ day of October, 2019.

Kate Brown
GOVERNOR

ATTEST:

Bev Clarno
SECRETARY OF STATE

	American Indian / Alaska Native	Asian	Native Hawaiian/ Pacific Islander	Black / African American	Hispanic / Latino	White	Multi-Racial	Totals			
	All	All	All	All	All	All	All	Male	Female	Non-Binary	All
Kindergarten	439	1,630	345	916	9,689	26,247	2,738	21,594	20,404	6	42,004
First Grade	459	1,689	301	946	9,899	26,760	2,887	22,115	20,824	2	42,941
Second Grade	505	1,642	361	985	10,192	26,899	2,977	22,316	21,241	4	43,561
Third Grade	488	1,703	340	1,021	10,327	27,125	2,898	22,568	21,331	3	43,902
Fourth Grade	523	1,762	326	1,082	10,892	27,644	2,953	23,432	21,746	4	45,182
Fifth Grade	551	1,777	357	1,098	11,294	28,631	3,133	24,002	22,833	6	46,841
Sixth Grade	608	1,780	332	1,039	11,264	28,603	3,029	23,922	22,718	15	46,655
Seventh Grade	616	1,839	348	1,005	11,063	27,924	2,889	23,307	22,357	20	45,684
Eighth Grade	578	1,723	338	991	10,600	27,401	2,819	22,939	21,486	25	44,450
Ninth Grade	634	1,871	343	925	10,206	28,553	2,851	23,295	22,055	33	45,383
Tenth Grade	581	1,892	321	995	10,223	28,051	2,751	23,142	21,645	27	44,814
Eleventh Grade	593	1,865	311	1,001	9,937	27,454	2,466	22,469	21,139	19	43,627
Twelfth Grade	705	2,094	340	1,297	10,600	28,905	2,745	24,265	22,403	18	46,686
All Grades	7,280	23,267	4,363	13,301	136,186	360,197	37,136	299,366	282,182	182	581,730

All Grades 2018-19

Total	7,280	23,267	4,363	13,301	136,186	360,197	37,136	581,730			
Percentage Each Group	1.25%	4.00%	0.75%	2.29%	23.41%	61.92%	6.38%	100%			

All Grades 2017-18

Total	7,724	23,324	4,232	13,509	133,822	362,396	35,677	580,684			
Percentage Each Group	1.33%	4.02%	0.73%	2.33%	23.05%	62.41%	6.14%	100%			

Percent change from 2017-18 to 2018-19

	-5.75%	-0.24%	3.10%	-1.54%	1.77%	-0.61%	4.09%	0.18%			
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IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of

JONES DAVID HOLLISTER,
Petitioner-Appellant.

CA No. A171609

Lane County Circuit Court Case
No. 19CV20980

DECLARATION OF NANCY HAQUE

I, Nancy Haque, under penalty of perjury do hereby declare:

1. I am the Executive Director for Basic Rights Oregon, one of the *amicus curiae* in this appeal. I have personal knowledge of the facts and information set forth herein and, if called as a witness, I could and would testify accordingly.

2. As part of the preparation of the *amici curiae* brief for Basic Rights Oregon and the American Civil Liberties Union Foundation of Oregon, Inc. (ACLU of Oregon) in this appeal, I contacted the Oregon Department of Motor Vehicles (DMV) to obtain current information about the number of state driver licenses and state identification cards that the DMV had issued with a “X” gender designation since the Oregon Transportation Commission (OTC) added a nonbinary option for gender

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on November 7, 2019, I filed the original of the BRIEF OF AMICI CURIAE with the Appellate Court Administrator via the eFiling System. I further certify that on November 7, 2019, I served this BRIEF OF AMICI CURIAE on the following parties via the eFiling system (with courtesy copies by email):

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DATED: November 7, 2019.

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