

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

K.L.,

Appellant,

v.

STATE OF ALASKA, DEPARTMENT OF  
ADMINISTRATION, DIVISION OF  
MOTOR VEHICLES,

Appellee.

CASE NO. 3AN-11-05431 CI

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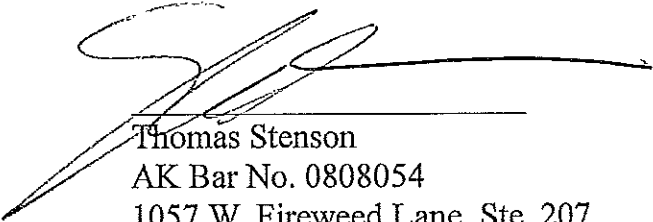
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Clerk of the Trial Court

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DEPARTMENT OF ADMINISTRATION,  
DIVISION OF MOTOR VEHICLES

ACLU of Alaska Foundation



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### Alaska Const. art. I, § 1: Inherent Rights

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and the protection under the law; and that all persons have corresponding obligations to the people and to the State.

### Alaska Const. art. I, § 22: Right to Privacy

The right of the people to privacy is recognized and shall not be infringed.

### AS 28.15.111: Licenses issued to drivers; anatomical gift and living will document

(a) Upon successful completion of the application and all required examinations, and upon payment of the required fee, the department shall issue to every qualified applicant a driver's license indicating the type or general class of vehicles that the licensee may drive. The license must (1) display a distinguishing number assigned to the license; (2) display the licensee's full name, address, date of birth, brief physical description, and color photograph .

... A license may not display the licensee's social security number and is not valid until signed by the licensee. If facilities are not available for the taking of the photograph required under this section, the department shall endorse on the license, the words "valid without photograph."

...

### AS 28.15.161: Cancellation of driver's license

(a) The department shall cancel a driver's license upon determination that

...

(2) there is an error or defect in the license;

...

(b) The licensee may apply for a new license at any time after cancellation upon removal of the cause for the cancellation.

## INTRODUCTION

K.L. outlined in her opening brief how the Department of Motor Vehicle's refusal to allow her and other transgender persons to correct the sex designation on their driver's license or, in the alternative, to permit a correction only upon proving that they have undergone surgery, violates their fundamental liberty and privacy rights and violates their right to equal protection. She argued additionally that the hearing officer erred in concluding that AS 28.15.161 authorizes the Department of Motor Vehicles ("DMV") to cancel her license. Finally, she showed that the remedy in this case should include, in addition to an order that K.L. may keep her license listing her gender as female, the promulgation of a rule similar to those used in many other states that allow a change of gender to reflect the gender identity in which the individual lives, as affirmed by a medical, mental health, or social service provider.

The DMV argues that this Court should avoid reaching K.L.'s constitutional arguments if it can resolve the case on statutory grounds.<sup>1</sup> K.L. agrees that statutes should be construed "to avoid the danger of unconstitutionality,"<sup>2</sup> and Section IV of this brief shows why the hearing officer's decision misinterprets and misapplies the applicable statutes, which require a ruling in K.L.'s favor. Interpreting the applicable statutes to allow a change of the sex designation on a transgender person's license is consistent with K.L.'s constitutional rights. The DMV's contrary position, that the driver's license statutes do not authorize it to make gender changes absent a regulation, should be rejected. This position is inconsistent with the driver's license statutes and violates the privacy, liberty, and equal protection rights of K.L. and other transgender driver's license applicants.

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<sup>1</sup> Brief of Appellee at p. 10, n.19.

<sup>2</sup> *State, Dept. of Rev. v. Andrade*, 23 P.3d 58, 71 (Alaska 2001).



**I. THE DMV'S ARGUMENT DISREGARDS ESTABLISHED CONSTITUTIONAL LAW RECOGNIZING THAT GOVERNMENT ACTION WHICH INDIRECTLY BURDENS A FUNDAMENTAL RIGHT VIOLATES THE CONSTITUTION.**

The Alaska Constitution establishes that “[t]he right of the people to privacy is recognized and shall not be infringed.”<sup>3</sup> Based on this explicit right, the Alaska Supreme Court has long held that “the right of privacy protects ‘fundamental rights of personal autonomy,’ including a person's right to control his appearance, [and] a patient's ‘privacy interest in protecting sensitive personal information from public disclosure . . . .’”<sup>4</sup> The fundamental privacy right also includes the “right to make decisions about medical treatments for oneself . . . .”<sup>5</sup> The DMV's refusal to correct K.L.'s gender marker on her driver's license, or to condition correction on proof of surgery, *seriously burdens* her legitimate and fundamental privacy interests.<sup>6</sup> This burden is a constitutional violation of K.L.'s fundamental rights because the DMV did not demonstrate a compelling state interest

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<sup>3</sup> Alaska Const. art. I, § 22.

<sup>4</sup> *Ranney v. Whitewater Eng'g*, 122 P.3d 214, 221-22 (Alaska 2005) (citing *Sampson v. State*, 31 P.3d 88, 94 (Alaska 2001); *Breese v. Smith*, 501 P.2d 159, 169 (Alaska 1972); *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469, 480 (Alaska 1977)).

<sup>5</sup> *Huffman v. State*, 204 P.3d 339, 346 (Alaska 2009).

<sup>6</sup> The American Association of Motor Vehicle Administrators recently offered advice to DMVs around the country regarding the benefits of policies allowing transgender persons who live full time in a new gender to change the gender on their driver's licenses, since such changes protect the privacy of transgender persons while also “allowing officials a means for accurate identification.” Manuel, Tom, American Association of Motor Vehicles Administrators, *Transgender Drivers: New Norms in Customer Service*, MOVE (Spring/Summer 2011), at 29-30, available at [http://www.nxtbook.com/nxtbooks/networkpartners/move\\_2011spring](http://www.nxtbook.com/nxtbooks/networkpartners/move_2011spring) [App'x A].

to justify this burden, and there are less restrictive means to advance the DMV's concerns for accuracy and uniformity.<sup>7</sup>

The DMV fails to address this argument and instead, misconstrues K.L.'s position as a claim for a constitutional "right to change information on a driver's license[.]"<sup>8</sup> According to the DMV, "the absence of a procedure for changing gender on a driver's license places no restrictions on K.L.'s personal autonomy or the right to control her appearance."<sup>9</sup> Furthermore, the DMV claims it is not "exerting control over K.L.'s body and appearance" because "K.L. remains free to dress as she wishes and live her life as a woman."<sup>10</sup> Finally, the DMV asserts that it "has not publicly disclosed K.L.'s transgender status."<sup>11</sup>

The DMV's argument disregards established constitutional law recognizing that government action which *burdens* a fundamental right is as much a constitutional violation

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<sup>7</sup> *Myers v. Alaska Psychiatric Inst.*, 138 P.2d 238, 245-46 (Alaska 1981).

<sup>8</sup> Brief of Appellee at 12.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 14.

as a direct prohibition on the exercise of that right.<sup>12</sup> Thus, contrary to the DMV's argument, an infringement on the fundamental right to personal autonomy does not require an explicit government ban on citizens dressing contrary to the gender designation listed on their driver's license. Rather, it is sufficient that the DMV places a serious barrier in the way of personal autonomy through its refusal to correct K.L.'s gender designation on her driver's license.

The DMV, by forcing K.L. to disclose her transgender status and gender identity disorder—a sensitive personal trait and potentially stigmatizing medical condition—every time she shows her license or, on the other hand, relinquish control over her appearance, represents an impermissible burden on fundamental liberty and privacy rights. Moreover, forcing K.L. to disclose private information is no different from the DMV making the disclosure itself.<sup>13</sup> Thus, the DMV wrongly asserts that “K.L. remains free to dress as she

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<sup>12</sup> See *Huffman v. State*, 204 P.3d at 345-47 (conditioning children's ability to attend school on their willingness to be tested for tuberculosis may have violated privacy interests in medical-decision-making); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 651 (1974) (conditioning employment as teacher on not becoming pregnant violated fundamental right to procreate); *Speiser v. Randall*, 357 U.S. 513, 528-29 (1958) (conditioning property tax exemptions on taking a loyalty oath violated fundamental right to freedom of speech); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (conditioning eligibility for unemployment benefits on willingness to work on the Sabbath, despite religious beliefs, violated fundamental right to freedom of religion).

<sup>13</sup> See *Falcon*, 570 P.2d at 480 (privacy violation resulting from statutory requirement that physician reveal patient's names to comply with income disclosure laws applicable to public officials); see also Supp. Exc., at 3-4[Hearing Tr., at 41-42] (DMV representative acknowledges that a police officer stopping a driver with a feminine appearance but a male designation on a driver's license “would bring up some questions” the officer “would need to ask”).

wishes and live her life as a woman.”<sup>14</sup> The DMV fails to acknowledge the undeniable stigma and intolerance some of society still imposes on the transgender community, and consequently, K.L.’s legitimate privacy interest in preventing disclosure of her gender identity disorder.<sup>15</sup>

## II. THE DMV WRONGFULLY ASSERTS THAT A VIOLATION OF THE RIGHT TO PRIVACY REQUIRES AN INDIVIDUAL TO PROVE THAT DISCLOSURE WILL RESULT IN PHYSICAL HARM TO ONE’S LIFE.

“[T]he right of privacy embodied in the Alaska Constitution is implicated by the disclosure of *personal information* about oneself.”<sup>16</sup> According to the Court, “[a] common thread woven into our decisions is that privacy protection extends to the communication of ‘private matters,’ or, phrased differently, ‘sensitive personal information,’ or ‘a person’s more intimate concerns.’ This is the type of personal information which, if disclosed even to a friend, could cause embarrassment or anxiety.”<sup>17</sup>

Gender identity disorder and transgender status are the type of information “which, if disclosed even to a friend, could cause embarrassment or anxiety.”<sup>18</sup> Thus, the DMV’s

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<sup>14</sup> Brief of Appellee, at 13.

<sup>15</sup> Exc., at 76-78 [Hearing Tr., at 65-67] (appellant explains that she views her transgender status as “a private and personal matter,” states she is required to show her state identification when traveling, and that she has faced “nasty” response from certain people aware of her transgender status).

<sup>16</sup> *Doe v. Alaska Superior Court*, 721 P.2d 617, 629 (Alaska 1986) (emphasis in the original).

<sup>17</sup> *Id.* (internal citations omitted) (quoting *State v. Glass*, 583 P.2d 872, 880 (Alaska 1978); *Falcon*, 570 P.2d at 480; *Pharr v. Fairbanks N. Star Borough*, 638 P.2d 666, 670 (Alaska 1981)).

<sup>18</sup> *Doe*, 721 P.2d at 629 (citing *Falcon*, 570 P.2d at 479).

refusal to change the gender on K.L.'s license, which causes a forced outing of this *personal* information, infringes on K.L.'s fundamental right to privacy.<sup>19</sup>

In contrast, the DMV claims that K.L. does not “have a legitimate expectation that her gender designation, whatever it may be, will not be disclosed on a form of public identification.”<sup>20</sup> To support this claim, the DMV erroneously relies on *Alaska Wildlife Alliance*.<sup>21</sup> At issue in *Alaska Wildlife Alliance* was the disclosure of public employees’ and private contractors’ names and timesheets related to the government’s wolf control program. There, the question was whether public employees and contractors have a legitimate expectation that their status as public employees and private contractors will be confidential.<sup>22</sup> In other words, unlike here, the information subject to disclosure was not sensitive personal information.<sup>23</sup> Nevertheless, the Court held that the employees and

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<sup>19</sup> See *Falcon*, 570 P.2d at 480 (protecting information regarding medical treatment involving a “psychiatrist, psychologist or of physician who specialized in treating sexual problems”); *Doe*, 721 P.2d at 629 (protecting “information which, if disclosed even to a friend, could cause embarrassment or anxiety”); *Rollins v. Ulmer*, 15 P.3d 749, 752 (Alaska 2001) (protecting information that could be “stigmatizing”).

<sup>20</sup> Brief of Appellee at 13-14.

<sup>21</sup> *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976 (Alaska 1997).

<sup>22</sup> *Id.* at 980.

<sup>23</sup> *Id.* (“public employees and private contractors generally do not have any expectation that their status as public employees and private contractors will be confidential”); *International Ass’n of Fire Fighters, Local 1264 v. Municipality of Anchorage*, 973 P.2d 1132, 1136 (Alaska 1999) (“[M]unicipal employees do not have a legitimate expectation of privacy in their names and salaries.”).

contractors had a legitimate expectation that their involvement in the program would not be publicly disclosed due to threats received against their lives and their families.<sup>24</sup>

Based on this holding, the DMV argues that “K.L. does not cite to evidence that she herself has been or will be harassed or harmed because of the discrepancy on her license.”<sup>25</sup>

The DMV also claims that, under *Alaska Wildlife Alliance*, K.L. has a “significant burden . . . to show that the threats are both real and credible.”<sup>26</sup>

The DMV’s reliance on *Alaska Wildlife Alliance*, however, is misplaced. The holding, in *Alaska Wildlife Alliance*, required “credible threats against the lives of public employees and their families” because the information at issue was not of a personal nature.<sup>27</sup> Here, gender identity disorder and transgender status represent personal sensitive information, and therefore, the standard set out in *Alaska Wildlife Alliance* is not controlling.<sup>28</sup>

Second, even if the *Alaska Wildlife* standard applied in cases involving information of a private nature such as K.L.’s transgender status and gender identity disorder, it is unclear what additional evidence the DMV is demanding of K.L. with regard to the risk of harassment and harm from an inaccurate license. The DMV does not contest the validity of

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<sup>24</sup> *Id.*

<sup>25</sup> Brief of Appellee at 14.

<sup>26</sup> Brief of Appellee at 15 (quoting *Alaska Wildlife Alliance*, 948 P.2d at 980 n.5).

<sup>27</sup> *Alaska Wildlife Alliance*, 984 P.2d at 980.

<sup>28</sup> See *Falcon*, 570 P.2d at 480; *Doe*, 721 P.2d at 629; *Rollins*, 15 P.3d at 752.

the information and evidence presented. For example, the DMV fails to take issue with the Second Circuit's conclusion that "[i]t is . . . *obvious* that an individual who reveals that she is a transsexual 'potentially exposes herself . . . to discrimination and intolerance.'"<sup>29</sup> The DMV likewise fails to dispute the findings by the National Center for Transgender Equality and National Gay and Lesbian Task Force regarding the wide-spread reporting of harassment, assault, and discrimination against transgender individuals who presented identification that did not match their gender identity. Given the DMV's failure to contest the validity of this evidence, it presumably agrees with the premise that disclosure of gender identity disorder, by way of an inaccurate driver's license, results in a credible risk of harassment and harm, both to K.L. and countless other transgender individuals, and the DMV has waived any argument to the contrary.<sup>30</sup>

### III. THE DMV'S CANCELLATION OF K.L.'S LICENSE VIOLATES EQUAL PROTECTION.

Alaska's equal protection clause "guarantees not only equal protection, but also equal rights and opportunities under the law."<sup>31</sup> The court has "long recognized that the Alaska

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<sup>29</sup> *Powell v. Schriver*, 175 F.3d 107, 111-12 (2nd Cir. 1999) (quoting *Doe v. City of New York*, 15 F.3d 264, 267 (2d Cir. 1994)).

<sup>30</sup> *Alaska Wildlife Alliance*, 948 P.2d at 980 n.5 (Alaska Wildlife waived any claim that threats against state employees were real or credible by failing to contest those issues in the agency appeal).

<sup>31</sup> *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 785 (Alaska 2005) (internal citations and quotation marks omitted).

Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment."<sup>32</sup>

**A. Contrary to the DMV's Claims, Its Current Policy Treats Similarly Situated Persons Differently.**

The DMV's refusal to change the gender on a license or, in the alternative, to make such a change only upon proof of surgery, violates equal protection because it precludes transgender persons from obtaining an accurate driver's license while non-transgender persons are not faced with this same burden. "[I]f a person does not have identification that accurately reflects his or her social gender, that person is put in a position of potential danger on a daily basis and may be forced to live on society's margins because of an inability to obtain gainful employment, credit, or bank accounts."<sup>33</sup>

The Alaska Supreme Court addressed a similar form of disparate treatment in *Alaska Civil Liberties Union v. State*.<sup>34</sup> In deciding whether government employee benefit provisions violated the equal protection clause, the Court determined that the programs treated same-sex couples differently from opposite-sex couples because same-sex unmarried couples have no way of obtaining the benefits.<sup>35</sup> Similarly here, transgender persons who

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<sup>32</sup> *Malabed v. North Slope Borough*, 70 P.3d 416, 420 (Alaska 2003).

<sup>33</sup> Leslie DuBois-Need & Amber Kingery, *Transgendered in Alaska: Navigating the Changing Legal Landscape for Change of Gender Petitions*, 26 Alaska L. Rev. 239, 241 (2009) (quoting Spencer Bergstedt, *Estate Planning and the Transgender Client*, 30 W. New Eng. L. Rev. 675, 681 (2008)).

<sup>34</sup> 122 P.3d 781.

<sup>35</sup> *Id.* at 788.



currently hold a license with the wrong gender on it have no way of obtaining a driver's license that accurately reflects his or her gender identity.

The DMV, however, fails to refute this differential treatment, and instead, limits its rebuttal to a comparison between current and new license holders. Accordingly, the DMV mistakenly claims that “[a] person seeking to change the gender designation on a driver’s license is not similarly situated to a person applying for an original driver’s license.”<sup>36</sup> Under the DMV’s current policy, a new license applicant may acquire a license that conforms to her lived gender identity by presenting an amended or recently acquired United States passport under the federal government’s revised policy, per State Department regulations.<sup>37</sup> On the other hand, a current license holder, like K.L., is precluded from this right despite also having a United States passport validating her gender identity. With regard to this discriminatory policy, the DMV has failed to offer any reason why the state’s need for proof regarding a correction of information on a license is any greater than its need for proof when an applicant first seeks a license. If it is asserting a need for proof aimed specifically at the change in sex from what was previously recorded, then the DMV has failed to explain why the proof already offered by K.L.<sup>38</sup> is not sufficient to document the change.

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<sup>36</sup> Brief of Appellee at 17.

<sup>37</sup> 7 FAM 1300 App. M (2008), available at <http://www.state.gov/documents/organization/143160.pdf>; Supp. Exc. at 5-12. [R. 32-39].

<sup>38</sup> See Exc. at 50, 71-72 [R. 238; Tr. 63-64]; Exc. 49, 74-76 [R. 239; Tr. 60-61].

Moreover, the DMV's logic is self-serving and circular. Under the DMV's reasoning, the government is permitted to distinguish similarly situated persons merely by failing to promulgate regulations with regard to one class. In the absence of authority to the contrary, the DMV's authority to validate the gender of a *new* license holder likewise applies to a *current* license holder. Any other reading of the statutory and regulatory licensing provisions violates equal protection.

Lastly, the DMV argues "someone who seeks to amend the gender designation on a driver's license is not similarly situated to someone who seeks to make another change to physical appearance information" because "[u]nlike other physical characteristics, gender generally does not vary over a person's lifetime" and gender is "less likely" to change.<sup>39</sup> Contrary to the DMV's argument, it permits changes to both eye color and height—two characteristics, like gender, that are less likely to change and generally do not vary over a person's lifetime once an individual is of sufficient age to apply for a license. Moreover, the DMV's argument assumes that state policies regarding driver's licenses may be formulated without taking into account the existence of transgender people, who although a distinct minority among Alaskans, represent a group of persons whose sex designation does change from the one they were assigned at birth.

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<sup>39</sup> Brief of Appellee at 17-18.

**B. The DMV's Refusal to Correct the Sex Designation on a License Does Not Bear a Fair and Substantial Relationship to the State's Interest in Accuracy and Uniformity.**

According to the DMV, its refusal to correct the gender designation on a driver's license "bears a fair and substantial relation to the clear legislative goal of having a driver's licenses that do not contain errors, misinformation, or inaccuracies that could be used to perpetuate identification theft, fraud, or other malfeasance."<sup>40</sup> The DMV also claims its current practice substantially furthers the legitimate state goal of "dealing with the licensure of drivers in 'a comprehensive and uniform manner.'"<sup>41</sup>

These claims are without merit. The DMV's refusal to correct gender identity does not bear a close and substantial relationship to the DMV's interest for accuracy or uniformity. Contrary to the DMV's claims, its current practice results in *inaccuracies* between the gender designation on a license and the lived gender identity of the license holder as well as the gender designation on a license and the gender designation on other primary forms of identification. In addition, the DMV's refusal to correct a gender designation does not deal with license holders in a *uniform manner* since it imposes conflicting outcomes on gender designation between current license holders and new license holders.

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<sup>40</sup> Brief of Appellee at 19.

<sup>41</sup> *Id.* (quoting *Roberts v. State*, 700 P.2d 815, 817-18 (Alaska App. 1985).

Moreover, the DMV has not identified a single state in the union other than Alaska where a change in gender is impermissible.<sup>42</sup> Even the DMV's invalidated prior policy permitted some drivers to change their sex designations. Therefore, the DMV's current practice—imposed by default through the hearing officer's decision, rather than a deliberate policy choice—does not substantially relate to the state's interest in accuracy and uniformity. The DMV's now-invalidated policy for changing the gender on a driver's license, as well as the practices in other states, show that Alaska and other states have recognized that governmental interests in accuracy and uniformity are served by allowing transgender persons to correct the gender on their license, even if Alaska's earlier policy was based on inaccurate assumptions about what is required for such a gender change.

**IV. THE ALASKA DRIVER'S LICENSE STATUTES AUTHORIZE THE DMV TO CORRECT THE GENDER ON K.L.'S DRIVER'S LICENSE, AND NO ERROR IN THE LICENSE JUSTIFIES ITS CANCELLATION.**

The DMV claims that it has no authority to change the gender on a driver's license because it has not adopted a regulation to establish a gender change procedure.<sup>43</sup> Furthermore, the DMV claims that the hearing officer correctly cancelled K.L.'s license because the DMV modified her license without legal authority. However, in the absence of a regulation, the driver's license statutes plainly authorize the DMV to correct a license

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<sup>42</sup> See Affidavit of Lisa Mottet at ¶ 3 (“Every jurisdiction in the United States has a policy, written or unwritten, permitting transgender drivers/residents to update the gender marker on their license/ID under some circumstances.”)

<sup>43</sup> Brief of Appellee at 5.

holder's gender. In addition, no error in K.L.'s license justified the DMV's cancellation of her license.

**A. The Overall Statutory Scheme Regarding Driver's Licenses Evidences the DMV's Authority to Correct the Sex Designation on K.L.'s Driver's License.**

Several provisions of the driver licensing statutes indicate that the legislature authorizes the DMV to correct license information, despite the absence of an administrative regulation expressly permitting such change. First, the licensing statutes require a license holder to renew her license every five years "upon proper application."<sup>44</sup> With regard to renewals in person, the DMV uses the same form as for original applications, without any requirement that the sex listed in the renewal application match the information on the current license.<sup>45</sup> Second, a license may be cancelled where "there is an error or defect in the license."<sup>46</sup> An "error or defect" may result from incorrect information being provided to the DMV, recorded by the DMV, or from a subsequent change in the information even though it was correct at the time of application. Third, the cancellation statute permits re-application for a license upon correction of the "error or defect."<sup>47</sup> Together, these statutory provisions

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<sup>44</sup> AS 28.15.101(a).

<sup>45</sup> See Alaska Division of Motor Vehicles, Renewing an Alaska License, *available at* <http://doa.alaska.gov/dmv/akol/renewal.htm>; Alaska Division of Motor Vehicles, Form 478, *available at* <http://doa.alaska.gov/dmv/forms/pdfs/478form.pdf>.

<sup>46</sup> AS 28.15.161(a)(2).

<sup>47</sup> AS 28.15.161(b) (permitting reapplication after cancellation "upon removal of the cause for the cancellation"). The "cause for cancellation" may include an "error or defect in the license," AS 28.15.161(a)(2), and the only way a licensee can remove this "cause for cancellation" is for her to be given an opportunity to correct the mistake.

show the legislature's intent to authorize the DMV to correct information on driver's licenses even in the absence of an administrative regulation expressly permitting such action.

**B. No Administrative Regulation Is Required to Authorize the DMV to Change the Gender on K.L.'s Driver's License.**

The DMV's failure to promulgate a rule for gender changes does not prevent it from making such a change to K.L.'s license because the "obvious, common sense"<sup>48</sup> interpretation of the driver's license statutes authorizes the DMV to correct false information on a driver's license. It is commonly understood, that a person's information on his or her license inevitably changes. Thus, a statutory scheme that forever precludes the DMV from correcting information—including a person's gender—is contrary to a common sense reading of the statutes.

In addition, the DMV has authority to change a person's gender, just as it has authority to change other physical descriptions on a license.<sup>49</sup> The DMV's argument that gender is "fundamental identifying information unlike other physical descriptors"<sup>50</sup> has no merit. This claim is based solely on the fact that AS 28.15.061(b) requires sex to be listed on a driver's license *application* while other descriptors are not.<sup>51</sup> However, there are differences between information that must be reported in an *application* and that which must

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<sup>48</sup> *Alyeska Pipeline Serv. Co. v. State, Dep't of Env'tl. Conservation*, 145 P.3d 561, 573 (Alaska 2006).

<sup>49</sup> See Standard Operating Procedure D-24 ("SOP") D-24, Exc. 47-48 [R. 103-04 ].

<sup>50</sup> Brief of Appellee at 7.

<sup>51</sup> *Id.*

appear on the *license*,<sup>52</sup> and sex is not among the information that must appear on a driver's license. Instead, a license merely must include "a brief physical description."<sup>53</sup> Another example of information a license applicant is required to report is her social security number,<sup>54</sup> but the DMV is explicitly *prohibited* from including a social security number on a driver's license.<sup>55</sup> The fact that sex must be listed on an application, but not the license itself, discredits the DMV's proffered "fundamental" theory regarding gender. Consequently, the DMV has failed to offer any reason why a regulation is required to correct a license holder's gender, but not to correct or change any other physical descriptions on a license, such as eye color and height.

Furthermore, agency action in the absence of regulation is prohibited only where the regulations are "'necessary' to implement" the provisions of a statute or "to protect a constitutional right."<sup>56</sup> Neither concern applies in permitting K.L. to change her name. First, permitting K.L. to correct her gender designation would not impinge upon her constitutional

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<sup>52</sup> Compare AS 28.15.061(b) (requiring an applicant to report "full legal name, date of birth, sex, and mailing and residence addresses" along with other information, including "the applicant's social security number") with AS 28.15.111 (requiring, among other things, a driver's license to display "the licensee's full name, address, date of birth, brief physical description, and color photograph").

<sup>53</sup> AS 28.15.111.

<sup>54</sup> AS 28.15.061(b)(4).

<sup>55</sup> AS 28.15.111(a) ("A license may not display the licensee's social security number . . .").

<sup>56</sup> *State v. Marshall*, 633 P.2d 227, 233 (Alaska 1981); *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com'n*, 711 P.2d 1170, 1177-79 (Alaska 1986) (regulations were not necessary to satisfy due process); *Silides v. Thomas*, 559 P.2d 80, 91 (Alaska 1977) (regulations were not necessary to implement the mandatory political candidate disclosure requirements).

rights.<sup>57</sup> Rather, here it is the DMV's refusal to allow K.L. to change the gender on her license, in the absence of a regulation, that violates K.L.'s constitutional rights. Second, although a regulation may be "helpful" to establish a standard for changing the gender on a driver's license,<sup>58</sup> it is not necessary to allow the DMV to change the gender designation on K.L.'s license.<sup>59</sup>

**C. K.L.'s License Was Wrongly Cancelled Because There Was No "Error or Defect in the License."**

The DMV argues that K.L.'s license was issued in error because the DMV had no authority to change the gender on her license.<sup>60</sup> Under this argument, the DMV analogizes the gender change on K.L.'s license to an erroneous name change where the applicant did not provide the required documentation to support such a change.<sup>61</sup> In both circumstances, the DMV argues that the license should be cancelled. The DMV's analogy breaks down, however, upon closer scrutiny, because the DMV has specified by regulation that "the

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<sup>57</sup> Cf. *Falcon*, 570 P.2d at 480 (conflict of interest law requiring a public official who was also a doctor to disclose patient names as "sources of income" could not be enforced consistently with the constitution until regulations to preserve the privacy rights of patients had been promulgated); *Messerli v. State*, 626 P.2d 81, 88-89 (Alaska 1980) (campaign finance law could not be enforced absent regulations protecting the speech and privacy rights of anonymous speakers).

<sup>58</sup> *Marshall*, 633 P.2d at 233. K.L. argued in her opening brief and in Section V of this brief that this Court should order the DMV to promulgate such a regulation. Brief of Appellant at 39-40.

<sup>59</sup> The DMV's previous standard for gender changes, SOP D-24, was a regulation that should have been promulgated pursuant to the APA, because the *restrictive* rule regarding gender changes was an "unforeseeable" interpretation of the driver's license statutes. *Alyeska Pipeline Service Co.*, 145 P.3d at 573.

<sup>60</sup> Brief of Appellee at 8-10.

<sup>61</sup> *Id.* at 9.



applicant must also provide legal documentation, determined acceptable by the department, to verify the name change,"<sup>62</sup> but has not done so for gender changes. Because K.L.'s request for a gender change did not violate any valid regulation setting conditions on a gender change, including K.L. providing legal documentation to verify her change in gender, her license was not issued in error.

Moreover, the evidence K.L. has offered is more than adequate to document her gender change. K.L. provided the DMV her passport and pilot's license to show her gender to be female<sup>63</sup> and both are documents the DMV accepts to substantiate personal information regarding an applicant's date of birth and legal name.<sup>64</sup> She also provided a letter from her health care provider documenting her female sex.<sup>65</sup> By doing so, K.L. met any reasonable standard of truth, adequacy, or sufficiency of proof with regard to sex.<sup>66</sup>

**V. THIS COURT SHOULD ORDER THE DMV TO PROMULGATE A REGULATION CONSISTENT WITH GROWING NUMBER OF STATES THAT FOCUSES ON GENDER IDENTITY AND EXPRESSION RATHER THAN PROOF OF SURGICAL TREATMENT.**

As shown above, the promulgation of regulations is not a prerequisite to changing the gender on K.L.'s and other individual's licenses. Despite not being a prerequisite, K.L.

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<sup>62</sup> 2 AAC 90.420(c).

<sup>63</sup> Exc., at 49-50 [R. 238-39].

<sup>64</sup> 2 AAC 90.420(b)(2); *see also* the DMV's website, <http://doa.alaska.gov/dmv/akol/original.htm>.

<sup>65</sup> Exc., at 46 [R. 240].

<sup>66</sup> AS 28.05.041(b).

agrees that a regulation may be helpful to guide the DMV's conduct.<sup>67</sup> However, a regulation that restricts a person's ability to change his or her gender potentially implicates constitutional rights.<sup>68</sup> Consequently, this Court should provide guidance to the DMV regarding the constitutional implications of restricting a transgender person's ability to change the gender designation on his or her license.<sup>69</sup>

The DMV argues that the question of the constitutionality of its "now-defunct policy D-24 . . . is moot" and should not be considered.<sup>70</sup> However, the DMV "does not . . . concede that the invalidated policy would be unlawful if it were validly promulgated under the APA,"<sup>71</sup> so even if the constitutionality of SOP D-24 were technically a moot question, the issue falls plainly within the public interest exception to mootness and should be addressed by this court.<sup>72</sup> The issue is capable of repetition, may evade review if treated as moot, and involves serious constitutional burdens that are important to the public interest.<sup>73</sup>

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<sup>67</sup> *Marshall*, 633 P.2d at 233.

<sup>68</sup> *Falcon*, 570 P.2d at 480.

<sup>69</sup> *Id.* at 479-80 (providing guidance to Public Office Commission); *see also Alaska Civil Liberties Union*, 122 P.3d at 795 (remedy for constitutional violation could involve providing state and municipality the opportunity to adopt standards consistent with constitution); *Messerli v. State*, 626 P.2d at 88-89 (remanding case for promulgation of regulations to guide enforcement of campaign finance law in order protect the speech and privacy rights of anonymous speakers).

<sup>70</sup> Brief of Appellee at 13.

<sup>71</sup> Brief of Appellee at 1, n.1.

<sup>72</sup> *Kodiak Seafood Processors Ass'n v. State of Alaska*, 900 P.2d 1191, 1196 (Alaska 1995).

<sup>73</sup> *Id.*

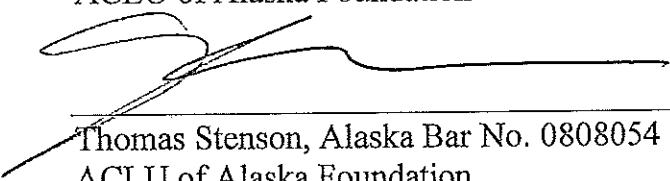
Accordingly, this Court should address the constitutionality of SOP D-24 for purposes of guiding the DMV's promulgation of rule with respect to this matter.

CONCLUSION

For all the reasons stated in this brief and her opening brief, K.L. respectfully request this Court to vacate the order cancelling her license; to declare that all current and future holders of an Alaska driver's license, and similar documents issued by the DMV, should be entitled to change the sex designation on such documents, subject to conditions imposed by valid, constitutional regulations; and likewise, the proof of surgery may not be demanded as a condition to change the sex designation on such documents, as this requirement violates the rights of equal protection and privacy.

DATED: this 28<sup>th</sup> day of November, 2011.

ACLU of Alaska Foundation



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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

K.L. )  
 )  
Appellant, )  
 )  
vs. )  
 ) APPEAL CASE No. 3AN-11-05431CI  
DIVISION OF MOTOR )  
VEHICLES, DEPARTMENT )  
OF ADMINISTRATION, )  
STATE OF ALASKA. )  
 )  
Appellee. )  
\_\_\_\_\_ )

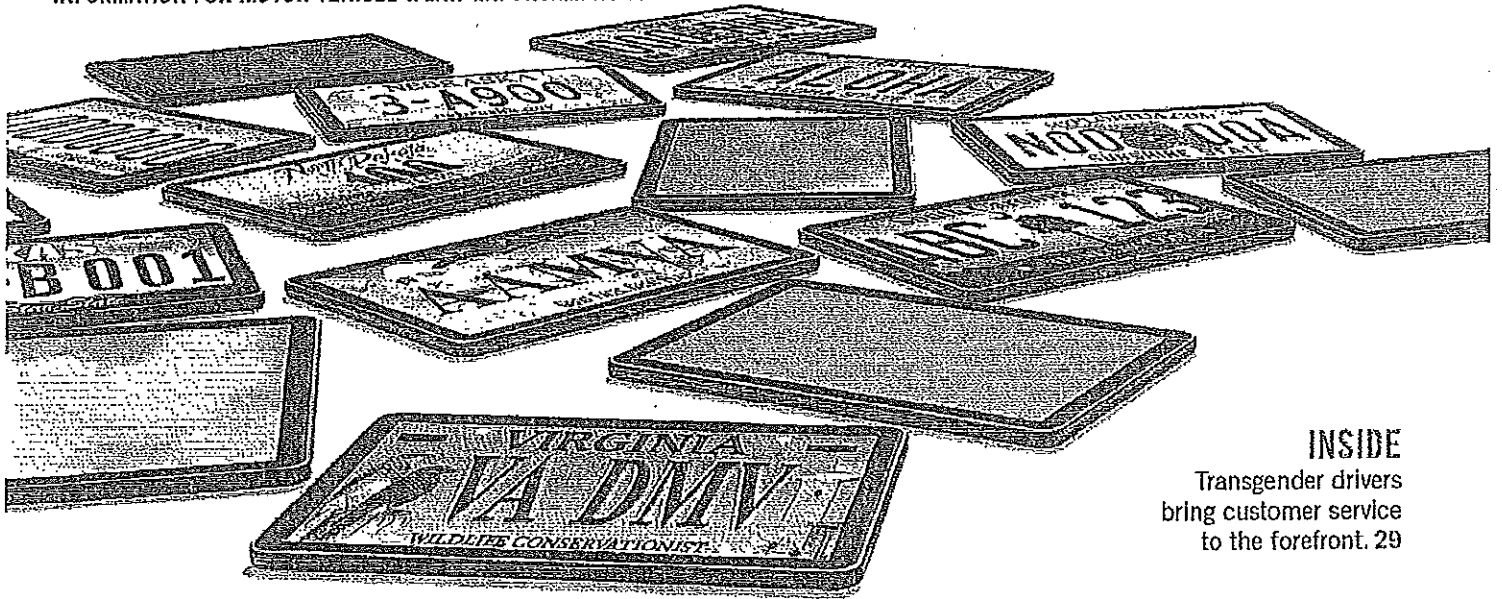
APPELLANT'S REPLY BRIEF, APPENDIX A

Manuel, Tom, American Association of Motor Vehicles Administrators, *Transgender Drivers: New Norms in Customer Service*, MOVE (Spring/Summer 2011), Cover, 29-30, available at [http://www.nxtbook.com/nxtbooks/networkpartners/move\\_2011spring](http://www.nxtbook.com/nxtbooks/networkpartners/move_2011spring).

# MOVE

Spring/Summer 2011 Vol. 10 No. 21

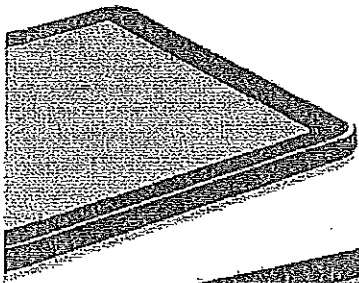
INFORMATION FOR MOTOR VEHICLE & LAW ENFORCEMENT OFFICIALS



**INSIDE**  
Transgender drivers  
bring customer service  
to the forefront. 29

## Wave of the Future

Automated LPRs among newest technology



TRANSGENDER DRIVERS:

**NEW**

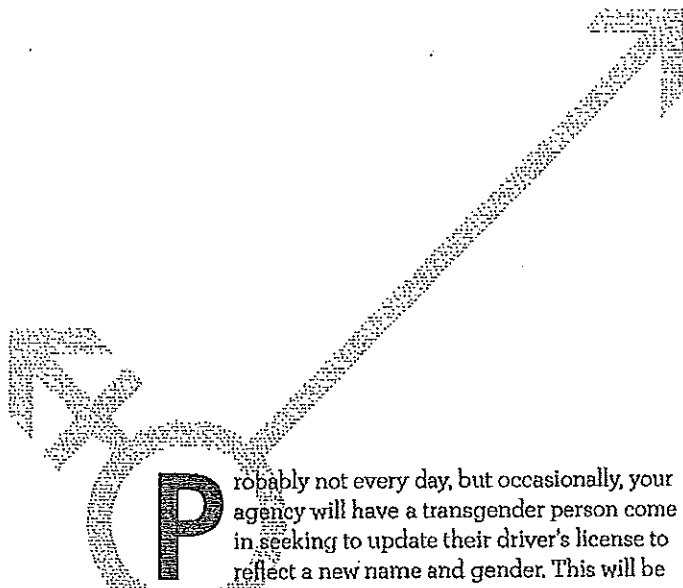


**NORMS**

**IN CUSTOMER SERVICE**

BY TOM MANUEL

The Department of Motor Vehicles (DMV) does more than just test applicants to make sure they meet the minimum qualifications for driving safely on our highways. They are responsible for ensuring all people are issued accurate identification. This sounds easy enough; the drivers present the appropriate documentation and the license is processed routinely as thousands of driver licenses and IDs are issued daily. However, when people are confronted with new or unusual circumstances they may become apprehensive, and when confronted with controversy, the circumstances can quickly deteriorate into ill will.



**P**robably not every day, but occasionally, your agency will have a transgender person come in seeking to update their driver's license to reflect a new name and gender. This will be an unfamiliar phenomenon and may seem strange, confusing or controversial. The notion that a person believes the sex assigned at birth is an inadequate description or application of their gender may conflict with the DMV staff's personal, political or religious beliefs. As public servants, personal feelings or bias cannot interfere with quality customer service extended to those we serve. When there are fewer facts known and agreed upon, there is greater controversy; where there are more facts known and agreed upon, controversy diminishes. Perhaps no greater place is this felt than in the transgender community.

Transgender people may identify and live as a gender different from the one they were assigned at birth. Gender identity is a person's sense of themselves as male or female. Some transgender people undergo a gender transition to begin living as the gender with which they identify, including changing their outward behavior, clothing, hairstyle, etc. According to clinical standards accepted by the American Medical Association (AMA), transgender persons should be allowed live and conduct their day-to-day living in harmony with their gender identity. Clinical treatment for those undergoing gender transitions may include hormone therapy, psychotherapy, surgery, or a combination of these, as deemed appropriate by the person and their healthcare provider. A "sex change operation" or sex reassignment surgery may or may not be indicated, desired, or may not be feasible for an individual. For those who do undergo surgical procedures, clinical guidelines typically require living as that new gender for at least one year before surgery. It is important to understand gender transition does not equate to surgically altering procedures.

**According to clinical standards accepted by the American Medical Association (AMA), transgender persons should be allowed live and conduct their day to day living in harmony with their gender identity.**

### **Proper ID**

Some transgender persons may not need, want or require a change in gender designation on their license. However, there will be some whose license or ID needs to reflect their gender identity in order to conduct day-to-day tasks. Having a driver license or ID that does not correlate with the gender the person is living compromises their ability to function in society where ID is required (such as banking, boarding a plane, entering Federal buildings, when stopped by law enforcement, at bars and restaurants and when applying for employment.) When gender identity does not match the gender displayed on the license or ID, it can result in violations of privacy, discrimination, and risks to personal safety.

In the case of transgender persons, identification that solely reflects sexual anatomy may not accurately reflect the person's identity or appearance. For example, a person cashing a check at the bank that is living as a gender that differs from the gender displayed on their driver license may have a difficult time accessing their funds because the picture on the ID does not match their present appearance. If the picture ID does not match the person, any action requiring ID is jeopardized and makes the ID process worthless. DMV's may consider adopting policies that recognize the gender identity/expression of the transgender person and fulfill the jurisdiction's requirement to supply accurate identification. That means a transgender person should be allowed to change the gender indicated on the driver license or ID when living fully as the other gender. Policies like this are mutually beneficial to the privacy of the individual as well as allowing officials a means for accurate identification.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

K.L.,

Appellant,

v.

STATE OF ALASKA, DEPARTMENT OF  
ADMINISTRATION, DIVISION OF  
MOTOR VEHICLES,

Appellee.

CASE NO. 3AN-11-05431 CI

Original Received

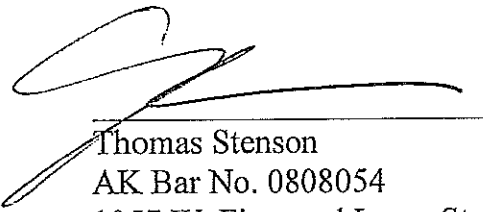
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Clerk of the Trial Courts

APPEAL FROM THE DEPARTMENT OF ADMINISTRATION,  
DIVISION OF MOTOR VEHICLES

**APPELLANT'S SUPPLEMENTARY EXCERPT OF RECORD**  
**VOLUME 1 OF 1**

ACLU of Alaska Foundation

  
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Filed in the Superior Court of  
the State of Alaska, this \_\_\_\_\_  
day of \_\_\_\_\_, 2011



APPELLANT'S SUPPLEMENTARY EXCERPT OF RECORD

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1           this appears in the SOPs and not in the Alaska  
2           Administrative Code -- that this is not a  
3           regulation that's been certified by the  
4           Lieutenant governor?

5       A     Correct.

6       Q     Okay. Now, you indicated that one of the  
7           reasons this was important was that  
8           information about -- from driver's licenses  
9           would be shared with APSIN and with the  
10          police?

11      A     Uh-huh.

12      Q     Wouldn't -- if this information was going to  
13           the computer screen in an average patrol car,  
14           wouldn't the nature of someone's appearance  
15           actually be more important in verifying their  
16           identity?

17                   So if you had someone who appeared  
18           stereotypically female sitting in a driver's  
19           seat, and a police officer walked up to the  
20           driver's side window and looked in and saw  
21           someone who was not the male he expected,  
22           based on the computer report in his car,  
23           wouldn't that be more confusing rather than  
24           less confusing?

25      A     I think it would bring up some questions that

\* Indicates name, personal  
information redacted

1 they'd need to ask.

2 Q Okay.

3 A And the opposite way, they wouldn't know to  
4 ask those questions.

5 Q So where there's a discrepancy between the  
6 information in the DMV's system and the  
7 information on someone's driver's license, on  
8 one hand, and their physical appearance on the  
9 other, that's going to lead to questions from  
10 the police officer, correct --

11 A Uh-huh. Yeah.

12 Q -- about why their gender appearance is  
13 different?

14 A Uh-huh.

15 Q Okay. Now, you had said before that -- I'm  
16 sorry -- that if somebody came in and said  
17 that they were dramatically shorter or taller  
18 than they actually are, or had a different  
19 hair color, that the individual at the window  
20 here at the DMV would say, you know, "Come on.  
21 Is that right?" Correct?

22 A Uh-huh.

23 Q Okay. If I'm reading D24 correct, it says,  
24 "Accept the applicant's word for weight,  
25 height, hair, and eye color." Is that

\* indicates name, personal  
information redacted

## 7 FAM 1300 APPENDIX M GENDER CHANGE

(CT:CON-334; 06-10-2010)  
(Office of Origin: CA/OCS/PRI)

### 7 FAM 1310 APPENDIX M SUMMARY

(CT:CON-334; 06-10-2010)

- a. This appendix provides policy and procedures that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.
- b. This policy explains the need for medical certification from an attending medical physician regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association.
- c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.
- d. Sexual reassignment surgery is not a prerequisite for passport issuance and such documentation must not be requested.
- e. Medical certification of gender transition from an attending medical physician as described in 7 FAM 1320 Appendix M is the only documentation of gender change required. Other medical records are not to be requested. If a passport adjudicating officer or consular officer has questions about this guidance or a particular case, see 7 FAM 1380 Appendix M.

### 7 FAM 1320 APPENDIX M DOCUMENTS TO BE SUBMITTED WITH PASSPORT APPLICATION

(CT:CON-334; 06-10-2010)

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7 FAM 1300 Appendix M Page 1 of 8

Appellant's Sup. Record

Page 5 of 12

- a. Requirements for all elements of the passport application aside from gender still apply, including:
- (1) Evidence of U.S. citizenship/nationality. The applicant must submit acceptable evidence of U.S. citizenship or nationality. (See 7 FAM 1100 Acquisition and Retention of U.S. Citizenship and Nationality.) It is not necessary, however, for the applicant to obtain an amended birth record reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;
  - (2) Evidence of Identity. The applicant must be asked to submit acceptable evidence of identity in the new gender, if available, and must submit evidence of the new name, if changed. (See 7 FAM 1320.) State law and foreign laws vary as to whether a driver's license or other State government form of identity document may be issued reflecting a gender change. If evidence of change of gender in the identity documents is not obtainable because of state or local requirements, the passport may still be issued in the new gender based on the medical certification outlined below in paragraph b(1)(f).;
  - (3) Photograph. A recent photograph that reflects a good likeness of, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance. (See also 7 FAM 1300 Appendix E Passport Photographs.)
  - (4) Passport Fee. All necessary passport fees must be submitted. (See 7 FAM 1300 Appendix G Passport Fees.)
  - (5) Name Change. If the applicant's name has been changed, he/she must present satisfactory evidence of a legal name change. Adjudication of the name change must be handled as a routine request and conform to the requirements of 7 FAM 1300 Appendix C Names to Be Used in Passports.

b. Medical Certification.

- (1) A full validity U.S. passport will be issued reflecting a new gender upon presentation of the following: A signed original statement, on office letterhead, from the attending medical physician (Internist, endocrinologist, gynecologist, urologist or psychiatrist). The statement must include the following information (See 7 FAM 1320 Appendix M Exhibit B):
  - (a) Physician's full name;
  - (b) Medical license or certificate number;

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- (c) Issuing state or other jurisdiction of medical license/certificate;
- (d) Drug Enforcement Administration (DEA) registration number assigned to the physician;

**NOTE: If the attending physician does not have or provide a DEA number, the passport application is to be suspended for further clarification or verification of the physician's bona fides. Physicians in foreign countries, for example, would not have a DEA number.**

- (e) Address and telephone number of the physician;
- (f) Language stating that he/she is the attending physician for the applicant and that he/she has a doctor/patient relationship with the applicant;
- (g) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender (male or female);
- (h) Language stating "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct"; and
- (i) Annotate the application "gender transition" to record the reason for issuing the full validity passport in the new gender.

**NOTE: Passport adjudicators and consular officers must not ask for additional medical information from the applicant.**

- (2) A two year limited validity passport reflecting the new gender will be issued upon presentation of the following:
  - (a) Information listed in paragraph 1(a)-(h) above;
  - (b) Language stating the applicant is in the process of gender transition to the new gender (male or female); and
  - (c) Use endorsement code 46 for domestic and Overseas Photodigitized Passports (OPDP) issuance. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender.

**Endorsement Code 46: THIS PASSPORT EXPIRES ON (MON DAY, YEAR). IT CANNOT BE REPLACED WITHOUT THE EXPRESS AUTHORIZATION OF THE DEPARTMENT OF STATE.**

- (3) If overseas, and an Emergency Photodigitized Passport (EPDP) must be issued so that the applicant can travel, the passport must be limited to three months using endorsement code 109. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender.

**Endorsement Code 109: THIS PASSPORT EXPIRES ON (mon day, year). IT CANNOT BE REPLACED WITHOUT THE EXPRESS AUTHORIZATION OF THE DEPARTMENT OF STATE.**

- (4) The applicant will receive a passport for the remaining full validity period without further fee, (except for expedited service), if:
- (a) He/she applies for the new passport within two years of issuance using form DS-5504, Application for a U.S. Passport (Name Change, Data Correction and Limited Passport Book Replacement);
  - (b) Meets the requirements of (1) or (2) above. ; and
  - (c) Use Endorsement Code 3 for domestic and OPDP passports.

**Endorsement Code 3: THIS PASSPORT REPLACES (REGULAR/OFFICIAL/ DIPLOMATIC) PASSPORT NUMBER (NUMBER) ISSUED ON (MON DAY, YEAR). IT IS VALID UNTIL (MON DAY, YEAR).**

To replace a passport canceled in error, spoiled or defective book, or a passport containing a data error. Limit to expiration date of original passport.

- c. If the applicant has not submitted the requested medical certification, use the appropriate Information Request Letter (IRL) in corresponding with the passport applicant. (See also 7 FAM 1320 Appendix M Exhibit A, Information Request Letter Regarding Gender Change.) (See 7 FAM 1300 Appendix T for general guidance about IRLs.)

## **7 FAM 1330 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS SEEKING TO DOCUMENT GENDER TRANSITION**

(CT:CON-334; 06-10-2010)

- a. As with all passport applicants, you must be sensitive and respectful at all times.
- b. Refer to the applicant by the pronoun appropriate to his/her new gender.
- c. Ask only appropriate questions regarding information necessary to

determine citizenship and identity of the applicant.

## **7 FAM 1340 APPENDIX M AMENDING GENDER IN REPORTS OF BIRTH**

*(CT:CON-334; 06-10-2010)*

The Form FS-240, Consular Report of Birth Abroad of Citizen of the United States of America, can be amended by the Vital Records Section of Passport Services (CA/PPT/TO/RS/VR) to reflect the change in gender. The same documentary requirements specified above for passport services would pertain to amending gender in a Form FS-240. (See 7 FAM 1440, Consular Report of Birth Abroad of a Citizen of the United States of America.) Inquirers should be directed to Passport Vital Records.

**Contact ...**

U.S. Department of State  
Passport Services  
Vital Records Section  
1111 19th Street, NW, Suite 510  
Washington, DC 20522-1705  
(202) 955-0307

## **7 FAM 1350 APPENDIX M CASES OF UNSPECIFIED GENDER**

*(CT:CON-334; 06-10-2010)*

"Intersex" is a group of conditions where there is a discrepancy between the internal and external genitals (previously this was referred to as hermaphroditism). Unless the applicant has undergone gender transition as outlined in this appendix, the gender listed on the applicant's birth documentation will determine the gender to be listed in the passport.

## **7 FAM 1360 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE**

*(CT:CON-334; 06-10-2010)*

If an applicant advises that the gender on his/her birth document mistakenly lists the wrong gender due to typographical error, refer the applicant to the appropriate issuing vital records office.

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7 FAM 1300 Appendix M Page 5 of 8

Appellant's Sup. Record

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## 7 FAM 1370 APPENDIX M QUESTIONS

(CT:CON-334; 06-10-2010)

- a. Passport agencies and centers should contact CA-PPT-ADJQ@state.gov for specific guidance.
- b. U.S. embassies and consulates should contact ASKPRI@state.gov for specific guidance.

## 7 FAM 1380 THROUGH 1390 APPENDIX M UNASSIGNED

### 7 FAM 1320 APPENDIX M EXHIBIT A INFORMATION REQUEST LETTER TO APPLICANTS REGARDING GENDER CHANGE

(CT:CON-334; 06-10-2010)

Dear [Name of subject]:

Thank you for your recent passport application. We need your help in order to continue processing your request for the issuance of a passport reflecting a gender different from the one reflected on some or all of the submitted citizenship and/or identity evidence.

A full validity passport reflecting the new gender will be issued to you upon submission of a signed original statement, on office letterhead, from your attending medical physician (Internist, endocrinologist, gynecologist or urologist, psychiatrist). The statement, signed under penalty of perjury, must include the following information:

- (a) Physician's full name;
- (b) Medical license or certificate number;
- (c) Issuing state of medical license/certificate;
- (d) Drug Enforcement Administration (DEA) registration number assigned to the physician;
- (e) Address and telephone number of the physician;
- (f) Language stating that he/she is the attending physician for the applicant. He/she has a doctor/patient relationship with the applicant; and
- (g) Language stating that the applicant has had appropriate clinical treatment for gender transition to the new gender (male or female).

If your gender transition process is ongoing, a two year limited validity passport reflecting the new gender will be issued upon submission of the items above and a statement from your attending physician that you are in the process of gender transition.

If we do not receive the requested information within ninety (90) days or the information you submit is insufficient to establish your gender transition, your passport will be issued in your birth gender. If you prefer you may withdraw your application. By law, passport fees are not refundable. Any special return postage will be returned or refunded.

Sincerely,

[Signature]

[Name]

[Title]

[Name of Passport Issuing Office]

**7 FAM 1320 APPENDIX M EXHIBIT B MODEL  
LETTER FOR ATTENDING PHYSICIAN  
CERTIFYING TO THE APPLICANT'S GENDER  
CHANGE**

(CT:CON-334; 06-10-2010)

**Attending Physician's Letterhead  
(Physician's Address and Telephone Number)**

I, (physician's full name), (physician's medical license or certificate number), (issuing State of medical license/certificate), (DEA Registration number), am the attending physician of (name of patient), with whom I have a doctor/patient relationship. (The letter must indicate that the physician is either an internist, endocrinologist, gynecologist, urologist or psychiatrist.)

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

Or

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).

I declare under penalty of perjury under the laws of the United States that

the forgoing is true and correct.

Signature of Physician

Typed Name of Physician

Date

000067

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

1  
2 K.L. )  
3 )  
4         Appellant, )  
5 vs. )  
6 DIVISION OF MOTOR )  
7 VEHICLES, DEPARTMENT )  
8 OF ADMINISTRATION, )  
9 STATE OF ALASKA. )  
       Appellee. )  
\_\_\_\_\_ )

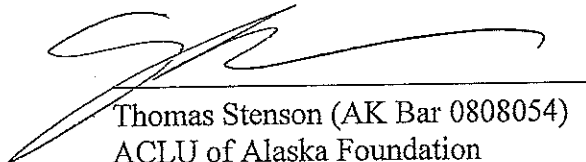
APPEAL CASE No. 3AN-11-05431CI

COPY  
Original Received  
**NOV 28 2011**  
Clerk of the Trial Court 3

REQUEST FOR ORAL ARGUMENT ON APPEAL

11  
12 Pursuant to Appellate Rules 505 and 605.5, the appellant requests that the court  
13 schedule the matter for oral argument on the merits of the appeal, at the court's  
14 convenience.

Dated this 28th day of November, 2011.

17  
18   
19 Thomas Stenson (AK Bar 0808054)  
20 ACLU of Alaska Foundation  
21 1057 West Fireweed Lane, Suite 207  
22 Anchorage, AK 99503  
23 Telephone: (907) 258-0044  
24 Facsimile: (907) 258-0288

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

1 K.L. )

2 )  
3 Appellant, )  
4 )

5 vs. )

6 DIVISION OF MOTOR )  
7 VEHICLES, DEPARTMENT )  
8 OF ADMINISTRATION, )  
9 STATE OF ALASKA. )

Appellee. )  
10 )  
11 )

APPEAL CASE No. 3AN-11-05431CI

Original Received

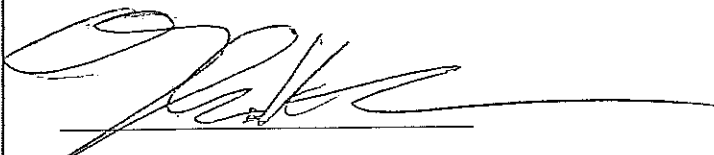
NOV 28 2011

Clerk of the Court

CERTIFICATE OF SERVICE

12 I hereby certify that on November 28, 2011, I mailed a true and correct  
13 copy of the following documents to: the Attorney General's Office, Civil Division,  
14 in Juneau.

- 15     ▪ Appellant's Reply Brief with Appendix, re: *K.L. v. DMV*, Appeal Case No.  
16     3AN-11-05431CI
- 17     ▪ Appellant's Request for Oral Argument re: *K.L. v. DMV*, Appeal Case No.  
18     3AN-11-05431CI
- 19     ▪ Appellant's Supplementary Excerpt, re: *K.L. v. DMV*, Appeal Case No.  
20     3AN-11-05431CI
- 21     ▪ Appellant's Certificate of Service, re: *K.L. v. DMV*, Appeal Case No. 3AN-  
22     11-05431CI

22   
23

24 Thomas Stenson, Attorney