

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

STEPHANIE LEIGH WHITAKER,
5248 Hidden Creek Circle
Mason, OH 45040

JENNIFER SHAUL,
7893 Yellowwood Drive
Mason, OH 45150

JANE DOE,
c/o Josh Langdon, LLC
810 Sycamore Street, Fl. 2
Cincinnati, OH 45202

PLAINTIFFS,

vs.

JUDGE JOSEPH W. KIRBY
Warren County Court of Common Pleas
Probate & Juvenile Division
900 Memorial Drive
Lebanon, OH 45036

Case No. 1:18-cv-540

Judge:

COMPLAINT

INTRODUCTION

1. Plaintiffs are the parents of transgender minors in Warren County who sought, are seeking, or intend to seek to legally change their names pursuant to Ohio law.
2. This case arises out of the pattern and practice of Defendant, acting under the color of state law, of treating transgender minors differently from others similarly situated without a rational basis for doing so in violation of their equal protection rights under the Fourteenth Amendment to the United States Constitution.

PARTIES

3. Plaintiff Stephanie Leigh Whitaker is an Ohio resident with a principal address at 5248 Hidden Creek Circle, Mason, OH 45040.
 - a. Whitaker and her husband, Kylen Whitaker, are parents of a fifteen-year-old transgender teen, Elliott Whitaker, whose legal name is currently Heidi Whitaker.
 - b. Whitaker filed a petition in Warren County Probate-Juvenile Court for Elliott's name change on April 24, 2018. Both parents consented to the legal name change to reflect Elliott's correct gender identity after consulting with multiple medical professionals and discussing it with their child.
 - c. Judge Kirby denied Elliott's name change application on June 22, 2018. An appeal to the Ohio Twelfth District Court of Appeals has been filed.
4. Plaintiff Jennifer Shaul is an Ohio resident with a principal address at 7893 Yellowwood Drive, Mason, OH 45150.
 - a. Shaul and her husband, Jeff Shaul, are parents of a fifteen-year-old transgender teen, James Shaul, whose legal name is currently Jenna Shaul.
 - b. Shaul filed a petition in Warren County Probate-Juvenile Court for James's name change on May 4, 2018. Both parents consented to the legal name change to reflect James' correct gender identity after consulting with multiple medical professionals and discussing it with their child.
 - c. A hearing on Shaul's application for name change is set to be heard by Judge Kirby on August 14, 2018.
5. Plaintiff Jane Doe is an Ohio resident with a principle residence at [REDACTED].
 - a. Doe is the sole legal parent of John Doe, a seventeen-year-old transgender teen. John Doe is a rising senior in high school.

- b. Doe has consented to the legal name change to reflect John Doe's correct gender identity after consulting with multiple medical professionals and discussing it with her child.
 - c. Doe is planning to file a petition in Warren County Probate-Juvenile Court for a name change. Doe is fearful that she and her child will be subjected to an unfair and unconstitutional refusal to consider the name change application.
 - d. The disclosure of Jane Doe's identity will cause her child irreparable harm as this case involves matters of the utmost personal intimacy.
6. Defendant Joseph W. Kirby is a judge of the Warren County Common Pleas Court, Probate-Juvenile Division.
- a. Judge Kirby has a principal place of business at 900 Memorial Drive, Lebanon, OH 45036.
 - b. Judge Kirby is, at all relevant times, acting under color of law.

JURISDICTION AND VENUE

7. This case arises, in part, under the laws of the United States, specifically 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331.
8. The declaratory relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and Federal Rule of Civil Procedure 57.
9. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391. Defendant is a resident of the State in which this district is located and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTS

NAME CHANGES FOR TRANSGENDER CHILDREN

10. Gender identity is a well-established medical and psychological term that refers to a person's fundamental, internal sense of their gender. Sex is the gender a person was assigned at birth, which correlates with genitalia. Gender identity matches the sex assigned at birth for most, but not all, people. Transgender people are people whose gender identity does not match their sex assigned at birth. Gender dysphoria is a diagnosis that applies to some, but not all, transgender people.
11. Transgender children typically consistently, persistently, and insistentlly feel and express a gender identity that is different from their sex assigned at birth. They may begin talking about their gender as soon as they begin to speak and some may express dissatisfaction with their genitals.
 - a. Transgender children are likely to experience gender dysphoria (i.e., distress related to their bodies not matching their gender identity). A pervasive, consistent, persistent and insistent sense of being another gender than the one assigned at birth and some degree of gender dysphoria are unique characteristics of transgender children. Transgender children may state that they are not their sex assigned at birth, or that someone (e.g., the doctor or a religious authority) made a mistake in their gender assignment.
 - b. The prevalence of children identifying as transgender is uncertain due to a lack of reliable data (i.e. fear of familial and societal rejection keeps some transgender people in the closet). Some studies estimate that 5 to 12% of girls and 2 to 6% of boys exhibit behavior traditionally inconsistent with their sex assigned at birth. Gender identification often begins around two years of age. The prevalence of gender identification through adolescence and adulthood is more likely to persist for individuals who first demonstrated gender dysphoria as toddlers.

12. Transgender adolescents typically consistently, persistently, and insistentlly feel and express a gender identity that is different from their sex assigned at birth. Transgender adolescents are likely to experience gender dysphoria. While many transgender adolescents have expressed their gender since they were old enough to talk, still many others do not realize their feelings about their gender until around puberty or even later.
 - a. Transgender adolescents often desire to make a social, legal, or medical gender transition while in school.
 - b. Transgender adolescents are not part of a “new” phenomenon. History suggests that they have existed in a wide range of cultures for thousands of years. Psychologists believe that by adolescence, a person’s gender identity is very resistant, if not immutable, to any type of intervention. The prevalence of transgender adolescents is uncertain. Some research suggests that transgender youth may be as prevalent as 0.5%.
 - c. Transgender adolescents may begin to seek therapy and consider hormone therapy and other methods to suppress the onset of puberty associated with their sex assigned at birth. Gender dysphoria that continues through the onset of puberty or increases at puberty is unlikely to desist. Early medical intervention to treat gender dysphoria is often be recommended by medical professionals for these youth.
13. Numerous medical professionals have opined that living in a manner consistent with one’s gender identity is critical to the health and well-being of transgender people, including children and adolescents.
 - a. The process by which transgender people come to live in a manner consistent with their gender identity, rather than their birth-assigned sex, is known as transition.

- b. Social transition involves shifting one's presentation and social functioning so that it is consistent with one's gender identity. Social transition is a part of necessary medical treatment for many transgender people with gender dysphoria.
- 14. Transgender adolescents experience rates of anxiety, depression and suicide that are dramatically higher than those among cisgender (i.e. non-transgender) adolescents. This is most likely tied to years of discrimination, internal conflict and rejection from social environments. Transgender children experience victimization from peers, are often worried about puberty, may be hiding their identities outside their homes, and are aware that their bodies are different from the bodies of children of the gender with which they identify.
- 15. Transgender adolescents, like transgender adults, often experience discrimination, ranging from subtle to severe, when accessing housing, health care, employment, education, public assistance, and other social services. This discrimination often includes assuming a person's assigned sex at birth is fully aligned with that person's gender identity, not using a person's preferred name or pronouns, asking transgender people inappropriate questions about their bodies, or making the assumption that psychopathology exists given a specific gender identity or gender expression.
- 16. Studies have found that transgender adolescents, like transgender adults, are at risk of experiencing prejudice and discrimination in educational settings.
 - a. In a 2014 study, over half of transgender children in a K-12 setting reported verbal harassment and over one-fifth reported physical harassment based on their gender expression. (Kosciw, Greytak, Palmer, & Boesen, 2014).
 - b. In a 2011 study, approximately 15% of transgender adults reported prematurely leaving educational settings ranging from kindergarten through college as a result of harassment (Grant et al., 2011). This study found that, as a result of discrimination and education

disparities, transgender people were substantially more likely to have a household income of less than \$10,000.

- c. A 2011 study has suggested that employment discrimination for transgender people may be related to stigma based on a transgender person's appearance, discrepancies in identity documentation, or being unable to provide job references linked to that person's pre-transition name or gender presentation. (Bender-Baird, 2011).

17. Social transitioning is important to transgender adolescents and can alleviate some of the risks and harms faced by transgender people.

- a. Once children are old enough to know that they identify with a gender different from the one they were born with, current medial thinking supports a "social transition" that includes the use of pronouns that matched the child's gender identity, calling them by the name of their choosing and allowing them to change their hairstyle and clothing to reflect their identity
- b. A recent study published in journal Pediatrics, found normal levels of depression and only slightly elevated anxiety levels in transgender children who were supported by their families in a social transition, including calling them by the name of their choosing.

18. Calling transgender children by the name of their choosing is likely to alleviate the harm caused by discrimination in accessing housing, health care, employment, education, public assistance, and other social services.

19. A legal name change is necessary to allow transgender children full access to housing, health care, employment, education, public assistance, and other social services.

- a. Government and social service agencies often require a legal name change. Transgender children often face difficulties when presenting legal documents that don't match their chosen name or gender identity.

- b. In order to update the name and/or gender on an Ohio ID or driver's license, a transgender person must submit a court order certifying the name change. If changing only the gender marker, a BMV Declaration of Gender Change form signed by a physician or psychologist/licensed therapist certifying the applicant's gender identity may be submitted.
- c. Ohio recently enacted new guidelines to obtain a state-issued driver's license or other credential for access to federal facilities or services, such as airport security screening by the Transportation Safety Administration. Ohio residents seeking such a document are required to provide documentation proving their name and date of birth, such as a Social Security card, birth certificate or passport and additional documents proving residential address.
 - i. If a resident's current name is not the same as the name listed on a resident's birth certificate, a resident must provide a certified copy of a court order granting the name change in order to obtain a compliant identification.
 - ii. The State of Ohio refuses to correct the gender markers on transgender people's birth certificates regardless of what steps a person may have taken in order to obtain recognition of their gender identity. A number of transgender people have challenged the constitutionality of this refusal in this Court. *Ray v. Himes*, S.D. Ohio No. 2:18-cv-00272-MHW.

20. Many transgender people are typically perceived by others accurately and consistent with their gender identity. A transgender person who has official documents, such as a driver's license or school records, with an incorrect name is burdened with an identity that conflicts not only with the person's gender, but also with how others perceive the person. A mismatch between a transgender person's chosen name, gender identity, or name on official documents can subject

that person to harms, including interference with the person's ability to pass background checks and obtain benefits that persons without such a mismatch routinely enjoy.

21. Denying transgender people the ability to change their names to a name that matches their gender identity reveals private information in contexts where this information would otherwise remain undisclosed (e.g., at a new job), regardless of whether a person's transgender identity may otherwise be known by others (e.g., to friends or family), and regardless of a person's desire not to disclose that personal information.

- a. Transgender people denied the ability to change their names are deprived of significant control over the circumstances surrounding disclosure of their transgender identity, including when, where, how, and to whom their transgender identity is disclosed.
- b. The ability to exercise control over the circumstances surrounding disclosure of their transgender identity, including when, where, how, and to whom their transgender identity is disclosed, is important because transgender people are often subjected to violence or harassment.

22. To obtain a legal name change in Ohio, an applicant must submit a petition to the court.

- a. Ohio Rev. Code § 2717.01 provides that at least 30 days before the hearing, the applicant must publish notice of the hearing in a newspaper, though publication requirements can be waived for the applicant's personal safety.
 - i. Depending on the nature of the offense, applicants with prior criminal convictions may not be eligible for a name change.
 - ii. An application for change of name may be made on behalf of a minor by either of the minor's parents, a legal guardian, or a guardian ad litem.

- b. The statute provides that that if the facts set forth in the application show reasonable and proper cause for changing the name of the applicant, the court may order the change of name.
- c. The Ohio Supreme Court has instructed that when deciding whether to permit a name change for a minor child pursuant to R.C. 2717.01(A), a court must consider the best interest of the child in determining whether reasonable and proper cause has been established. *In re Willbrite*, 85 Ohio St.3d 28, 32, 1999-Ohio-201.
 - i. Most of the factors, however, that the court is to consider deal with the change of a minor child's surname, not first name, and, as a result, have no relevance to the name change of a transgender child. These name change requests typically arise in the context of divorce or custody proceedings.
 - ii. The Ohio Supreme Court in *In re Willbrite* said:

[I]n determining whether a change of a minor's surname is in the best interest of the child, the trial court should consider the following factors: the effect of the change on the preservation and development of the child's relationship with each parent; the identification of the child as part of a family unit; the length of time that the child has used a surname; the preference of the child if the child is of sufficient maturity to express a meaningful preference; whether the child's surname is different from the surname of the child's residential parent; the embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's; parental failure to maintain contact with and support of the child; and any other factor relevant to the child's best interest.

- d. In the context of name changes unrelated to a child's surname, Ohio courts have held:

A court should deny a change of name if the change would involve a potential for fraud, if it would interfere with the rights of others, if the change would permit the applicant to avoid a legal duty, or if the change was in some way contrary to the strong public policy of the state.

In re Wurgler, 136 Ohio Misc.2d 1, 2005-Ohio-7139, ¶ 11.

- 23. There is no government justification to support a refusal to provide transgender children with a name change as part of social transitioning.

PLAINTIFFS NAME CHANGE APPLICATION

24. Whitaker filed for Elliott's name change on April 24, 2018.
25. Both parents consented to the legal name change to reflect Elliott's correct gender identity after consulting with multiple medical professionals and discussing it with their child.
- a. Elliott sought medical treatment due to anxiety and depression. He is now under the care of Dr. Lee Ann Conard at the Cincinnati Children's Medical Center and Marcy Marklay, an LPCC from the Lindner Center.
 - b. Dr. Conard strongly supports the petition for Elliot's legal name change because changing his legal name is a critical component to mitigate depression, anxiety, and suicidal ideations/attempts often present in the transgender population.
 - c. Elliott sought a name change because his legal name is on numerous documents at school, which "outs" him to staff and students. His legal name will also be on his passport, driver's license, college applications, etc.
 - d. Elliott is not seeking the name change for purposes of fraud. Elliott's name change would not interfere with the rights of others or permit Elliott to avoid a legal duty. Elliott's name change is not contrary to the strong public policy of the state of Ohio.
26. Whitaker, along with Elliott and her husband, appeared for a hearing before Judge Kirby on June 18, 2018. A transcript of the hearing is attached as Exhibit A.
- a. Whitaker explained to the court that she believed, based on the advice she had received from medical professionals, that a name change was in Elliott's best interest:

MS. S. WHITAKER: Um, we have been going to therapy for about a year now, and, and, we are, um we've been to Children's Hospital and, un, gone through all of the uh things that we feel like we should go through, and, we're convinced that it's in Elliot's best interest to change his name.
THE COURT: Was there a diagnosis of . . . ? . . .
MS. S. WHITAKER: Gender Dysphoria

(Tr. p. 5-6.)

- b. Whitaker also had a letter from a medical professional explaining the treatment being received by Elliot. (Tr. p. 6.) Whitaker told Judge Kirby, “we have gone through a lot of therapy to convince us that it’s not just a passing phase or fad.” (Tr. p. 15.)
- c. Whitaker explained to Judge Kirby that Elliot’s school, although supportive, is unable to change permanent records without a court order approving the name change. Elliott testified:

[ELLIOT] WHITAKER: The school can’t change my name in, um, the system like on their computers, and, so without it being like legally changed. So all the substitutes get the old list where my name is my birth name and, just all legal documents, and, prescriptions, and everything has to have my birth name on it.

(Tr. p. 18.) Whitaker’s husband told Judge Kirby that the name change was necessary for college applications and “emergency situations.” (Tr. p. 19.)

- d. Judge Kirby made a number of inquiries concerning the history of Elliot’s expression of his gender and asked about Elliot’s counseling and potential hormone treatment. (Tr. p. 11, 14.)
- e. Judge Kirby asked personal and irrelevant questions, such as whether Elliott was considering gender reassignment surgery or whether he was sexually attracted to women. (Tr. p. 18, 22.) Judge Kirby also asked a series of questions about which restroom Elliot used at school:

THE COURT: . . . I am not allowed into a female’s restroom, right? I mean it’s just, I would probably get in trouble or at least called out on it if I did, okay. Is the same as true if somebody who associates themselves as male? Uh, can she go into the male’s restroom?

MS. S. WHITAKER: . . . Elliot uses an, um, non-gendered bathroom.

(Tr. p. 20.)

- f. Judge Kirby suggested that Elliott’s expression of his gender identity was not sincere but, instead, was the result of exposure of media coverage of the transition by Caitlyn Jenner.

THE COURT: Well explain to me the process? When did you, uh, when did Heidi come to you and tell you that she, she associates herself as a boy?

MS. S. WHITAKER: About a year, and, a half ago

MR. WHITAKER: In, in August

MS. S. WHITAKER: Yes.

MR. WHITAKER: It was actually last August.

THE COURT: Kind of when he [Caitlyn Jenner] made the papers, and, everybody was, was, doing it kind of thing?

MS. S. WHITAKER: No I don't believe so.

THE COURT: Was it about the time that it kind of made headlines about a year, and, a half ago? . . . Everybody was talking about all the transgender transformations were coming out in the paper?

(T. p. 6-7.) Later in the hearing, Judge Kirby returned to this line on inquiry:

THE COURT: So a year, and, a half your parents knew, and, the world knew, how long have you known?

[ELLIOT] WHITAKER: Um, there's always been like a feeling of distress about it like from as far back as I can remember really . . . But then around when I learned that you can be transgender I, I kind of clicked, and, you know I was like that's what I was like upset about. That I wanted to be a boy but I couldn't.

THE COURT: That's what I was referring to a couple years ago when it hit the papers, and, people were starting, they were identifying themselves or associating themselves with it. Uh, because it was not something that people were talking about.

MS. S. WHITAKER: I guess that never struck me because I've known transgender people since I was a kid . . .

THE COURT: But weren't they just known as cross-dressers back then or did they actually go through the physical? . . . I just look at Bruce Jenner set the stage nationally for it, maybe even . . . [a]ll over the world.

(Tr. p. 22-23.)

27. Judge Kirby denied Elliott's name change application on June 22, 2018 stating that they cannot apply for a name change again until the minor becomes an "adult." A copy of the decision denying the name change is attached as Exhibit B.

a. In his decision, Judge Kirby said:

The Court is sympathetic to the parents of the child and their desire to assuage their child. In essence, the Court isn't say "no" to the name change. The Court is simply saying "not yet."

Age.

Develop.

Mature.

And take advantage of your common-law right to use the name you are petitioning for in the meantime, so long as it's not for fraudulent purposes.

- b. In his decision, Judge Kirby did not find that the name change would involve a potential for fraud, it would interfere with the rights of others, would permit the applicant to avoid a legal duty, or was in some way contrary to the strong public policy of the state
28. Shaul filed for James' name change on May 4, 2018. A hearing is scheduled on the application; no decision has been rendered.
29. Both parents consented to the legal name change to reflect James' correct gender identity after consulting with multiple medical professionals and discussing it with their child.
- a. James sought medical treatment due to anxiety and depression. He is now under the care of Dr. Lee Ann Conard at the Cincinnati Children's Medical Center and Dr. Hillary Wishnick, a clinical psychologist.
 - b. Dr. Wishnick strongly supports the petition for James' legal name change because changing his legal name is a critical component to mitigate depression, anxiety, and suicidal ideations/attempts often present in the transgender population. Dr. Wishnick states that James "consistently presents himself as male in all settings including work, school and with family and friends." Dr. Wishnick also conducted a biopsychosocial assessment and determined that there is no significant impairment in James' insight, impulsivity, or decision-making ability.
 - c. James sought a name change because his legal name is on numerous documents at school, which "outs" him to staff and students. His legal name will also be on his passport, driver's license, college applications, etc.
 - d. James is not seeking the name change for purposes of fraud. James' name change would not interfere with the rights of others or permit James to avoid a legal duty. James' name change is not contrary to the strong public policy of the state of Ohio.

30. Jane Doe intends to file to a John Doe's name change in Warren County Common Pleas court.
- a. John Doe sought medical treatment due to anxiety and depression. Doe is now under the care of Dr. Conard at the Cincinnati Children's Medical Center. Doe has been living as the correct gender identity and going by their new name since 2015.
 - b. Dr. Conard strongly supports the petition for Doe's legal name change because changing their legal name is a critical component to mitigate depression, anxiety, and suicidal ideations/attempts often present in the transgender population.
 - c. John Doe seeks a legal name change because their legal name is on numerous documents at school, which "outs" them to staff and students. Doe's legal name will also be on their passport, driver's license, college applications, etc.
 - d. John Doe is not seeking the name change for purposes of fraud. John Doe's name change would not interfere with the rights of others or permit John Doe to avoid a legal duty. John Doe's name change is not contrary to the strong public policy of the state of Ohio.
31. Plaintiff Doe has not filed for the name change because she fears unequal and embarrassing treatment by Judge Kirby.

PATTERN AND PRACTICE

32. Judge Kirby has a pattern and practice of treating name change requests from transgender adolescents differently than other name change requests.
33. On the same day that Judge Kirby denied Whitaker's name change request, Judge Kirby denied two other transgender teen name change applications See Warren Count No. 2018-1955; Warren County No.. 2018-9045. Redacted copies of these decisions are attached as Exhibits C and D. Judge Kirby used identical language in denying all of the name change requests from transgender adolescents.

34. The name change applications review by the Warren County Common Pleas Court, Probate-Juvenile Division, in 2018 are summarized in this table:

<u>Case #</u>	<u>File Date</u>	<u>Disposition</u>	<u>Transgender</u>	<u>Hearing Officer</u>
20189085	5/21/2018	Granted	No	Magistrate
20189084	5/16/2018	Granted	No	Magistrate
20189083	5/11/2018	Granted	No	Magistrate
20189082	5/10/2018	Granted	No	Magistrate
20189078	5/4/2018	Granted	No	Magistrate
20189077	5/2/2018	Granted	No	Magistrate
20189076	5/2/2018	Granted	No	Magistrate
20189075	4/25/2018	Granted	Transgender (Adult)	Judge Kirby
20189073	4/24/2018	Denied	Transgender Minor	Judge Kirby
20189069	4/12/2018	Granted	No	Magistrate
20189061	3/30/2018	Granted	No	Magistrate
20189060	3/30/2018	Granted	No	Magistrate
20189059	3/30/2018	Granted	Transgender (Adult)	Judge Kirby
20189055	3/27/2018	Denied	Transgender Minor	Judge Kirby
20189054	3/23/2018	Granted	No	Magistrate
20189052	3/21/2018	Granted	Transgender (Adult)	Judge Kirby
20189050	3/19/2018	Granted	No	Magistrate
20189049	3/19/2018	Granted	No	Magistrate
20189045	3/13/2018	Denied	Transgender Minor	Judge Kirby
20189043	3/9/2018	Granted	No	Magistrate
20189042	3/6/2018	Granted	No	Magistrate

<u>Case #</u>	<u>File Date</u>	<u>Disposition</u>	<u>Transgender</u>	<u>Hearing Officer</u>
20189040	3/5/2018	Granted	No	Magistrate
20189039	3/5/2018	Granted	No	Magistrate
20189036	3/2/2018	Granted	No	Magistrate
20189035	3/2/2018	Granted	No	Magistrate
20189034	3/2/2018	Granted	No	Magistrate
20189030	2/23/2018	Denied	No	Magistrate
20189028	2/21/2018	Granted	Transgender Minor	Magistrate
20189026	2/15/2018	Granted	Transgender (Adult)	Judge Kirby
20189016	2/5/2018	Granted	Transgender (Adult)	Judge Kirby
20189015	2/2/2018	Granted	Transgender (Adult)	Judge Kirby
20189013	1/26/2018	Granted	No	Magistrate
20189009	1/19/2018	Granted	No	Magistrate
20189005	1/5/2018	Granted	No	Magistrate
20189002	1/2/2018	Granted	No	Magistrate
20189001	1/2/2018	Granted	No	Magistrate

35. A review of the 2018 name change applications by the Warren County Common Pleas Court, Probate-Juvenile Division, in 2018, shows that Judge Kirby has a pattern and practice of treating name change applications by adolescents differently than other name change applications.

- a. On information and belief, Judge Kirby has instructed that all name change applications from transgender persons be assigned to his docket for a hearing. Typically, name change application hearings are conducted by a magistrate judge. Judge Kirby has not conducted any name change hearings for non-transgender individuals.

- b. In 2018, Judge Kirby has denied each and every name change applications by transgender adolescents when he conducted the hearing. The only name change application by a transgender adolescent approved by the Warren County Common Pleas Court, Probate-Juvenile Division in 2018 was after a hearing conducted by a magistrate judge.
36. On information and belief, Judge Kirby has demonstrated animosity towards transgender adolescents seeking a name change without any rational basis.
- a. Judge Kirby has ignored evidence presented by the parties from medical professionals suggesting that the name change is in the best interest of the child. Instead, Judge Kirby has substituted his own archaic views.
 - a. The questioning by the Court in the Whitaker matter demonstrates that Judge Kirby is unwilling to accept the view of professionals that gender identity may be expressed by adolescents and that by adolescence, a person's gender identity is very resistant to any type of intervention. Instead, Judge Kirby expressed a belief – based on no evidence in the record – that the adolescents seeking a name change are motivated because they saw Caitlyn Jenner on television.
 - b. Judge Kirby is not making an individualized determination about the best interest of each child but, instead, is motivated pre-existing notions about towards transgender individuals. Instead, Judge Kirby relied on sex stereotyping based on a perception that the behavior of transgender adolescents transgresses gender stereotypes.
 - c. Judge Kirby did not make any findings that the name changes sought by transgender adolescents would involve a potential for fraud, would interfere with the rights of others, would permit the applicant to avoid a legal duty, or were in some way contrary to the strong public policy of the state of Ohio.

37. Judge Kirby's actions against are causing, or are likely to cause, substantial, immediate, and continuing damages to Plaintiffs' children because changing their legal names is a critical component to mitigate depression, anxiety, and suicidal ideations/attempts.

**COUNT I
(DECLARATORY JUDGMENT – VIOLATION OF EQUAL PROTECTION
PROVISIONS OF UNITED STATES CONSTITUTION)**

38. Plaintiff repeats and incorporates all of the allegations of this Complaint, as if fully set forth herein.

39. The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

40. Judge Kirby has facially and intentionally discriminated against transgender people based on sex. By not permitting transgender adolescents to use a name that fits their gender identity, the court in maintaining a classification reflecting sex contrary to their gender identity, causing harm as a result.

41. Discrimination based on sex-related considerations also includes, but is not limited to, discrimination based on gender nonconformity, gender identity, transgender status, and gender transition.

42. Plaintiff, acting as individual "classes of one" have been treated by the Defendant differently from others similarly situated without a rational basis for doing so. Judge Kirby violated the Equal Protection Clause's prohibition against sex-based discrimination when the judge treated transgender adolescents unfavorably because of their gender identity.

43. Discrimination because a person is transgender is discrimination based on a sex-related consideration, which requires courts to apply intermediate scrutiny when evaluating the constitutionality of Judge Kirby's actions.

44. Alternatively, discrimination because a person is transgender requires courts to apply strict scrutiny when evaluating the constitutionality of Judge Kirby's actions. Government discrimination against

transgender people because of their transgender identity bears the indicia of a suspect classification requiring strict scrutiny by the courts. Transgender people have suffered a long history of extreme discrimination and continue to suffer such discrimination to this day. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people are a relatively small minority, and have had limited success securing express federal, state, and local protections specifically protecting them against discrimination, and have been and continue to be regularly targeted by anti-transgender legislation, regulations, bills, and other government action.

45. Judge Kirby has facially and intentionally discriminated against the Plaintiffs in violation of the Equal Protection guarantees of the 14th Amendment on the basis of sex and transgender status by depriving transgender adolescents the ability to change their name. Non-transgender adolescents are not deprived of this ability to change their names.
46. Defendant's actions deny transgender people, including Plaintiffs, access to legal documents and the ability to legally change their names. Defendant's refusal to allow transgender children to change their legal name erects a barrier to the full recognition, participation, and inclusion of transgender people in society and subjects them to discrimination, privacy invasions, harassment, humiliation, stigma, harm to their health, and even violence.
47. Plaintiffs are entitled to a declaratory judgment that Judge Kirby has violated Plaintiffs' right to Equal Protection guaranteed by the Fourteenth Amendment to the United States Constitution.
48. Pursuant to 42 U.S.C. §1988, Plaintiffs are entitled to her attorney's fees incurred in bringing this action.

COUNT II
(DECLARATORY JUDGMENT -- 42 U.S.C. §1983)

49. Plaintiffs repeat and incorporate all of the allegations of this Complaint, as if fully set forth herein.

50. Judge Kirby violated the Equal Protection Clause's prohibition against sex-based discrimination when the judge treated transgender adolescents unfavorably because of gender non-conformity.
51. Plaintiffs are entitled to a declaratory judgment that Judge Kirby has violated 42 U.S.C. §1983.
52. Pursuant to 42 U.S.C. §1988, Plaintiff is entitled to her attorney's fees incurred in bringing this action.

PRAYER FOR RELIEF

Plaintiff respectfully requests the following relief:

- Judgment Declaring that Defendant has violated Plaintiffs' right to Equal Protection guaranteed by the Fourteenth Amendment to the United States Constitution and prohibiting further violations.
- Judgment Declaring that Defendant has violated 42 U.S.C. §1983 and prohibiting further violations.
- Court costs and other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees as authorized by 42 U.S.C. §1988.

Respectfully submitted,

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EXHIBIT A

COURT

IN THE COURT OF COMMON PLEAS
STATE OF OHIO, COUNTY OF WARREN

2018 JUL 16 AM 11:18

PROBATE/JUVENILE DIVISION

- - -

IN THE MATTER OF:

Case No: 2018-9073

HEIDI C. WHITAKER

ORIGINAL

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

HEARING DATE:

RECORDING

June 18, 2018

TRANSCRIBER:

Stephanie Nicole Rogers

1 APPEARANCES:

2 On behalf of HEIDI WHITAKER AKA ELLIOT WHITAKER (CHILD)

3 Stephanie Whitaker (MOTHER)

4 Kylen Whitaker (FATHER)

5 5248 Hidden Creek Circle

6 Mason, OH 45040

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16 BE IT REMEMBERED that the above entitled matter came on

17 for hearing before Joseph W. Kirby; Judge of the

18 Probate/Juvenile Court of Warren County, Ohio, on June 18, 2018

19 and the following was heard:

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INDEX

DIRECT CROSS REDR. RECR.

THERE WAS NO DIRECT OR CROSS
THE JUDGE ASKED QUESTIONS OF ALL PARTIES FROM THE BENCH
PARTIES SWORN IN AND PARTIES INVOLVED AS FOLLOWS:
MS. STEPHANIE WHITAKER (MOTHER) -----STARTED ON PAGE 5
MR. KYLEN WHITAKER (FATHER)
MS. HEIDI WHITAKER AKA ELLIOT WHITAKER (CHILD)

MATTER TAKEN UNDER ADVISEMENT 25

CERTIFICATE OF TRANSCRIPTIONIST 26

1 BAILIFF: All rise. Warren County Probate Court is in
2 session. Your Honorable Joe Kirby presiding. All parties
3 please raise your right hand. Do you swear or affirm that the
4 testimony that you're about to give will be the truth, the whole
5 truth, and, nothing but the truth?

6 MS. S. WHITAKER: Yes.

7 MR. WHITAKER: Yes.

8 MS. H. WHITAKER: Yes.

9 BAILIFF: Please be seated. (INAUDIBLE) would for the
10 record state your name, spelling your last name, Ma'am.

11 MS. H. WHITAKER: Um...

12 MR. WHITAKER: Last name?

13 MS. H. WHITAKER: Whitaker.

14 BAILIFF: Spell your last name for me Ma'am.

15 MS. H. WHITAKER: Heidi Clair Whitaker. Uh,
16 W.H.I.T.A.K.E.R.

17 BAILIFF: Thank you Ma'am.

18 MS. S. WHITAKER: Stephanie Lee Whitaker.
19 W.H.I.T.A.K.E.R.

20 BAILIFF: Thank you. Sir?

21 MR. WHITAKER: Whitaker, Kylen Wade. W.H.I.T.A.K.E.R.

22 BAILIFF: Thank you.

23

24

25

DIRECT TESTIMONY OF STEPHANIE WHITAKER, MOTHER, KYLEN WHITAKER,
FATHER & HEIDI WHITAKER AKA ELLIOT WHITAKER CHILD
BY JUDGE, JOSEPH W. KIRBY FROM THE BENCH

THE COURT: So mom it looks like you are the applicant here. So what is it that you're asking this Court to do?

MS. S. WHITAKER: We're asking for a, a legal name change.

THE COURT: Okay, and, give me some more particulars?

MS. S. WHITAKER: Um, Elliot um, want to be a boy so, wants to change name to Elliot instead of Heidi.

THE COURT: So right now the, the child's name is Heidi Clair Whitaker?

MS. S. WHITAKER: Yes Sir.

THE COURT: And, that was the, that was the name given at birth correct?

MS. S. WHITAKER: Yes Sir.

THE COURT: And, was Heidi born a female?

MS. S. WHITAKER: Yes.

THE COURT: And, you think it's in Heidi's best interest to be known as Elliot now?

MS. S. WHITAKER: Yes Sir.

THE COURT: So tell me about that?

MS. S. WHITAKER: Um, we have been going to therapy for about a year now, and, and, we are, uh, we've been to Children's

1 Hospital, and, uh, gone through all of the uh, things that we
2 feel like we should go through, and, we're convinced that it's
3 in Elliot's best interest to change his name.

4 THE COURT: Was there a diagnosis of um?

5 MS. S. WHITAKER: Uh, what, Dysphoria.

6 MS. H. WHITAKER: Yeah.

7 MS. S. WHITAKER: Gender Dysphoria.

8 MR. WHITAKER: Gender Dysphoria yes.

9 THE COURT: Who's the doctor?

10 MS. S. WHITAKER: The therapist is Marcy Marklay at
11 Lindner Center of Hope, and, the physician is Doctor Kinard at
12 Children's Hospital.

13 THE COURT: So does Children's operate through the
14 Lindner Center?

15 MS. S. WHITAKER: Uh, I don't believe so.

16 MR. WHITAKER: I do have a letter from Doctor, or from
17 Marcy Marklay releasing um, Heidi for transgender treatments at
18 Connor uh...

19 MS. S. WHITAKER: Children's Hospital.

20 THE COURT: Well explain to me the process? When did
21 you uh, when did Heidi come to you, and, tell you that she, she
22 associates herself as a boy?

23 MS. S. WHITAKER: About a year, and, a half ago.

24 MR. WHITAKER: In, in August.

25 MS. S. WHITAKER: Yes.

1 MR. WHITAKER: It was actually last August.

2 THE COURT: Kind of when he made the papers, and,
3 everybody was, was doing it kind of thing?

4 MS. S. WHITAKER: No I don't believe so.

5 THE COURT: Was it about the time that it kind of made
6 headlines about a year, and, a half ago?

7 MS. S. WHITAKER: What headlines?

8 THE COURT: Everybody was talking about all the
9 transgender transformations were coming out in the paper?

10 MS. S. WHITAKER: I don't recall.

11 THE COURT: Okay.

12 MS. S. WHITAKER: I don't recall.

13 THE COURT: Well um, well did, did Heidi add, address,
14 and, appear in, as a boy?

15 MS. S. WHITAKER: Yes.

16 MR. WHITAKER: Yes.

17 THE COURT: For how long?

18 MS. S. WHITAKER: About a year, and, a half now.

19 MR. WHITAKER: In the spring um, Heidi started cutting her
20 hair, and, wanting to wear boy's cloths.

21 THE COURT: In the spring what 16"?

22 MR. WHITAKER: Spring of last year, yes.

23 THE COURT: 17"?

24 MR. WHITAKER: Spring of 17", and, then in August...

1 THE COURT: Say that again. So in the spring of 17",
2 she wanted to cut her hair, and, wear boy's clothes?

3 MS. S. WHITAKER: Umm hum.

4 MR. WHITAKER: Yes.

5 MS. S. WHITAKER: Yes Sir.

6 MR. WHITAKER: And, we started sending her to a therapist.

7 THE COURT: And, what made you send her to a therapist?

8 MS. S. WHITAKER: Um, I wanted to make sure that the uh,
9 gender identification was real as you said. Like it wasn't a
10 trend or a fad or something.

11 MR. WHITAKER: Umm hum. Sorry actually there was a lot of
12 anxiety associated with Heidi, and, anxiety disorder um, anti-
13 depressants. We sent her to a therapist. The therapist said
14 um, the therapist couldn't tell us, didn't want to tell us.
15 Said you need to go a specialist because a therapist in, in a
16 session with Heidi, Heidi said she was transgender. So since
17 then we did find a specialist in transgender issues.

18 THE COURT: And, that's at the Lindner Center?

19 MR. WHITAKER: That's at the Lindner Center. That's Marcy
20 Marklay. And, after our visits, and, actually three (3) on one
21 (1) visits um, on March 23th, Marcy Marklay gave us a letter to
22 allow for treatments uh, for hormone therapy if Heidi decides it
23 at Children's Hospital.

24 THE COURT: And, how old is Heidi, fifteen (15)?

25 MS. S. WHITAKER: Fifteen (15).

1 MR. WHITAKER: Fifteen (15), yes Sir.

2 THE COURT: And, this therapist gave clearance to
3 Children's doctor to start physical transformation?

4 MS. S. WHITAKER: Yes Sir.

5 MR. WHITAKER: Yes.

6 MS. S. WHITAKER: Hormone therapy.

7 MR. WHITAKER: Would the Court like a copy of the letter?

8 THE COURT: Please.

9 MR. WHITAKER: That's my copy.

10 THE COURT: So you chose the name Elliot, is that
11 correct?

12 MS. H. WHITAKER: Yes Sir.

13 THE COURT: How long have you been going by the name
14 Ell, Elliot?

15 MS. H. WHITAKER: Um, I, I started going by it at school
16 beginning of last school year.

17 THE COURT: August?

18 MS. H. WHITAKER: Yes.

19 THE COURT: And, what school do you go to?

20 MS. H. WHITAKER: Mason High School.

21 THE COURT: And, how did that come about? You'd already
22 started to change your appearance?

23 MS. H. WHITAKER: Um, I had to um, talk with uh,
24 counselor at school to get it um, the teachers to call me by my
25 name.

1 THE COURT: Did the school call you, does the school
2 call you by your new name?

3 MS. H. WHITAKER: Yes.

4 THE COURT: How many times have you seen this Marcy
5 Marklay?

6 MS. S. WHITAKER: Um, we have probably seen Marcy...

7 MR. WHITAKER: Like twenty (20) times.

8 MS. S. WHITAKER: Twenty (20) times I would say.

9 MR. WHITAKER: Yes.

10 THE COURT: How long were the sessions?

11 MS. S. WHITAKER: An hour, and, we will continue with
12 those.

13 THE COURT: And, what's the purpose of the therapy that
14 she provides?

15 MS. S. WHITAKER: Uh, the purpose is for both anxiety,
16 and, gender issues.

17 THE COURT: Have you ever received, and, I guess I'm
18 talking to you Elliot. Have you ever received any hospital stay
19 or any type of suicidal ideations or attempts, anything like
20 that?

21 MS. H. WHITAKER: No Sir.

22 THE COURT: Do you have any friends at school that are
23 going through this?

24 MS. H. WHITAKER: Um, a few but they're mostly just
25 acquaintances.

1 THE COURT: Have you already had a doctor's appointment
2 with Doctor Kinard?

3 MS. H. WHITAKER: Yes.

4 THE COURT: And, how many appointments have you had?

5 MS. H. WHITAKER: We've had three (3), four (4).

6 MR. WHITAKER: We've had like four (4).

7 MS. H. WHITAKER: Four (4) sorry.

8 THE COURT: Have they started any, any of the physical?

9 MS. S. WHITAKER: They did um, uh, a blood draw for
10 baseline hormone levels but that's as far as we've gotten.

11 THE COURT: Do you know what the next step is?

12 MS. S. WHITAKER: The next step would be starting
13 testosterone.

14 THE COURT: And, do you plan on authorizing that on
15 behalf of your child?

16 MS. S. WHITAKER: Yes Sir.

17 MR. WHITAKER: Yes Sir.

18 THE COURT: And, when's that gonna start taking place?

19 MS. S. WHITAKER: July 13th.

20 THE COURT: And, what's the, what happens when, in the
21 testosterone therapy? What happens to the body?

22 MS. S. WHITAKER: Biologically? Um, a large number of
23 things happen but, facial hair, um, have body type more like a
24 male um, Adam's apple, voice change.

1 MS. H. WHITAKER: (INAUDIBLE---TALKING TO SOFT) male
2 puberty.

3 MS. S. WHITAKER: Yeah it basically like going through
4 male puberty.

5 THE COURT: So are they going to artificially put her
6 through puberty then?

7 MS. S. WHITAKER: Yes.

8 THE COURT: Is there a recommended age that Doctor
9 Kinard has for the physical transformation?

10 MS. S. WHITAKER: Um, this is something we've talked
11 about quite a bit, and, um, studies have shown the earlier you
12 can do this if you're sure the better the outcome will be as far
13 as um, mental health. I should just say that isn't something
14 that we are treating lightly. There's been a lot of discussion
15 about it.

16 THE COURT: I imagine a lot of your decision has to do
17 with supporting your child?

18 MS. S. WHITAKER: Yes Sir.

19 MR. WHITAKER: Yeah.

20 THE COURT: Do you know of anybody else who's gone
21 through this?

22 MS. S. WHITAKER: We do have a support group uh, that
23 we've come to be uh, acquainted with through the process.

1 THE COURT: Has anybody ever talked about what happens
2 when you're eighteen (18) or nineteen (19), and, you change your
3 mind, and, it wasn't what you wanted or?

4 MS. S. WHITAKER: We have definitely talked about that
5 yes.

6 THE COURT: What happens then?

7 MS. S. WHITAKER: What happens then is there are some
8 changes that are permanent, and, cannot be reversed, and, that's
9 just something that you have to come to, to grips with.

10 MR. WHITAKER: These are questions we asked Marcy the
11 therapist.

12 MS. S. WHITAKER: And, Doctor Kinard also.

13 MR. WHITAKER: And, Doctor Kinard, and, most of the stories
14 you had were I think ninety-nine percent (99%) were great.
15 There were a few cases of one (1) like why did I do this. And,
16 that, that is a concern but Elliot seems to be...

17 MS. S. WHITAKER: Sure.

18 MR. WHITAKER: Sure of this.

19 THE COURT: So what is the uh, process for somebody
20 who's experiencing this in their family? Do the first thing
21 obviously is you're taking him to a therapist just to find out
22 what's all the anxiety because there's some, I'm sure there's
23 some other issues, anxiety, depression, things like that. So
24 you go see a, I'll say a normal therapist but you know what I
25 mean?

1 MS. S. WHITAKER: Right.

2 THE COURT: And, then they tell you this is kind of
3 advanced, it's kind of cutting edge, it's new, you need to talk
4 to somebody who's familiar with it, and, they send you to
5 someone at Lindner correct?

6 MR. WHITAKER: Right.

7 MS. S. WHITAKER: Well not some much new as in it's; it's
8 sort of a specialist area um, that we would want the therapist
9 to be well acquainted with the research in the area. Um, so not
10 so much a new thing as just being well versed.

11 THE COURT: So a specialized therapist?

12 MS. S. WHITAKER: Yes Sir.

13 MR. WHITAKER: Yes.

14 THE COURT: Okay, and, so the thing is for you to have
15 counseling, and, therapy sessions for as long as it takes right?

16 MS. S. WHITAKER: Yes Sir.

17 THE COURT: Okay.

18 MS. S. WHITAKER: There's really no set time. It's just
19 until the therapist is um, and, and, we did talk to Marcy about
20 wanting to be one hundred percent (100%) sure as much as we can.
21 You can never be one hundred percent (100%) sure right?

22 THE COURT: Well does she tell you I mean, here's what
23 I've learned as I've been sitting up here that I deal with, I'm
24 the Juvenile Judge not just Probate. I deal with juveniles

1 whose brains have not fully developed yet, and, they won't be
2 until they're an adult.

3 MS. S. WHITAKER: Right.

4 THE COURT: Do they agree with that statement?

5 MS. S. WHITAKER: Yes.

6 THE COURT: So...

7 MS. S. WHITAKER: I know what you're, I think I know what
8 you're getting at. It's a fine line right? Are we doing damage
9 or are we helping right?

10 THE COURT: Well um, it's one (1) thing what we do as
11 adults that we kind of answer to ourselves but what do we do
12 when we're children? Um, if a fifteen (15) year old said to me
13 I want to quit school, and, the parents say yeah we support it I
14 would say let's not do that. I mean let's get him through
15 school. I mean at eighteen (18) they're allowed to quit school.

16 MS. S. WHITAKER: Right.

17 THE COURT: Um...

18 MS. S. WHITAKER: And, it's something that we have talked
19 quite a bit about. You know we just can't let the kids do
20 whatever they want, and, is it just a passing phase but, we have
21 gone through a lot of therapy to convince us that it's not just
22 a passing phase or a fad. Um...

23 THE COURT: Does your insurance cover this transgender
24 process do you know? Have you looked into it?

25 MS. S. WHITAKER: I have no idea. Do you?

1 MR. WHITAKER: Yes Sir.

2 MS. S. WHITAKER: It does.

3 MR. WHITAKER: Proc, Proctor & Gamble, I work for Proctor &
4 Gamble. They are very inclusive to LGBT.

5 THE COURT: Do you know of other plans that cover it?
6 Do know of like government funded ones, Medicare, Medicaid?
7 Have you ever heard or read?

8 MR. WHITAKER: I haven't read or heard about.

9 MS. S. WHITAKER: I don't believe that Medicaid is
10 covering um, hormone. I have a friend who's on Medicaid, and,
11 it doesn't cover her hormones anymore.

12 THE COURT: Is it for the same process or just?

13 MS. S. WHITAKER: Transgender but male to female.

14 THE COURT: Okay.

15 MR. WHITAKER: The, the hormone is a life-long treatment.

16 THE COURT: Oh.

17 MR. WHITAKER: I've, I've met transgender people. Like
18 even later it's like every two (2) weeks they give themselves a
19 shot.

20 THE COURT: Only on the reverse side um, from male to
21 female?

22 MR. WHITAKER: It...

23 MS. S. WHITAKER: Both, either...

24 MR. WHITAKER: Both, either way.

25 THE COURT: Oh.

1 MR. WHITAKER: It's a life-long...

2 MS. S. WHITAKER: Yeah.

3 MR. WHITAKER: Um, therapy.

4 MS. S. WHITAKER: If you were to stop taking either the
5 estrogen or the testosterone somethings will revert back, and,
6 but somethings would be permanently um, changed.

7 THE COURT: Does the treatment through Children's at
8 Doctor Kinard, is that something that you all signed for? Do
9 they have, will they have Elliot sign for it, or how does that
10 work?

11 MS. S. WHITAKER: I'm not sure. I know that we have to
12 agree, and, we have to have a letter from a therapist.

13 MR. WHITAKER: Yeah three (3) parties have to consent.
14 Doctor Kinard at Children's Hospital, a licensed therapist, and,
15 then the parents.

16 MS. S. WHITAKER: And, I assume the, the patient as well.

17 MR. WHITAKER: Yes but, but as far as because of underage
18 consent.

19 THE COURT: Elliot have they told you that in common law
20 you can go by whatever name you want too? Did you know that?
21 Like you're going to school?

22 MS. H. WHITAKER: Um, uh...

23 THE COURT: Did you wonder how that came about, how they
24 would even allow it for you to be, change your name like that?

25 MS. H. WHITAKER: Not really Sir.

1 THE COURT: What's that?

2 MS. H. WHITAKER: Not really Sir.

3 THE COURT: So who won't go along with you just saying
4 your name is Elliot? Who won't agree to that, anybody? I mean
5 what's the need to have it done legally?

6 MS. H. WHITAKER: The school can't change my name in um,
7 the system like on their computers, and, so without it being
8 like legally changed. So all the substitutes get the old list
9 where my name is my birth name, and, just all legal documents,
10 and, prescriptions, and everything has to have my birth name on
11 it.

12 THE COURT: Does that like when a substitute comes in,
13 and, they don't know you to be Elliot they're gonna call roll,
14 and, ask for Heidi Whitaker right, and then you have to respond?
15 Does that drudge up all, more of anxiety?

16 MS. H. WHITAKER: Yes Sir.

17 THE COURT: Is there ever gonna be a time where they
18 have to do like uh, surgery, physical surgery, alteration? Is
19 that part of the plan or part of the process?

20 MS. S. WHITAKER: Uh, we haven't gotten that far yet but
21 it is a possibility.

22 THE COURT: Is that something happen when you're later
23 like when you're an adult?

24 MS. S. WHITAKER: I think it just depends on when you
25 feel everyone is ready for that.

1 MS. H. WHITAKER: It's usually more towards adulthood
2 though.

3 MS. S. WHITAKER: More towards adulthood.

4 THE COURT: So it starts with therapy, and, it ends,
5 and, then he goes to Doctor Kinard, and, then if needed you look
6 at the physical alterations?

7 MS. S. WHITAKER: Yes Sir.

8 THE COURT: Is there uh, is there a process by which
9 they tell you that a name change needs to happen in that?

10 MS. H. WHITAKER: I don't believe so.

11 THE COURT: You just figured that was the, the next step
12 to it?

13 MS. H. WHITAKER: I mean I suppose so Sir.

14 MS. S. WHITAKER: You tell, tell him what you want.

15 MR. WHITAKER: Your, Your Honor may I?

16 THE COURT: Sure.

17 MR. WHITAKER: Um, Elli, Elliot is fifteen (15), soon will
18 be fifteen and a half (15½), and we'll be applying for driver's
19 permits, and, then driver's license, and, then eventually
20 passports, and, college, and, um, for this I, I practically
21 wanted the name changed to happen if that's what he wants. Um,
22 for my insurance uh, again for college applications, uh, for
23 emergency situations, and, things I wanted him uh, to be legally
24 known as Elliot. And, that's why we're going through this
25 process.

1 THE COURT: A lot of my questions is just because I
2 don't know the answers to it.

3 MS. S. WHITAKER: Oh okay.

4 THE COURT: But um, I am not allowed into a female's
5 restroom right? I mean it's just, I would probably get in
6 trouble or at least called out on it if I did okay. Is the same
7 as true if somebody who associates themselves as a male? Uh,
8 can she go into the male's restroom?

9 MS. S. WHITAKER: It, it really depends on what you work
10 out like at school. Elliot uses an um, non-gendered bathroom.

11 THE COURT: Okay.

12 MS. S. WHITAKER: And, for, for example gym or P.E. we
13 gonna be doing a um, at home version so the locker room isn't
14 really a uh, issue. Um, as far as other people handle it, it
15 really depends on what they work out with the school or the
16 facility.

17 MR. WHITAKER: Most, most males from my experience talking
18 to ones that have trans, uh, gone from female to male they look
19 like men. They go to the restroom. They can use a stall, no
20 one ever knows. Uh, right now Elliot has issues um, out in
21 public if, if he has to go, he goes with me just to feel safe.
22 But that's something Elliot is gonna have to work out.

23 THE COURT: Okay. I know it was a big issue with the
24 schools, and, that because they were wrestling with how to

1 handle it. I mean this is just a new area for the Courts to
2 wrestle with, the schools um, for kinds, and, adults alike.

3 MR. WHITAKER: Mason has been extremely accommodating for
4 this I must say.

5 THE COURT: But all they've done is just change the name
6 of what they call him on a daily basis but not they're official
7 scrolls, and, they've made some gender neutral bathrooms which
8 basically solved the problem.

9 MS. S. WHITAKER: Yes.

10 THE COURT: Okay.

11 MS. S. WHITAKER: They haven't been resistant. They
12 could have been resistant.

13 MR. WHITAKER: But not to minimize it?

14 MS. S. WHITAKER: Right, yeah.

15 THE COURT: Okay. Are there a lot of people in Mason
16 Schools that are like that?

17 MS. H. WHITAKER: I don't know what um, you would
18 consider a lot but um...

19 THE COURT: That's the biggest high school in the State.

20 MS. H. WHITAKER: I mean I guess so.

21 MR. WHITAKER: How many do you know?

22 MS. H. WHITAKER: Like probably like three (3), three (3)
23 other people in the high school that I know of.

24 MS. S. WHITAKER: I mean how many kids at Mason, over a
25 thousand right?

1 MR. WHITAKER: Several thousand.

2 MS. S. WHITAKER: Yeah.

3 THE COURT: Well Elliot I appreciate you answering my
4 questions because as you can tell I'm more curious about things
5 than anything else but you know my job is to decide whether or
6 not um, you know my um, my job is to do things that are
7 reasonable, and, proper cause exists, and, what's in your best
8 interest. Um, and, Gender Dysphoria has nothing to do with
9 sexuality right?

10 MS. H. WHITAKER: Yes.

11 THE COURT: Okay. And, that's probably the most natural
12 response that somebody would think to think okay well I get it.
13 Um, Elliot must be interested in females, and, this is why he
14 wants to do it but that has, one (1) has nothing to do with the
15 other right?

16 MS. H. WHITAKER: (NO RESPONSE HEARD)

17 THE COURT: You just feel like when you were born as a
18 female that it does not jive with how you feel emotionally?

19 MS. H. WHITAKER: Yes Sir.

20 THE COURT: So a year, and, a half your parents knew,
21 and, the world knew, how long have, have you known?

22 MS. H. WHITAKER: Um, there's always been like feeling of
23 distress about it like from as far back as I can remember really
24 but I don't think I exactly knew like what I was upset about.
25 But then around when I learned that you can be transgender I, it

1 kind of clicked, and, you know I was like that's what I was like
2 upset about. That I wanted to be a boy but I couldn't.

3 THE COURT: That's what I was referring to a couple
4 years ago when it hit the papers, and, people were starting,
5 they were identifying themselves or associating themselves with
6 it. Uh, because it was not something that people were talking
7 about.

8 MS. S. WHITAKER: I guess that never struck me because—
9 I've known transgender people since I was a, a kid. But yeah it
10 is becoming more...

11 THE COURT: But weren't they just known as cross-
12 dressers back then or did they actually go through the physical?

13 MS. S. WHITAKER: I know people who took hormones back...

14 THE COURT: Yeah.

15 MS. S. WHITAKER: Like ten (10), fifteen (15) years ago.

16 THE COURT: I, I, I just look at Bruce Jenner set the
17 stage nationally for it, maybe even um...

18 MS. S. WHITAKER: This is true.

19 THE COURT: All over the world. Um, but he hasn't done
20 the physical part that I know of, physical change, well not all
21 the way.

22 MS. S. WHITAKER: I don't know. Yeah I don't.

23 THE COURT: Yeah well people have asked him um.

24 MR. WHITAKER: We, we were, we were taken by surprise to be
25 honest. I mean we didn't see this coming. Heidi's always had

1 anxiety. But when we talked to Marcy about it, like why now?
2 There's like an obvious, obvious pool of kids that around five
3 (5) or six (6) years old. You just know, and, there's some kids
4 who are a little more conflicted.

5 MS. S. WHITAKER: Apparently, apparently when puberty
6 hit.

7 MR. WHITAKER: When puberty hits.

8 MS. S. WHITAKER: Is another big time when people realize
9 that they feel like they're the wrong.

10 MR. WHITAKER: So I was like why now, and, that's, that's
11 where he falls in this pool of there's a realization then. I
12 guess Marcy showed us the definition of Gender Dysphoria, the
13 official diagnosis manual, and, it's been around since the late
14 70's I would guess.

15 THE COURT: We need to have Doctor Kinard come up, and,
16 give us a presentation. She seems to be the authority in the
17 area um, on the subject.

18 MS. S. WHITAKER: Children's is a very highly regarded
19 for their um, their, their teen gender um, clinic. Um, people
20 come from all over the County actually to go to Children's to
21 see Doctor Kinard.

22 THE COURT: It's just a new world we're living in, and,
23 everybody is trying to struggle with it, that's all.

24 MS. S. WHITAKER: It is.

1 THE COURT: Okay. Elliot anything else you want to tell
2 me?

3 MS. H. WHITAKER: (NO RESPONSE HEARD)

4 THE COURT: No. Mom, and, dad anything else?

5 MS. S. WHITAKER: No Sir.

6 MR. WHITAKER: No Your Honor.

7 THE COURT: Alright I'm gonna take it under advisement.
8 Uh, if I a Decision I'll go ahead, and, render it. If I don't,
9 and, I invite you back it just means I've had more questions.
10 Uh, like I said I don't get a whole lot of these um, so when
11 they come up I have to kind of learn on the first couple that
12 come along. So I'll let you know. Thank you.

13 MS. H. WHITAKER: Thank you.

14 BAILIFF: All rise. Court's adjourned.

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C E R T I F I C A T E

I, Stephanie Nicole Rogers, do hereby certify that I
transcribed the foregoing from a mechanical recording device and
that it is a true and accurate transcription as was understood
and audible.

Stephanie Nicole Rogers
Stephanie Nicole Rogers

My Commission Expires May 4, 2023.



STEPHANIE N. ROGERS
NOTARY PUBLIC
STATE OF OHIO
My Commission Expires
5-4-2023

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO
PROBATE DIVISION

EXHIBIT B

2018 JUN 22 AM 10:16

In the matter of : Case No. 20189073
Change of Name of : Judge Kirby
Heidi Claire Whitaker :
:

This matter is before the Court on an *Application for Change of Name of Minor*, filed with the Court on April 24, 2018. Mother wishes to change the child's name from Heidi Claire Whitaker to a male name, Elliott John Whitaker, because the child identifies herself¹ as a transgender male. The child was born female. Mother and Father filed their Consent to Change of Name. The Court published Notice in the Journal-News Pulse of Lebanon and Mason. The Court heard testimony from Mother and the child, whose date of birth is [REDACTED].

For the reasons stated below, the Court cannot find the name change as reasonable and proper and in the child's best interest at this time.

FACTS

Heidi is 15 years old and has been in therapy for approximately one year. She has been diagnosed as having Gender Dysphoria and receives counseling through the Lindner Center and is treated medically by Dr. Conard from the Cincinnati Children's Hospital Medical Center. She first realized she was transgender in the Spring of 2017 and started to cut her hair and wear boy clothes. Due to anxiety and being depressed, she was advised to seek out a specialist who deals with adolescent transgender issues. She availed herself of Marcy Marklay, an LPCC from the Lindner Center. She has met with Ms. Marklay twenty times. Heidi denies any suicidal ideations or recent hospitalizations.

Heidi has met with Dr. Conard on three separate occasions and blood draws have taken place to get a base-line for hormonal levels. Testosterone is anticipated to be administered beginning July 13, 2018. This will artificially put her body through male puberty.

¹ The Court is aware of the fact that using a pronoun as it pertains to a person's sex (which is their biological characteristics) as opposed to a pronoun for a person's gender (which is that person's social identity) is offensive to the transgender community. As a compromise, the Court attempted to utilize the singular, gender-neutral third person "they" pronoun in place of him/her and she/him, as introduced by the Associated Press' Stylebook; however, it made the entry difficult to read and comprehend. Therefore, the Court opted to use the pronoun associated with the child's sex and not their preferred gender. No disrespect is meant to the child in this decision.

Heidi is aware that some of the hormonal therapies are permanent in nature and are irreversible. She realizes that she is already called Elliott, but there are some instances in which her birth name Heidi is and will be used: her school still uses her birth name on their official rosters and yearbooks, substitute teachers call her by her birth name, her driver's license will have her birth name once she applies for one, and any future passport applications and college applications she makes will have her birth name as well.

By granting her a legal name change, it will help resolve some of the feelings of distress that accompanies her use of her birth name.

LAW

At common-law, a person has always been able to assume any name he or she wishes so long as taking the name is not for fraudulent purposes. A name change authorized by a court, however, is a different matter. Changing a name through judicial decree implies an official consideration and a judicial endorsement of the new name. *In re Wurgler*, 136 Ohio Misc. 2d 1, 2005-Ohio-7139, 844 N.E.2d 919, 2005 Ohio Misc. LEXIS 601 (Ohio C.P. July 12, 2005). It is the Probate Division of the Court of Common Pleas that is endowed with the exclusive jurisdiction to change the *legal* name of a person, be they an adult or a minor, and that authority is found in R.C. 2717.01.

A name change for a minor may be requested by either of the minor's parents, the child's legal guardian, or a guardian ad litem. *Id.* When application is made on behalf of a minor, in addition to the notice and proof required pursuant to division (A) of this section, the consent of both living, legal parents of the minor shall be filed, or notice of the hearing shall be given to the parent or parents not consenting by certified mail, return receipt requested. *Id.*

The Court must consider the best interest of the child in determining whether reasonable and proper cause exists when deciding whether to permit a name change for a minor child pursuant to RC 2717.0 1(A). *In re Willhite*, 85 Ohio St. 3d 28; 1999-Ohio-201, Syllabus 1. In *Willhite*, the Ohio Supreme Court held that when determining the best interest of the child,

the trial court should consider the following factors: the effect of the change on the preservation and development of the child's relationship with each parent; the identification of the child as part of a family unit; the length of time that the child has used a surname; the preference of the child if the child is of sufficient maturity to express a meaningful preference; whether the child's surname is different from the surname of the child's residential parent; the embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's; parental failure to maintain contact with and support of the child; and any other factor relevant to the child's best interest.

Id. Syllabus 2, citing *Bobo v. Jewell* (1988) 38 Ohio St. 3d 330, paragraph 2 of the syllabus.

DECISION

Adolescence is a time of fevered identity exploration. In addition, adolescents can become fixated on their immediate desires and far too often lack the ability to fully appreciate the long-term effects of their decisions. It is generally well-known and not seriously contested that adolescent minds and bodies don't fully develop during their minority and they are unable to cognitively and emotionally make adult-like decisions.

Here the Court is faced with a request from a 15-year-old who lacks the age, maturity, knowledge, and stability to make this decision.

Whether Heidi is experiencing Gender Dysphoria or is just not comfortable with her body is something that only time will reveal. Is Heidi's distress brought about by confusion, peer pressure, or other non-transgender issues -- or is it truly a mismatch between her gender identity and her body? Children change significantly and rapidly. A name change request today by a child could be motivated by short-term desires or beliefs that may change over the passage of time as the child matures. The Court recognizes the reality that Heidi's brain is still growing and changing, and is simply not ready to make this life-altering decision.

The Court is sympathetic to the parents of the child and their desire to assuage their child. In essence, the Court isn't saying "no" to the name change. The Court is simply saying "not yet."

Age.

Develop.

Mature.

And take advantage of your common-law right to use the name you are petitioning for in the meantime, so long as it's not for fraudulent purposes. Then, ask this Court again once you become an adult.

Based upon the foregoing, the Court finds the application for change of name of a minor to be **NOT WELL TAKEN** and hereby **DENIED**.

It is so ordered.

ENTER:

Joseph W. Kirby, Judge

Distribution:
Stephanie Whitaker, Applicant

CERTIFICATE
I hereby certify that I have
this 22nd day of
June, 20 18
mailed by certified mail
mail a "certified true copy"
of the foregoing instrument
to all parties named in
distribution.
[Signature]
Deputy Clerk

PARTIES ARE ADVISED OF THEIR RIGHT TO APPEAL THIS DECISION. ANY APPEAL OF THIS CASE MUST BE FILED WITH THE TWELFTH DISTRICT COURT OF APPEALS BY FILING SAME WITH THIS COURT WITHIN THE TIME FRAMES AS SET FORTH IN THE OHIO RULES OF APPELLATE PROCEDURE. HOWEVER, A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii) OR JUV. R. 40(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b) OR JUV. R. 40(D)(3)(b).

EXHIBIT C

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO
PROBATE DIVISION

2018 JUN 22 AM 10:14

In the matter of : Case No. 20189045

Change of Name of : Judge Kirby
[REDACTED]

:

This matter is before the Court on an *Application for Change of Name of Minor*, filed March 13, 2018. Mother wishes to change the child's name from [REDACTED] to a male name, [REDACTED], because the child identifies herself¹ as a transgender male. The child was born female. Mother and Father filed their Consent to Change of Name. The Court published Notice in the Journal-News Pulse of Lebanon and Mason. The Court heard testimony from Mother and the child, whose date of birth is [REDACTED].

For the reasons stated below, the Court cannot find the name change as reasonable and proper and in the child's best interest at this time.

FACTS

[REDACTED] is 14 years old and has been diagnosed with Gender Dysphoria – her brain does not recognize her body is female. She attends Little Miami High School and is going into the 9th grade. She is called [REDACTED] by her family, doctor and school. She wants her name changed in order to ease any confusion when she goes to get a passport and driver's license. She has associated herself as a male since she was 11 or 12 years old.

She was hospitalized one time at Children's Hospital and has not yet begun hormonal therapy. All she has received were hormonal blockers and she receives those every three months. She has experienced some depression, but claims that is just something that runs in her family. Her bout with it was prior to the onset of her transgender diagnosis. Medically, no physical alterations will be taken until she turns 18, if need be.

¹ The Court is aware of the fact that using a pronoun as it pertains to a person's sex (which is their biological characteristics) as opposed to a pronoun for a person's gender (which is that person's social identity) is offensive to the transgender community. As a compromise, the Court attempted to utilize the singular, gender-neutral third person "they" pronoun in place of him/her and she/him, as introduced by the Associated Press' Stylebook; however, it made the entry difficult to read and comprehend. Therefore, the Court opted to use the pronoun associated with the child's sex and not their preferred gender. No disrespect is meant to the child in this decision.

SCAN
COMPUTER

LAW

At common-law, a person has always been able to assume any name he or she wishes so long as taking the name is not for fraudulent purposes. A name change authorized by a court, however, is a different matter. Changing a name through judicial decree implies an official consideration and a judicial endorsement of the new name. *In re Wurgler*, 136 Ohio Misc. 2d 1, 2005-Ohio-7139, 844 N.E.2d 919, 2005 Ohio Misc. LEXIS 601 (Ohio C.P. July 12, 2005). It is the Probate Division of the Court of Common Pleas that is endowed with the exclusive jurisdiction to change the *legal* name of a person, be they an adult or a minor, and that authority is found in R.C. 2717.01.

A name change for a minor may be requested by either of the minor's parents, the child's legal guardian, or a guardian ad litem. *Id.* When application is made on behalf of a minor, in addition to the notice and proof required pursuant to division (A) of this section, the consent of both living, legal parents of the minor shall be filed, or notice of the hearing shall be given to the parent or parents not consenting by certified mail, return receipt requested. *Id.*

The Court must consider the best interest of the child in determining whether reasonable and proper cause exists when deciding whether to permit a name change for a minor child pursuant to RC 2717.0 1(A). *In re Willhite*, 85 Ohio St. 3d 28; 1999-Ohio-201, Syllabus 1. In *Willhite*, the Ohio Supreme Court held that when determining the best interest of the child,

the trial court should consider the following factors: the effect of the change on the preservation and development of the child's relationship with each parent; the identification of the child as part of a family unit; the length of time that the child has used a surname; the preference of the child if the child is of sufficient maturity to express a meaningful preference; whether the child's surname is different from the surname of the child's residential parent; the embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's; parental failure to maintain contact with and support of the child; and any other factor relevant to the child's best interest.

Id. Syllabus 2, citing *Bobo v. Jewell* (1988) 38 Ohio St. 3d 330, paragraph 2 of the syllabus.

DECISION

Adolescence is a time of fevered identity exploration. In addition, adolescents can become fixated on their immediate desires and far too often lack the ability to fully appreciate the long-term effects of their decisions. It is generally well-known and not seriously contested that adolescent minds and bodies don't fully develop during their minority and they are unable to cognitively and emotionally make adult-like decisions.

Here the Court is faced with a request from a 14-year-old who lacks the age, maturity, knowledge, and stability to make this decision.

SCAN

Whether [REDACTED] is experiencing Gender Dysphoria or is just not comfortable with her body is something that only time will reveal. Is [REDACTED] distress brought about by confusion, peer pressure, or other non-transgender issues -- or is it truly a mismatch between her gender identity and her body? Children change significantly and rapidly. A name change request today by a child could be motivated by short-term desires or beliefs that may change over the passage of time as the child matures. The Court recognizes the reality that [REDACTED] brain is still growing and changing, and is simply not ready to make this life-altering decision.

The Court is sympathetic to the parents of the child and their desire to assuage their child. In essence, the Court isn't saying "no" to the name change. The Court is simply saying "not yet."

Age.

Develop.

Mature.

And take advantage of your common-law right to use the name you are petitioning for in the meantime, so long as it's not for fraudulent purposes. Then, ask this Court again once you become an adult.

Based upon the foregoing, the Court finds the application for change of name of a minor to be **NOT WELL TAKEN** and hereby **DENIED**.

It is so ordered.

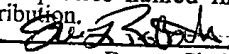
ENTER:



Joseph W. Kirby, Judge

Distribution:

[REDACTED]

CERTIFICATE
I hereby certify that I have
this 22nd day of
June, 2018
mailed by galbraith
mail a "certified true copy"
of the foregoing instrument
to all parties named in
distribution.

Deputy Clerk

SCAN

PARTIES ARE ADVISED OF THEIR RIGHT TO APPEAL THIS DECISION. ANY APPEAL OF THIS CASE MUST BE FILED WITH THE TWELFTH DISTRICT COURT OF APPEALS BY FILING SAME WITH THIS COURT WITHIN THE TIME FRAMES AS SET FORTH IN THE OHIO RULES OF APPELLATE PROCEDURE. HOWEVER, A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii) OR JUV. R. 40(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b) OR JUV. R. 40(D)(3)(b).

SCAN

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO
PROBATE DIVISION

EXHIBIT D

2018 JUN 22 AM 10:12

In the matter of : Case No. 20189055

Change of Name of : Judge Kirby

[REDACTED]

:

This matter is before the Court on an *Application for Change of Name of Minor*, filed with the Court on March 27, 2018. Mother wishes to change the child's name from [REDACTED] to a male name, [REDACTED] because the child identifies herself¹ as a transgender male. The child was born female. Mother and Father filed their Consent to Change of Name. The Court published Notice in the Journal-Pulse News of Lebanon and Mason. The Court heard testimony from Mother and the child, whose date of birth is [REDACTED]

For the reasons stated below, the Court cannot find the name change as reasonable and proper and in the child's best interest at this time.

FACTS

[REDACTED] is 14 years old and is in going into the 9th grade at Mason High School. [REDACTED] claims she began realizing her Gender Dysphoria two years ago. Although born a female, she associates herself to be a male. Medically, no steps have been taken. She is currently engaged in counseling with a psychologist in West Chester. She currently goes by the name [REDACTED] in school, home and with her doctor, without issue.

Her primary concerns are what names are listed on her passport and her future driver's license. Additionally, she plans on taking the ACT soon and wants her name to reflect her identity. While the driver's license issue won't be present for another year and a half, she has already experienced some issues with her passport. Her picture in her passport does not coincide with her current physical image.

¹ The Court is aware of the fact that using a pronoun as it pertains to a person's sex (which is their biological characteristics) as opposed to a pronoun for a person's gender (which is that person's social identity) is offensive to the transgender community. As a compromise, the Court attempted to utilize the singular, gender-neutral third person "they" pronoun in place of him/her and she/him, as introduced by the Associated Press' Stylebook; however, it made the entry difficult to read and comprehend. Therefore, the Court opted to use the pronoun associated with the child's sex and not their preferred gender. No disrespect is meant to the child in this decision.

She already uses the men's restroom. Having her name changed to a boy's name will help her with her day to day issues. She doesn't like herself as a female. Once suicidal two years ago, she was partially hospitalized for three weeks at Cincinnati Children's Hospital. After her second hospitalization, she changed her appearance and started going by the name [REDACTED]. This has created less sadness in her life. Just having her legal name being a female is upsetting, let alone when someone calls her that. She won't feel "complete" until she is legally recognized to be [REDACTED].

LAW

At common-law, a person has always been able to assume any name he or she wishes so long as taking the name is not for fraudulent purposes. A name change authorized by a court, however, is a different matter. Changing a name through judicial decree implies an official consideration and a judicial endorsement of the new name. *In re Wurgler*, 136 Ohio Misc. 2d 1, 2005-Ohio-7139, 844 N.E.2d 919, 2005 Ohio Misc. LEXIS 601 (Ohio C.P. July 12, 2005). It is the Probate Division of the Court of Common Pleas that is endowed with the exclusive jurisdiction to change the *legal* name of a person, be they an adult or a minor, and that authority is found in R.C. 2717.01.

A name change for a minor may be requested by either of the minor's parents, the child's legal guardian, or a guardian ad litem. *Id.* When application is made on behalf of a minor, in addition to the notice and proof required pursuant to division (A) of this section, the consent of both living, legal parents of the minor shall be filed, or notice of the hearing shall be given to the parent or parents not consenting by certified mail, return receipt requested. *Id.*

The Court must consider the best interest of the child in determining whether reasonable and proper cause exists when deciding whether to permit a name change for a minor child pursuant to RC 2717.01(A). *In re Willhite*, 85 Ohio St. 3d 28; 1999-Ohio-201, Syllabus 1. In *Willhite*, the Ohio Supreme Court held that when determining the best interest of the child,

the trial court should consider the following factors: the effect of the change on the preservation and development of the child's relationship with each parent; the identification of the child as part of a family unit; the length of time that the child has used a surname; the preference of the child if the child is of sufficient maturity to express a meaningful preference; whether the child's surname is different from the surname of the child's residential parent; the embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's; parental failure to maintain contact with and support of the child; and any other factor relevant to the child's best interest.

Id. Syllabus 2, citing *Bobo v. Jewell* (1988) 38 Ohio St. 3d 330, paragraph 2 of the syllabus.

DECISION

Adolescence is a time of fevered identity exploration. In addition, adolescents can become fixated on their immediate desires and far too often lack the ability to fully appreciate the long-term effects of their decisions. It is generally well-known and not seriously contested that adolescent minds and bodies don't fully develop during their minority and they are unable to cognitively and emotionally make adult-like decisions.

Here the Court is faced with a request from a 14-year-old who lacks the age, maturity, knowledge, and stability to make this decision.

Whether [REDACTED] is experiencing Gender Dysphoria or is just not comfortable with her body is something that only time will reveal. Is [REDACTED] distress brought about by confusion, peer pressure, or other non-transgender issues -- or is it truly a mismatch between her gender identity and her body? Children change significantly and rapidly. A name change request today by a child could be motivated by short-term desires or beliefs that may change over the passage of time as the child matures. The Court recognizes the reality that [REDACTED] brain is still growing and changing, and is simply not ready to make this life-altering decision.

The Court is sympathetic to the parents of the child and their desire to assuage their child. In essence, the Court isn't saying "no" to the name change. The Court is simply saying "not yet."

Age.

Develop.

Mature.

And take advantage of your common-law right to use the name you are petitioning for in the meantime, so long as it's not for fraudulent purposes. Then, ask this Court again once you become an adult.

Based upon the foregoing, the Court finds the application for change of name of a minor to be **NOT WELL TAKEN** and hereby **DENIED**.

It is so ordered.

ENTER:

Joseph W. Kirby, Judge

Distribution:
[REDACTED]

CERTIFICATE

I hereby certify that I have
this 22nd day of
June, 20 18
mailed by Deputy Clerk
mail a "certified true copy"
of the foregoing instrument
to all parties named in
distribution.

[Signature]
Deputy Clerk

SCAN

PARTIES ARE ADVISED OF THEIR RIGHT TO APPEAL THIS DECISION. ANY APPEAL OF THIS CASE MUST BE FILED WITH THE TWELFTH DISTRICT COURT OF APPEALS BY FILING SAME WITH THIS COURT WITHIN THE TIME FRAMES AS SET FORTH IN THE OHIO RULES OF APPELLATE PROCEDURE. HOWEVER, A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii) OR JUV. R. 40(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b) OR JUV. R. 40(D)(3)(b).