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Media Information Contact:

Nell Gaither, President
Trans Pride Initiative
nell@tpide.org
214-449-1439

Litigation Information Contacts:

Brian McGiverin, Executive Director
Austin Community Law Center
brian@austincommunitylawcenter.org
512-366-2114

Moira Meltzer-Cohen
Attorney at Law
meltzercohen@gmail.com
347-248-6771

Project 103 Challenges Constitutionality of Texas Name Change Prohibitions

AUSTIN, December 4, 2019—This morning, attorneys working with Trans Pride Initiative (TPI) filed suit against the State of Texas challenging the constitutionality of a law that gravely impacts the lives of a highly marginalized segment of the transgender population, those with a conviction history.

Imagine being released from prison and having to rebuild a stable and secure life, often from near nothing. Imagine the difficulty of building that new life with the stigma of a serious past mistake hanging over you. Now imagine building that life while being compelled to live a false identity forced on you by an obsolete law unnecessary in a heavily networked society where past legal names can readily be referenced as needed.

Forced compliance with a false identity is what Texas Family Code 45.103(b)(1) does in the case of many trans persons being released from prison. Specifically, this paragraph of Texas law states that a person with a felony conviction may not change their name until two years after completing all terms of their sentence, including any parole or community supervision.

For trans persons, that can add two additional years to their sentence after completing court defined punishment. Such additional punishment is unconstitutional.

The problem with Texas Family Code 45.103 extends inside the prisons as well as this same statute is used to prohibit name changes in federal facilities in Texas as well as Texas state prisons. This means that trans persons endure punishments in prison beyond the scope of their sentence, including daily humiliation, increased risk of physical and sexual violence, and even medical abuse by the refusal to recognize their identity.



Jason Lydon, founder and former Executive Director of Black & Pink, a national advocacy group for incarcerated LGBTQ persons, noted in reference to this suit, “Access to name changes is essential for a person to be able to fully affirm who they are. The state is involved in so many aspects of our lives and our legal identification cards are used over and over again. When a name we do not use, a name that can expose us to harassment, is on our legal documentation, that is dehumanizing. Removing barriers to changing one's name legally is a matter of basic human decency and could be done with the ease of new regulations.”

TPI estimates there are between 1,000 and 1,500 transgender persons in Texas prisons. The lower end of this range is the expected number if trans persons are incarcerated at the same rate as non-transgender, or cisgender, persons. Trans persons are believed to be about 0.66% of the adult population in Texas.¹ But studies have indicated trans persons are significantly more likely—due in no small part to stereotyping and discrimination—to experience negative interactions with police and the justice system.² A recent survey of about 28,000 trans persons nationwide found that approximately 2% had been incarcerated during the 12 months preceding the survey.³ Based on current population figures, that means that about 3,800 trans Texans spent time in a jail or prison in the last 12 months. Those being released after felony convictions would be forced to comply with possible additional punishment under Texas Family Code 45.103.

In 13 states, no criminal history check is required for name changes. Washington, D.C. and 27 states require disclosure of conviction history, but do not use that history to deny name changes. Only ten states, including Texas, use conviction history to restrict name changes.⁴

Challenges to such discriminatory practices are starting to be filed. In May 2019, petitions were filed challenging the constitutionality of similar statutes in Illinois (*Ortiz v. Foxx*, 1:19-cv-02923, Northern District of Illinois) and in Wisconsin (*Krebs v. Graveley*, 2:19-cv-364, Eastern District of Wisconsin). Today's petition is believed to be the third challenge to such restrictions.

Eliminating structural violence against trans persons means eliminating barriers to affirming documentation for everyone in the trans family. Plaintiff Teresa DeBarbarac has said that “It's a struggle and an

1. Flores, A. R., Herman, J. L., Gates, G. J., & Brown, T. N. T. (2016). *How Many Adults identify as Transgender in the United States?* Los Angeles, CA: The Williams Institute.
2. “Some studies estimate that 47% of Black transgender people, 30% of Native American transgender people, 25% of Latinx transgender people, 13% of Asian transgender people, and 12% of white transgender people can expect to be arrested at some point in their lives. These discrepancies are a result of racist and transphobic policing, as well as disproportionate rates of poverty and homelessness among these demographics.” Muligan, L. (2017). *Dismantling Collateral Consequences: The Case for Abolishing Illinois' Criminal Name-Change Restrictions*, 66 DePaul L. Rev. Available at: <https://via.library.depaul.edu/law-review/vol66/iss2/13>.
3. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.
4. Muligan, L. (2017). *Dismantling Collateral Consequences: The Case for Abolishing Illinois' Criminal Name-Change Restrictions*, 66 DePaul L. Rev. Available at: <https://via.library.depaul.edu/law-review/vol66/iss2/13>. Note that the source misidentifies Texas as having no ban, so the numbers have been adjusted to correct for the error.



embarrassment to have to use a name that is not my identity. . . . It creates stress, depression, and despondence to struggle with this.”

With a favorable ruling from the U.S. District Court in Austin, Ms. DeBarbarac may receive some relief, and some of the most marginalized of transgender Texans will see one less hurdle to overcome in trying to build stable and secure lives when they return from prison.

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Trans Pride Initiative is a Texas nonprofit corporation designated by the IRS as a public charity under Section 501(c)(3) of the US Tax Code. Trans Pride Initiative works to provide advocacy and support for trans and gender diverse persons in areas of healthcare, housing, education, and employment in the Dallas region, and supports incarcerated trans and queer persons in Texas.