

I. HOW TO PROTECT LGBT EMPLOYEES IN THE 6th CIRCUIT

A. Private Employees are not protected by Federal Law from discrimination on the basis of sexual orientation or gender identity.

1. Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*

“It shall be an unlawful employment practice . . . to discriminate against any individual . . . because of sex.”
2. “Because of sex” does not prohibit discrimination based on sexual orientation. *Dillion v. Frank*, 952 F.2d 403 (6th Cir.1992); *Ruth v. Children’s Medical Center*, 940 F.2d 662 (6th Cir. 1991); *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252 (1st Cir. 1999).
3. “Because of sex” refers only to membership in a class delineated by gender and not sexual affiliation.
4. Since 1994 Congress repeatedly rejected legislation that would have extended Title VII to cover sexual orientation (Employment Non Discrimination Act).
 - a. ENDA was most recently introduced in the 112th Congress on April 6, 2011 by Rep. Barney Frank in the House and on April 13, 2011 with 111 co-sponsors and by Senator Jeff Merkley (D-OR) and Mark Kirk (R-IL) in the Senate. H.R. 1397 and S. 811 are pending in Congress.
 - b. What ENDA Does
 - i. Extends federal employment discrimination protections currently provided based on race, religion, sex, national origin, age and disability to sexual orientation and gender identity
 - ii. Prohibits public and private employers, employment agencies and labor unions from using an individual’s sexual orientation or gender identity as the basis for employment

decisions, such as hiring, firing, promotion or compensation

- iii. Provides for the same procedures, and similar, but somewhat more limited, remedies as are permitted under Title VII and the Americans with Disabilities Act
- iv. Applies to Congress and the federal government, as well as employees of state and local governments

c. What ENDA Does Not Do

- i. Cover businesses with fewer than 15 employees
- ii. Apply to religious organizations
- iii. Allow for quotas or preferential treatment based on sexual orientation or gender identity
- iv. Allow a "disparate impact" claim similar to the one available under Title VII of the Civil Rights Act of 1964. Therefore, an employer is not required to justify a neutral practice that may have a statistically disparate impact on individuals because of their sexual orientation or gender identity
- v. Allow the imposition of affirmative action for a violation of ENDA
- vi. Allow the Equal Employment Opportunity Commission to collect statistics on sexual orientation or gender identity or compel employers to collect such statistics.
- vii. Apply retroactively

d. “**Sexual orientation**” is defined as “heterosexuality, homosexuality, and bisexuality.”

e. “**Gender identity**” is defined as “the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth.”

B. Private Employees Are Protected By Federal Law If They Are Sexually Harassed By a Same Sex Harasser.

1. *Oncale v. Sundowner Offshore Services, Inc.* 523 U.S. 75 (1998)

Supreme Court overruled Fifth Circuit opinion that held that, as a matter of law, Title VII categorically barred any claim for same-sex sexual harassment.

Just as there can be no presumption that a person of one race would not discriminate against another person of the same race, there can be no absolute presumption that a person of one gender would not discriminate against another person of the same gender.

It is not the sex of the harasser or the victim that is important, but, rather, whether the victim can “prove that the conduct at issue was not merely tinged with offensive sexual connotations, but actually constituted ‘discriminat[ion] . . . because of . . . sex.’”

2. But how do you prove same-sex sexual harassment?
 - a. One scenario is there is evidence the harasser sexually desired the victim.
 - b. Another is there is no evidence of sexual attraction, but there is evidence the harasser displays hostility to the presence of a particular sex in the workplace.
 - c. Another is where the plaintiff offers direct comparative evidence about how the alleged harasser treated members of both sexes in a mixed sex workplace.

C. Title VII Does Offer Protection From Sex Stereotyping For Transgender Persons But Not GLB Employees.

1. In order to prove a sex discrimination claim a plaintiff must prove that (1) he is a member of a protected class; (2) he applied and was qualified for a promotion; (3) he was considered for and denied the promotion; and (4) other employees of similar qualifications who were not members of the protected class received promotions. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).
2. A protected class does not include transgendered people. However, a protected class includes men and women. Men and women are protected from sex-stereotyping. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989). Therefore, discrimination that is based on sex-stereotyping or gender non-conformity is protected, regardless whether the person also happens to be transgendered. *Smith v. City of Salem, Ohio*, 378 F.3d 566, 575 (6th Cir. 2004) (good discussion of

all case law); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2004).

- a. In *Smith*, 7 year firefighter Jimmie Lee Smith was diagnosed with **Gender Identity Disorder**.¹ He then started the process of becoming more feminine in his appearance. After being harassed by co-workers for not being masculine enough, he told his supervisor he had GID and would eventually completely transform from a man to a woman. Thereafter the City began a “witch hunt” and tried to get Smith to resign by forcing him to undergo three psychological tests. Smith filed a Title VII suit for sex discrimination – which was dismissed. On appeal, the Sixth Circuit held that Smith stated a Title VII claim for sex stereotyping under *Price Waterhouse*. The case later settled.
 - b. In *Barnes*, police sergeant Philip Barnes was demoted. Barnes was the only sergeant in the history of Cincinnati Police to fail sergeant probation. Barnes argued he was demoted because he failed to conform to how a man should look and behave (arched eye brows, French manicure, and facial makeup). Barnes was even warned by a fellow sergeant he was going to fail probation because he was not masculine enough. By the time the case was tried in 2004 Philip had changed his name to Philecia and appeared at trial as a woman. The jury found she was discriminated against in violation of Title VII and awarded her \$320,511 in back pay, front pay and compensatory damages. The court awarded \$527,888 in attorney fees, plus \$25,837 in expenses. The verdict was upheld on appeal.
3. However, sex stereotyping cannot be stretched to protect gay men. In *Vickers v. Fairfield Medical Center*, 453 F.3d 757, 763 (6th Cir. 2006) the court denied a Title VII claim by a security officer who was harassed at work for being perceived as gay. The Court would not extend sex-stereotyping to protect male employees whose supposed sexual practices were objectionable because he was perceived to behave more like a woman. The Court limited sex stereotyping to gender non-conforming behavior observed at work. In *Price Waterhouse* her manner of walking and talking at work, as well as her work attire and her hairstyle were the basis of the sex stereotyping claim.
- a. *Gilbert v. Country Music Association, Inc.*, 2011 WL 3288655. Union worker filed suit against union and others for refusing to give him work after he complained that another union member called him a faggot and threatened to stab him. The Sixth Circuit

¹ Gender Identity Disorder, also called Gender Dysphoria, is a formal diagnosis in the DSM IV to describe persons who experience significant gender dysphoria (discontent with their biological sex and/or the gender they were assigned at birth).

found no federal or state law protected him but his breach of duty claim against the union could proceed.

b. *Gilbert* leaves an opening. If plaintiff had made a more detailed explanation of sex stereotyping in his complaint to satisfy *Ashcroft v. Iqbal*, 566 U.S. ___, 129 S.Ct. 1937 (2009), the Plaintiff may have stated a claim to survive the motion to dismiss.

c. *Taylor v. H.B. Fuller Co.*, 2008 WL 4647690 (Barrett J.), the court found Title VII and Price Waterhouse did not protect the plaintiff from being harassed at work because his co-workers thought he was gay. He did not offer any evidence that the “deplorable and unacceptable” actions of his co-workers, including hostile repeated sexual touchings and sexual remarks were not “because of sex” because there was no evidence how the harassers treated women in the workplace.

d. *Herbert v. Milford Towing*, S.D. Ohio, 1:00-cv-855 (Hogan M.J.), male on male sex harassment alleged men touching plaintiff was because of sex because men did not touch female employees.

4. See other district court cases: *Fischer v. City of Portland*, 2004 WL 2203276 (D. Or. 2004) (city must protect lesbian who dresses like a man from harassment); *Schroer v. Billington*, 577 F. Supp.2d 292 (D.D.C. 2008) (Library of Congress cannot discriminate against transgendered employee); *Glenn v. Brumby*, 2009 U.S. Dist. LEXIS 54768 (N.D. Ga. 2009) (legislative aide in transition to being a woman was protected from being fired); *Kastl v. Maricopa County Community College District*, 2004 WL 2008954 (June 3, 2004), (forcing employee transitioning from male to female to prove she did not have a penis before she could use the women’s bathroom stated a claim).

D. Other Transgender Workplace Issues (Transitions, Bathrooms, Dressing Areas)

1. Name change. A transgendered person in Ohio can have her name changed but cannot have the gender on her driver’s license changed. Employers must accept the name change. For example, the City of Cincinnati accepted Philip Barnes as Philecia Barnes and required her to follow female dress and grooming codes and female arrest procedures (female officers pat down female suspects).
2. Bathrooms. If fellow employees do not want the transgendered person, either before her gender transformation or during it, to use their bathroom, the employer must still offer the transgendered employee a bathroom. There is no law to force employers to honor the new gender for bathroom

assignment. The best practice is to designate a unisex bathroom or have the transgendered person use the bathroom that is identified with her gender identity and tell employees who do not want to share with her to use an alternate bathroom.

3. Locker rooms/ showers. If fellow employees do not want the transgendered person, either before her gender transformation or during it, to use their locker room or shower, employers must decide without legal guidance. There is no law addressing this. Negotiation is the best practice (designate times for transgendered employee, designate private area, create a unisex locker room).
4. Health care. In *Dovel v. Public Library of Cincinnati and Hamilton County*, SDOH Case No. 16-cv-955, plaintiff Rachel Dovel filed a sex discrimination charge under Title VII and an equal protection claim under 42 U.S.C. § 1983 when her public employer refused to provide health insurance coverage for her medically necessary transition surgery and treatment. The case was settled before there was any court decision. A copy of the complaint is attached.

E. Protections for Public Employees

1. *Who is the largest employer in Ohio? In Kentucky?* The State.
 - a. The State of Ohio employs over 180,000 people. The next top four employers are all private employers, employing only 47,000 people combined.
 - b. The Commonwealth of Kentucky employs over 123,000 people. The second largest is Fort Campbell City, which employs 23,000.
2. Equal Protection: All government employees must be treated Equally
 - a. The Fourteenth Amendment to the United States Constitution provides that no “State [shall] deprive any person within its jurisdiction the equal protection of the laws.” The U.S. Supreme Court, the Sixth Circuit, and this District Court have held that it is a violation of the Equal Protection Clause to discriminate on the basis of sexual orientation. *Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620 (May 20, 1996); *Stemler v. City of Florence*, 126 F.3d 856 (6th Cir. 1997); *Glover v. Williamsburg Local School Bd.*, 20 F. Supp. 2d 1160 (S.D. Ohio 1998); *Equality Foundation v. City of Cincinnati*, 860 F.Supp. 417 (S.D. Ohio 1994).
 - b. In *Romer*, the Court identified whether the classification drawn by the Colorado Amendment served a legitimate governmental

purpose, as illegitimate purposes are never constitutional. The Court reinforced the principle that the rational relationship test is sufficient to expose and strike down laws that draw a classification whose true purpose is simply to discriminate.

- c. Using extraordinarily strong language in a six member majority, the *Romer* Court held that the Colorado law was a “literal” violation of the Equal Protection Clause as no legitimate purpose is served by a law which defines persons by a single trait and then denies them the right to seek protection “across the board.” *Id.* at 1626, 1628. The Colorado law was held to reflect animus toward gay people. The Court held that hostility or animus is not a legitimate governmental purpose. *Id.* A “bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *Id.* at 1628.
- d. Justice O’Connor’s concurrence in *Lawrence v. Texas*, 529 U.S. 558 (2003), elaborated on *Romer* stating that Texas’ sodomy law brands all homosexuals as criminals, thereby making it more difficult for homosexuals to be treated in the same manner as everyone else.
- e. The Sixth Circuit has held that in sexual orientation equal protection challenges, justifications grounded in prejudice cannot be upheld under rational basis review. “[S]ince governmental action ‘must bear a rational relationship to a legitimate governmental purpose,’ and the desire to effectuate one’s animus against homosexuals can never be a legitimate governmental purpose, a state action based on that animus alone violates the Equal Protection Clause.” *Stemler*, at 856.
- f. Public employees are protected from irrational government discrimination under the Equal protection Clause. *See, e.g. Enquist v. Oregon Dept’t of Agriculture*, 128 S.Ct. 2146, 2155 (2008); *Beall v London City School Dist. Bd. of Educ.*, 2006 WL 1582447 (S.D. Ohio 2006); *Miguel v. Guess*, 112 Wn. App. 536, 51 P. 3d 89 (2002) (lesbian nurse protected); *Quinn v. Nassau County Police Dept.*, 53 F. Supp. 2d 347, 350 (E.D. NY 1999) and 2002 U.S. Dist. LEXIS 5537 at 22-25 (S.D. NY 2002, (gay police officer protected from harassment awarded \$380,000); *Lovell v. Comsewogue School Dist.*, 214 F. Supp. 2d 319 (E.D. NY 2002) (lesbian teacher protected); *Glover v. Williamsburg Local School Bd.*, 20 F. Supp. 2d 1160 (S.D. Ohio 1998) (gay school teacher protected from termination).

3. Governments May Protect Their Employees from GLBT Discrimination

- a. City of Cincinnati Municipal Code Chapter 914 (Attachment C)
 - All employers who employ 10 or more persons within the City of Cincinnati are prohibited from discriminating on the basis of sexual orientation or transgendered status.
 - It is unlawful for any employer to discriminate by refusing to hire any person or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment.
 - If an employer discriminates, it is subject to a maximum \$1,000 fine.
- b. Ohio Executive Order 2011-05K (Attachment D)
 - In January 2011 Governor Kasich declared it the policy of the State of Ohio that no person employed by an agency, board or commission may discriminate on the basis of sexual orientation in hiring, layoff, termination, transfer, promotion, demotion, or rate of compensation.
 - Governor Strickland's executive Order included a prohibition from discriminating on the basis of gender identity. Executive Order 2007-10S
- c. Hamilton County Ohio (Attachment E)
 - The County protects its employees from unfair treatment based on sexual orientation and gender identity. The County has a "zero tolerance" for violations of employee rights, harassment or discrimination.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RACHEL DOVEL	:	Case No. 1:16-cv-955
c/o Gerhardstein & Branch Co. LPA	:	
441 Vine Street, Suite 3400	:	
Cincinnati, OH 45202,	:	
	:	
PLAINTIFF,	:	
	:	
vs.	:	<u>COMPLAINT AND JURY</u>
	:	<u>DEMAND</u>
THE PUBLIC LIBRARY OF	:	
CINCINNATI AND HAMILTON	:	
COUNTY	:	
800 Vine St.	:	
Cincinnati, OH 45202,	:	
	:	
and	:	
COMMUNITY INSURANCE	:	
COMPANY d/b/a ANTHEM BLUE	:	
CROSS And BLUE SHIELD	:	
c/o CT Corporation System	:	
1300 East Ninth Street	:	
Cleveland, OH 44114,	:	
	:	
DEFENDANTS	:	

I. PRELIMINARY STATEMENT

1. Ms. Rachel Dovel is a transgender woman who is a long-term employee of the Public Library of Cincinnati and Hamilton County (“Library”). In May 2014, Ms. Dovel was diagnosed with gender dysphoria and began her medical transition, a process through which she has brought her life and outer appearance into closer alignment with her gender identity. As part of her transition, Ms. Dovel obtained a court-ordered name change, grew out her hair, started wearing clothing typically associated with women, and came out at work and in her personal life

as a transgender female. She also started a regimen of medications that would further feminize her appearance by stopping the production of testosterone and replacing it with estrogen.

2. Ms. Dovel's healthcare providers determined that she requires sex reassignment surgery to effectively treat her gender dysphoria. The sex reassignment surgery is a procedure that is both medically necessary and consistent with well-established standards of care for the treatment of gender dysphoria.

3. Through her providers, Ms. Dovel sought prior authorization for her surgery. Ms. Dovel was denied insurance coverage, however, because the Library and Community Insurance Company, doing business as Anthem Blue Cross and Blue Shield ("Anthem"), the health insurance benefit provider for the Library's employees, maintain a coverage exclusion for all procedures related to "sex transformation . . . regardless of origin or cause." Despite repeated efforts and requests to change the policy, the coverage exclusion remains in effect.

4. As a result of the coverage exclusion and unable to further delay her medically necessary care, Ms. Dovel obtained a private loan to cover the costs of the procedure, and other covered expenses associated with the surgery and the recovery for the surgery. Her procedure is scheduled for November 2016.

5. Defendants' continued enforcement of the coverage exclusion discriminates against Ms. Dovel on the basis of sex. Defendants' enforcement of the coverage exclusion thus violates Ms. Dovel's right to be free from sex discrimination under Title VII and Section 1557 of the Patient Protection and Affordable Care Act, and her right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. Ms. Dovel seeks injunctive relief to allow coverage for her gender reconstructive surgery and other related necessary medical care and an award of damages.

II. JURISDICTION AND VENUE

6. On November 5, 2015, Ms. Dovel filed a charge, pursuant to Title VII, of employment discrimination based on sex with the U.S. Equal Employment Opportunity Commission. The EEOC issued a right to sue letter on June 27, 2016. A copy is attached as Exhibit A.

7. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”), the Equal Protection Clause of the Fourteenth Amendment, and the Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (“Section 1557”).

8. This Court has jurisdiction pursuant to Article III of the United States Constitution; 28 U.S.C. §§ 1331, 1343; and 42 U.S.C. § 2000e-5(f).

9. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

10. Venue in this District and Division is proper in this district pursuant to 28 U.S.C. § 1391(b) because the Defendants are located within the Southern District of Ohio and the claims alleged in this complaint arose from events that occurred within this district.

III. PARTIES

11. Ms. Rachel Dovel is an Electronic Line Assistant in the Catalog and Processing Department at the Library. She resides in Hamilton County, Ohio. During all relevant times, she has been an employee of the Public Library of Cincinnati and Hamilton County. She is an employee within the meaning of Title VII.

12. Defendant Public Library of Cincinnati and Hamilton County is the employer of plaintiff and is a public employer within the meaning of Title VII. It is located at 800 Vine Street, Cincinnati, Ohio 45202.

13. Defendant Community Insurance Company, doing business as Anthem Blue Cross and Blue Shield, is a company organized under the laws of the State of Ohio. It is located in Mason, Ohio. The company's registered agent is located at 1300 East Ninth Street, Cleveland, Ohio 44114.

IV. STATEMENT OF FACTS

14. Ms. Rachel Dovel is a transgender woman. Although assigned male at birth, Ms. Dovel is female.

15. Since a young age, Ms. Dovel has enjoyed reading books and has always been a loyal patron of her local library. While in college, Ms. Dovel worked for the University of Toledo Carlson Library, which sparked her career in library service.

16. Ms. Dovel graduated from the University of Toledo with her Bachelor's Degree in 2005.

17. After graduating from college, Ms. Dovel began to work for the Public Library of Cincinnati and Hamilton County in October 2005. Ms. Dovel climbed her way up the ladder at the Library, first starting as a shelver and then working her way up to her current position of Electronic Line Assistant in the Catalog and Processing Department.

18. In March 2014, Ms. Dovel was diagnosed with gender dysphoria¹ as classified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V).

A. GENDER DYSPHORIA AND TRANSITION-RELATED CARE

19. Gender identity refers to a person's inner sense of belonging to a particular gender, such as male or female. It is a deeply felt and core component of human identity.

¹ Gender dysphoria was previously referred to as gender identity disorder. The American Psychiatric Association changed the name and diagnostic criteria for this condition to reflect that gender dysphoria "is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity per se."

Everyone has a gender identity, and for most people, their gender identity is consistent with the sex they were assigned at birth. At birth, infants are classified as male or female based on a cursory observation of their external genitalia. This classification becomes the person's birth-assigned sex, but may turn out to be inaccurate when the person's gender identity becomes known. Transgender people have a gender identity is different from the sex they were assigned or assumed to be at birth.

20. The medical diagnosis of gender dysphoria refers to the severe and unremitting emotional pain resulting from this incongruity. People diagnosed with gender dysphoria have an intense and persistent discomfort with the primary and secondary sex characteristics of their birth sex. Gender dysphoria is a serious medical condition that is codified in the DSM-5 and the World Health Organization's International Classification of Diseases.

21. The World Professional Association for Transgender Health (WPATH) is an interdisciplinary professional and educational organization devoted to transgender health. WPATH has established internationally-accepted Standards of Care ("SOC") for the treatment of people with gender dysphoria. Major medical and mental health organizations, including the American Medical Association, the Endocrine Society, the American Psychiatric Association, and the American Psychological Association, have endorsed the SOC as the authoritative standards of care.

22. The treatment for gender dysphoria is to affirm the person's gender and assist them in undergoing a gender transition in order to alleviate the distress caused by gender dysphoria and to live in alignment with their core gender identity. This treatment is also referred to as transition-related care. When left untreated, gender dysphoria can result in significant clinical distress, debilitating depression, and, often, suicidality.

23. The goal of treatment is to enable a transgender person to alleviate gender dysphoria and to live a healthy and productive life, based on their core gender identity, and typically involves bringing the person's body and social presentation into alignment with the person's gender identity. Treatment does not make a transgender person more of a man or more of a woman; the person's gender identity already exists. Rather, the purpose of treatment is to create more alignment between the person's identity and their appearance, attenuating the dysphoria and symptoms.

24. The transition process has three main components: social, pharmacological, and surgical. Social transition involves bringing a person's gender expression and gender role into alignment with their gender identity. It may include wearing clothes, using a different name and pronouns, and interacting with peers and one's social environment in a manner that matches the person's gender identity. In addition to the social transition, a transgender person may also decide to take medications that recalibrate the hormone balance in their bodies to be consistent with their gender identity. For example, a transgender woman would take medications that stop her body from producing testosterone and replace those hormones with estrogen, which will further feminize that person's appearance. Lastly, a transgender person may pursue surgical treatment to alleviate dysphoria associated with the person's primary and secondary sex characteristics. The precise medical treatments required to alleviate a particular individual's gender dysphoria may vary, based on the person's individualized medical needs.

B. MS. DOVEL'S TRANSITION

25. In March 2014, Ms. Dovel was diagnosed with gender dysphoria after years of suffering as a result of the intense discordance between her body and her perception as male by others and her female gender identity.

26. Two months later, Ms. Dovel started hormone therapy, which included taking estrogen, as well as spironolactone and finasteride, medications that suppressed testosterone production and increased estrogen production. Her hormone therapy was covered by the Library's health insurance policy with Anthem.

27. Ms. Dovel took other steps to bring her outer appearance into alignment with her gender identity, such as changing how she styled her hair, what clothes she wore, and how she presented her outward appearance.

28. In February 2015, Ms. Dovel legally changed her name from Nathan Bradley Dovel to Rachel Katina Dovel. Shortly thereafter, she informed her co-workers and supervisors that she is a transgender woman.

29. Ms. Dovel has met all the guidelines that Anthem Health Insurance requires of an employee seeking sex reconstructive surgery. Ms. Dovel is 34 years old and has the full capacity to make informed decisions and consent for treatment. Ms. Dovel has been diagnosed by her doctor with gender dysphoria and has met the eligibility criteria of the WPATH standard of care. In July and August 2014, Ms. Dovel came out to her family members about her gender identity. She has been living and identifying as Rachel in all aspects of her life including but not limited to work, social functions, friends, and family.

30. Dovel has been on hormone therapy since May 2014 and has retained two referral letters from two qualified mental health professionals stating why the surgery is necessary for her wellbeing.

31. Ms. Dovel's healthcare providers have determined that it is medically necessary for her to undergo sex reassignment surgery to effectively treat her gender dysphoria.

C. DEFENDANT'S DENIAL OF MS. DOVEL'S MEDICALLY NECESSARY CARE

32. On June 12, 2015, after attempting to get precertification from Anthem for the sex reassignment surgery, Ms. Dovel learned that the surgery was excluded under the Library's policy with Anthem.

33. Ms. Dovel then contacted the Library's Human Resources Department to inquire about why the procedure would not be covered under the insurance plan.

34. Ms. Dovel learned that the Library's insurance policy allows coverage for surgical procedures when medically necessary but categorically excludes "[s]ervices and supplies related to sex transformation and/or the reversal thereof . . . regardless of origin or cause."

35. Initially, the Library claimed that it was unable to provide Ms. Dovel with the insurance coverage she needed for her medically necessary transition-related care. Ms. Dovel continued to advocate that the Board of Trustees purchase an insurance policy that included coverage for transition-related care. She attended several of the board meetings in hopes of educating the trustees and explaining the importance of coverage. However, the Library Board of Trustees voted to make no changes to its insurance policy for transition-related care. Since August 2015, the Library has consistently refused that request, despite the availability of insurance products that would have provided that coverage. The exclusion for transition-related care is still in effect.

36. Defendants' healthcare policy discriminates against Ms. Dovel based on her sex. In particular, the Defendants' actions constitute sex discrimination for at least the following reasons: (1) the Library denied Ms. Dovel equal compensation, terms, conditions, or privileges of employment because of her birth sex; (2) the policy excludes surgical treatments for gender dysphoria, a medical condition that applies only to transgender people, and discrimination

against transgender people constitutes discrimination on the basis of sex and sex stereotypes; (3) the policy stems from the sex-based stereotype that regardless of medical necessity, a person who is assigned male at birth should not have access to medical care that alters their body to be more feminine; (4) the policy stems from the sex-based stereotype that regardless of medical necessity, people should not alter their bodies to change sex-related characteristics; (5) because medical transition inherently violates gender stereotypes; and (6) the policy covers the medically necessary procedures Ms. Dovel requires for other medical conditions, but not gender dysphoria.

37. As a result of Defendants' discrimination, Ms. Dovel was forced to pay for her medically necessary surgery out of pocket, which is currently scheduled for November 2016. In order to do so, she incurred high interest debt and depleted her interest bearing saving accounts.

V. FIRST CAUSE OF ACTION –Title VII

38. Defendant Library has violated plaintiff's rights under Title VII, 42 U.S.C. § 2000e *et seq.* to be free from sex discrimination.

39. Title VII provides that employers shall not “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex.” 42 U.S.C. § 2000e-2(a)(1).

40. An employer-sponsored health plan is part of the “compensation, terms, conditions, or privileges of employment.” 42 U.S.C. § 2000e-2(a)(1).

41. Discrimination on the basis of transgender status or gender nonconformity is discrimination on the basis of “sex” under Title VII.

42. By categorically excluding all medically necessary care related to “sex transformation and/or the reversal thereof,” the Library discriminates based on sex.

43. Non-transgender employees receive coverage for the same or substantially similar medically-necessary care, but transgender individuals do not. For instance, the Library's policy would cover an orchiectomy for a non-transgender male employee who was diagnosed with testicular cancer and would cover a vaginoplasty for a non-transgender female employee who was diagnosed with Mayer-Rokitansky-Kuster-Hauser syndrome.

44. As a result of the Library's policies, Ms. Dovel has suffered harm. As a result of the Library's discrimination, Ms. Dovel has experienced additional emotional pain and suffering from the delay in obtaining treatment.

VI. SECOND CAUSE OF ACTION- § 1983/Equal Protection

45. Ms. Dovel repeats and realleges each and every allegation set forth above as if fully set forth herein.

46. Defendant Library and Defendant's Board of Trustees are persons for purposes of 42 U.S.C. § 1983.

47. The Library Board of Trustees has final policymaking authority regarding the employee benefits package, including, but not limited to health insurance coverage benefits.

48. Defendant Library has violated rights secured to the plaintiff under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to be treated equally based on gender by engaging in discrimination based on sex, including transgender status, and sex stereotypes

49. Defendant Library's discrimination against Ms. Dovel based on sex is not substantially related to any important government interest.

50. Defendant Library's discrimination against Ms. Dovel based on sex is not rationally related to any legitimate government interest.

VII. THIRD CAUSE OF ACTION - § 1557/Affordable Care Act

51. Ms. Dovel repeats and realleges each and every allegation set forth above as if fully set forth herein.

52. Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 (“Section 1557”), provides that “an individual shall not, on the ground prohibited under . . . title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)”—which prohibits discrimination “on the basis of sex”—“be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.”

53. Based on information and belief, Defendant Community Insurance Company dba Anthem Blue Cross and Blue Shield sells insurance on the federally run Marketplace in Ohio. As a result, it receives federal financial assistance, and is therefore a “covered entity” for purposes of Section 1557.

54. Although not an exhaustive list, the regulations define discrimination to include “categorical coverage exclusion[s] or limitation[s] for all health services related to gender transition” or to “[o]therwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health services related to gender transition if such denial, limitation, or restriction results in discrimination against a transgender individual.” 45 C.F.R. § 92.207(b)(4) & (5).

55. The Community Insurance Company’s plan excludes “[s]ervices and supplies related to sex transformation,” which is and operates as a “categorical coverage exclusion or limitation for all health services related to gender transition” as defined by 45 C.F.R. § 92.207(b)(4).

56. Discrimination on the basis of transgender status or gender nonconformity is discrimination on the basis of “sex” under Section 1557.

57. By categorically excluding all medically necessary care related to “sex transformation surgery,” Defendant Anthem has drawn a classification that discriminates based on transgender status and gender nonconformity.

58. Because the only individuals who require medically necessary care to treat gender dysphoria are transgender individuals, denying coverage for such health care constitutes discrimination based on transgender status. As a result of the exclusion in the Anthem plan, non-transgender employees receive coverage for all of their medically necessary healthcare, but transgender individuals do not.

59. Because medical transition from one sex to another inherently violates gender stereotypes, denying coverage for such health care constitutes impermissible discrimination based on gender nonconformity.

60. Anthem’s policy also discriminates against Ms. Dovel by covering the medically necessary procedures she requires for other medical conditions, but not gender dysphoria.

61. By excluding all healthcare related to “sex transformation surgery” from the only available health plan it provides to employees, Anthem has unlawfully discriminated against Ms. Dovel—and continues to unlawfully discriminate against her—on the basis of sex in violation of Section 1557.

VII. JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues triable by a jury.

VIII. CLAIM FOR RELIEF

WHEREFORE, plaintiff demands that the Court:

- A. Award plaintiff compensatory damages in an amount to be shown at trial;
- B. Enjoin the Library from maintaining an insurance policy that excludes coverage for transition-related care.
- C. Enjoin Anthem from selling health insurance plans that contains exclusions for transition-related care.
- D. Order the Library to require coverage for Ms. Dovel's sex reassignment surgery and other medical care necessary to treat her gender dysphoria through the Library's insurance plan and available insurance policy rider;
- E. Award plaintiff other equitable relief;
- F. Award plaintiff reasonable attorney's fees, cost and disbursements;
- G. Grant to plaintiff such additional relief as the Court deems just and proper.

Respectfully submitted,

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* application for *pro hac vice* forthcoming