



North American Update International Bill of Gender Rights

Transgender Legal Theory To Application

Geneva, Switzerland

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Legal Implications of Gender

Four Examples

Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984), (a transsexual pilot fired based on “a change of sex,” significant subsequent negative history associated with this case).

In re: R.W. Heilig, 372 Md. 692 (2003), (jurisdiction of court to determine legal gender change and enter order, basis of jurisdiction, criteria to establish change of gender).

Smith v. City of Salem, Ohio, et al., 2004 U.S. App. LEXIS 16114; 2004 FED App. 0262A (6th Cir.), (veteran fire department lieutenant discriminated against following disclosure of intent to transition).

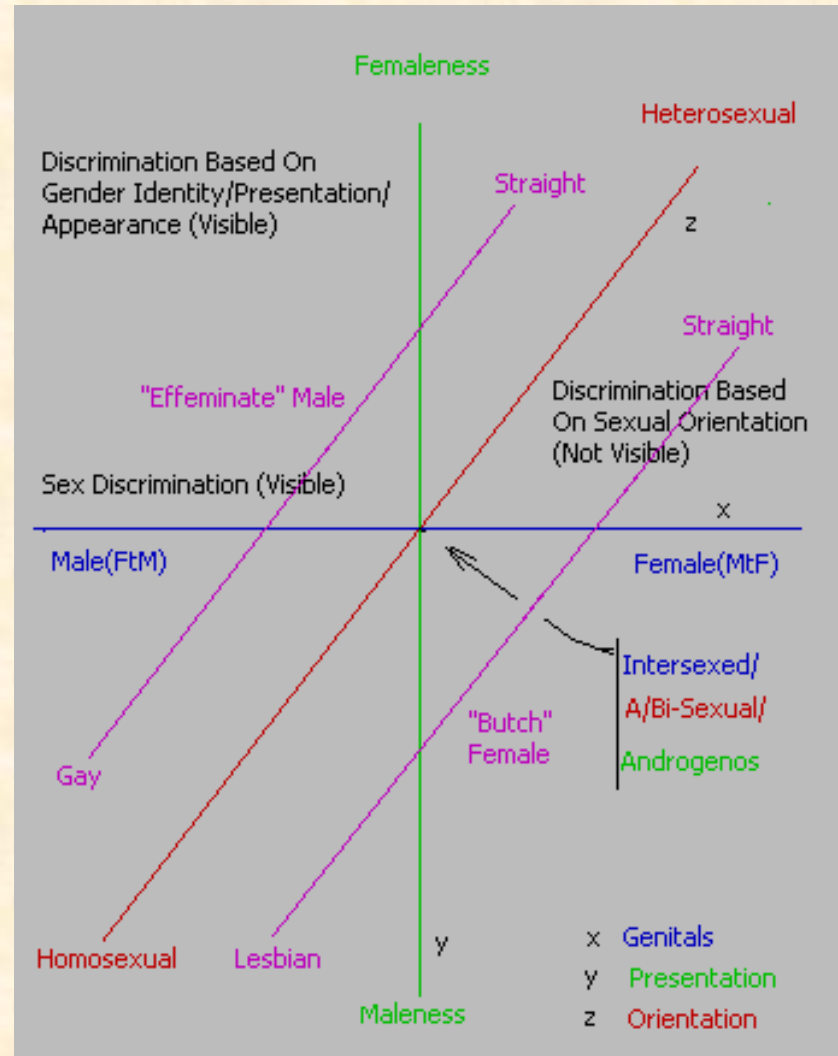
In re: Jose Mauricio LOVO-Lara, 23 I&N Dec. 746 (BIA 2005), the Defense of Marriage Act does not preclude recognition of a marriage involving a postoperative transsexual, where the State views the marriage as an opposite sex marriage.

U.S. Analysis of Transsexual Rights

- Civil & Human Rights as individually held rights - (unsettled within the United States regarding state, national, and international law).
- U.S. Constitution requires a compelling State interest to regulate an individual right.
- Equal protection of laws.
 - Legal Change of Gender and Name, Documentation
 - Right to Marriage, Family Relationships
 - Employment Rights
- Define the individual.
- Common law – history and impact.

Legal Definition of Sex - Factors

- **Determining Factors For Courts:**
- **Genitals / Neonatal Problems**
- **Gender Identity (Recent)**
- **Sexual Orientation (e.g. MwF)**
- **Defined by:**
 - Statute & Case Law**
 - Society / Social Custom**
 - Medical Professionals**
 - Individual**
- **Standardization**
 - International**
 - National**
 - Federal / States**
- **Family Law Cases**
 - **Marriage / Divorce**
 - **Parentage / Adoption**
- **Employment Cases**
- **Penal Institution Cases**



CASE NAME	Case Citation	Recognition
Anonymous vs. Weiner	50 Misc.2d 380, 270 N.Y.S.2d 319 (1966)	No - no basis to help psychologically ill
In re Annonymous (1970)	64 Misc.2d 309, 314 N.Y.S.2d 668 (1970)	Yes - may change name if no ability to procreate
Corbett vs. Corbett	2 All E.R. 33 (P. 1970)	No - chromosomes = sex
Anonymous v. Anonymous	67 Misc.2d 982, 325 N.Y.S.2d 499 (1971)	No - no ability to penetrate = not male = no marriage (FtM case)
Darnell v. Lloyd	395 F.Supp. 1210, D.Conn., May 13, 1975	Yes - no state justification
MT v. JT	355 A.2d 204 (N.J. Super. Ct. App. Div., 1976)	Yes - based on current medical science
Doe v. State, Dep't of Public Welfare	257 N.W.2d 816, Minn., Aug 19, 1977	Yes - current medical science (issue of funding CGRS)
Richards v. U.S.T.A.	93 Misc.2d 713, 400 N.Y.S.2d 267, N.Y.Sup., Aug 16, 1977	Yes - based on current medical science
Anonymous v. Mellon	91 Misc.2d 375, 398 N.Y.S.2d 99, N.Y.Sup., Aug 23, 1977	No - re: procedure to amend birth certificate not followed
City of Chicago v. Wilson	389 N.E.2d 522 (Ill. 1978)	
In re Dickinson	4 Pa. D. & C.3d 678, 1978 WL 891, Pa.Com.Pl., Jan 18, 1978	Yes - Court will request change of birth certificate (out of state)
In re Dowdrick	4 Pa. D. & C.3d 681, 1978 WL 894, Pa.Com.Pl., Feb 02, 1978	No - Court will not allow name change until CGRS is complete
Rush v. Johnson (1983)	565 F.Supp. 856, N.D.Ga., Jun 09, 1983	No - CGRS experimental therefore no state Medicaid coverage for patient
Ulane v. Eastern Airlines	742 F.2d 1081 (7th Cir., 1984)	No - sex immutable; discrimination based on change of sex OK
In re Ladrach	32 Ohio Misc.2d 6, 513 N.E.2d 828, Ohio Prob., Feb 17, 1987	No - no statutory authority
Matter of Anonymous	153 Misc.2d 893, 582 N.Y.S.2d 941, N.Y.City Civ.Ct., Mar 27, 1992	Yes - no phallas = no ability to penetrate = female (MtF case)
Application of Anonymous	155 Misc.2d 241, 587 N.Y.S.2d 548, N.Y.City Civ.Ct., Aug 27, 1992	No - fraught w/ danger of deception & confusion & contrary to public interest
Dep't. of Soc Sec vs. SRA	(1993) 118 A.L.R. 467 (Fed. Ct. Gen. Div. Australia)	Yes
Littleton v. Prange (1999)	9 S.W.3d 223, Tex.App.-San Antonio, Oct 27, 1999	No - "Our creator" / "left to legislature"
In re Estate of Gardiner I	29 Kan.App.2d 92, 22 P.3d 1086, Kan.App., May 11, 2001	Yes - based on current medical science
In re Estate of Gardiner II	273 Kan. 191, 42 P.3d 120, Kan., Mar 15, 2002	No - FF&C / DOMA / only marriage is between male and female
In re Kevin and Jennifer	No. SY8136 of 1999, [2001] FamCA 1074 (Fam. Ct. Austl.)	Yes (trial level opinion)
In re R.W. Heilig	372 Md. 692, 816 A.2d 68, Md., Feb 11, 2003	Yes - based on current medical science (CGRS surgery not mandatory)
In re Kevin and Jennifer	App.No. EA 97/2001, No. SY 8136/1999 (Fam. Ct. Austl.- Sydney) (2003)	Yes - based on current medical science (CGRS surgery not determinative)
Kantaras vs. Kantaras	No. 98-5375CA (Fla. Cir. Ct. Pasco Co. Feb. 21, 2003)	Yes - trial level, based on current medical science (CGRS surgery not determinative. Note: Reversed on Appeal based on 'traditional sex')
CASE NAME	Case Citation	Recognition

INTERNATIONAL TEXTS

Article 9 of the Charter of Fundamental Rights of the European Union, signed on 7 December 2000, provides: “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.”

Universal Declaration of Human Rights, Article 16, Section (1), states, ‘Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.’” (The U.S. is a signatory.)

INTERNATIONAL BILL OF GENDER RIGHTS

(As adopted July 4, 1996, Houston, Texas, USA)

■ **History of the International Bill of Gender Rights**

- The International Bill of Gender Rights was first drafted in committee and adopted by the International Conference on Transgender Law and Employment Policy, Inc. (ICTLEP) at that organization's second annual meeting, held in Houston, Texas, August 26-29, 1993. The IBGR was reviewed and amended at subsequent annual meetings of ICTLEP in 1994, 1995 and 1996.
- The IBGR is derived from two earlier documents both of which sought to articulate basic human rights for transgendered people. JoAnn Roberts of King of Prussia, Pennsylvania, drafted and disseminated a "Bill of Gender Rights" in 1991. Working independently and without knowledge of Roberts' efforts, Sharon Stuart of Cooperstown, New York, published a proposal for a "Gender Bill of Rights" in the 1991 annual meeting newsletter of the International Foundation for Gender Education (IFGE).

■ **The Purpose and Effect of the International Bill of Gender Rights**

- The IBGR strives to express fundamental human and civil rights from a gender perspective. The ten rights enunciated are not special rights applicable to a particular interest group, nor are these rights limited in application to persons for whom gender identity and role issues are of paramount concern.
- All ten sections of the IBGR are universal rights which can be claimed and exercised by every human being regardless of their sex or gender.

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#1 The Right To Define Gender Identity

- *All human beings carry within themselves an ever-unfolding idea of who they are and what they are capable of achieving. The individual's sense of self is not determined by chromosomal sex, genitalia, assigned birth sex, or initial gender role. Thus, the individual's identity and capabilities cannot be circumscribed by what society deems to be masculine or feminine behavior. It is fundamental that individuals have the right to define, and to redefine as their lives unfold, their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role.*
- Therefore, all human beings have the right to define their own gender identity regardless of chromosomal sex, genitalia, assigned birth sex, or initial gender role.

#2 The Right to Free Expression of Gender Identity

- *Given the right to define one's own gender identity, all human beings have the corresponding right to free expression of their self-defined gender identity.*
- Therefore, all human beings have the right to free expression of their self-defined gender identity; and further, no individual shall be denied Human or Civil Rights by virtue of the expression of a self-defined gender identity.

#3 The Right to Secure and Retain Employment and to Receive Just Compensation

- *Given the economic structure of modern society, all human beings have a right to train for and to pursue an occupation or profession as a means of providing shelter, sustenance, and the necessities and bounty of life, for themselves and for those dependent upon them; further, all human beings have the right to secure and retain employment and to receive just compensation for their labor regardless of gender identity, chromosomal sex, genitalia, assigned birth sex, or initial gender role.*
- Therefore, individuals shall not be denied the right to train for and to pursue an occupation or profession, nor be denied the right to secure and retain employment, nor be denied just compensation for their labor, by virtue of their chromosomal sex, genitalia, assigned birth sex, or initial gender role, or on the basis of a self-defined gender identity or the expression thereof.

#4 The Right of Access to Gendered Space and Participation in Gendered Activity

- *Given the right to define one's own gender identity and the corresponding right to free expression of a self-defined gender identity, no individual should be denied access to a space or denied participation in an activity by virtue of a self-defined gender identity which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role.*
- Therefore, no individual shall be denied access to a space or denied participation in an activity by virtue of a self-defined gender identity which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role.

#5 The Right to Control and Change One's Own Body



All human beings have the right to control their bodies, which includes the right to change their bodies cosmetically, chemically, or surgically, so as to express a self-defined gender identity.

Therefore, individuals shall not be denied the right to change their bodies as a means of expressing a self-defined gender identity; and further, individuals shall not be denied Human or Civil Rights on the basis that they have changed their bodies cosmetically, chemically, or surgically, or desire to do so as a means of expressing a self-defined gender identity.

#6 The Right to Competent Medical and Professional Care

- ▶ *Given the individual's right to define one's own gender identity, and the right to change one's own body as a means of expressing a self-defined gender identity, no individual should be denied access to competent medical or other professional care on the basis of the individual's chromosomal sex, genitalia, assigned birth sex, or initial gender role.*
- ▶ Therefore, individuals shall not be denied the right to competent medical or other professional care on the basis of chromosomal sex, genitalia, assigned birth sex, or initial gender role, when changing their bodies cosmetically, chemically, or surgically.

#7 The Right to Freedom From Involuntary Psychiatric Diagnosis and Treatment

- *Given the right to define one's own gender identity, individuals should not be subject to involuntary psychiatric diagnosis or treatment.*
- Therefore, individuals shall not be subject to involuntary psychiatric diagnosis or treatment as mentally disordered, dysphoric, or diseased, on the basis of a self-defined gender identity or the expression thereof.

#8 The Right to Sexual Expression

- *Given the right to a self-defined gender identity, every consenting adult has a corresponding right to free sexual expression.*
- Therefore, no individual's Human or Civil Rights shall be denied on the basis of sexual orientation; and further, no individual shall be denied Human or Civil Rights for expression of a self-defined gender identity through private sexual acts between consenting adults.

#9 The Right to Form Committed, Loving Relationships and Enter Into Marital Contracts

- *Given that all human beings have the right to free expression of self-defined gender identities, and the right to sexual expression as a form of gender expression, all human beings have a corresponding right to form committed, loving relationships with one another, and to enter into marital contracts, regardless of their own or their partner's chromosomal sex, genitalia, assigned birth sex, or initial gender role.*
- Therefore, individuals shall not be denied the right to form committed, loving relationships with one another or to enter into marital contracts by virtue of their own or their partner's chromosomal sex, genitalia, assigned birth sex, or initial gender role, or on the basis of their expression of a self-defined gender identity.

#10 The Right to Conceive, Bear, or Adopt Children; The Right to Nurture and Have Custody of Children and to Exercise Parental Capacity

- *Given the right to form a committed, loving relationship with another, and to enter into marital contracts, together with the right to express a self-defined gender identity and the right to sexual expression, individuals have a corresponding right to conceive and bear children, to adopt children, to nurture children, to have custody of children, and to exercise parental capacity with respect to children, natural or adopted, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role, or by virtue of a self-defined gender identity or the expression thereof.*
- Therefore, individuals shall not be denied the right to conceive, bear, or adopt children, nor to nurture and have custody of children, nor to exercise parental capacity with respect to children, natural or adopted, on the basis of their own, their partner's, or their children's chromosomal sex, genitalia, assigned birth sex, initial gender role, or by virtue of a self-defined gender identity or the expression thereof.

To be continued Thank you!

