

LGBTQ SOUTH FLORIDA

From bathrooms to birth certificates: New front in battle for trans rights

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Justin Lee Naber seeks to be known legally as Stacy Lorraine Naber. R404RWJ

FLORIDA DEPARTMENT OF CORRECTIONS



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TALLAHASSEE

The nation's war over gender roles and sexuality is moving from banquet halls, bakeries and bathrooms into a new arena: birth certificates.

In courthouses across Florida, judges are being asked to decide whether transgender people may change not only the name on their birth certificate, but also their "gender marker," or the box that designates their sex. The requests have become increasingly common, say lawyers who litigate such cases.

And they've become increasingly contentious.

On Friday, a Tallahassee judge held a hearing in a case involving a Broward County teenager who has asked state health administrators to change both the name and gender marker on his birth certificate. The child's birth certificate identifies him as female, but his parents say the youth, who is about 14 years old, identifies himself as male, and wishes to live his life with a male name and male characteristics. The Department of Health, which oversees Vital Statistics, has denied the request.

And at the federal courthouse in Fort Pierce, a judge has been asked to declare unconstitutional a state law that forbids convicted felons from changing their names. The request was made in 2015 by an inmate at Okeechobee Correctional Institution; the inmate's legal name is Justin Lee Naber, though she now is using the name Stacy Lorraine Naber. Naber is serving a life sentence on a Pasco County conviction for second-degree murder.

Through her attorney, Daniel Tilley of the American Civil Liberties Union of Florida, Naber said being called by a name that matches her gender is a necessary element of her psychological health.

"Being called my female name is like magic — it's beautiful," Naber said. "It's something I can't even describe. I feel truly at peace with myself. It's who I was meant to be. It pains me to know that I've asked politely and through the proper channels to be called Stacy. By repeatedly denying me, it's like they don't care if I get treatment."

Under health department policy, Floridians may amend both the name and gender marker on their birth certificate, and, in recent years, petitions to do that have become more common. Gender markers are more difficult to change; the health department requires a notarized affidavit from a doctor stating that the petitioner has undergone surgery to reassign his or her gender, a procedure that generally is not covered by health insurance, and which surgeons are reluctant to perform on minors.

That requirement is at the center of several disputes, including the one that resulted in Friday's hearing.

Miami Beach attorney Elizabeth Schwartz, whose family law, estate, and adoption practice often caters to LGBT clients, said she has represented several people who sought to legally change their names and gender markers, including minors. In one case, she said, a judge ordered a reluctant health department to amend a youngster's birth certificate to reflect the client's gender identity.

Schwartz views the health department's policy of requiring a doctor's note as both "overly invasive" and "not realistic."

There is wide variation in the approach taken by transgender people, Schwartz said, with some people surgically altering their anatomy, and others choosing not to. The health

department's rule, which Schwartz called "anachronistic," punishes people who retain the sexual organs of the gender they no longer affirm, she said.

"You don't necessarily have to have body-altering surgery to have a different gender identity," Schwartz said.

The health department would not discuss the policy with the Herald on Friday, except to say in a statement that "there is no process in place to change the gender on a birth certificate for a minor in the State of Florida that is not a misstatement, error or omission occurring at birth." Such an amendment, spokeswoman Mara Gambineri said, would require "further clarification from the court."

Birth certificates have taken on added freight in recent months as social and religious conservatives have tied other, more fraught, issues to them. Lawmakers in at least seven states debated the passage of so-called "bathroom bills," some of which would have required people to use only the restroom that matched the sex on their birth certificate. In March, North Carolina approved one such law, House Bill 2, which generated an enormous backlash, and a federal civil rights lawsuit.

Little is known of the drama that is playing out in Leon Circuit Judge Karen Gievers' courtroom in Tallahassee, as all records in the case had been hidden, and both parties declined to discuss it. A lawyer for the Miami Herald, Kevin Cox, asked Gievers Friday to open the records to public inspection, and said the Herald did not intend to name the child.

When the Department of Health filed its petition last week asking Gievers to affirm its decision to deny the Broward teen a change in his gender marker, the court document was filed under seal. Even the [court docket](#), or listing of activity in the case, was sealed, a practice the state Supreme Court [forbade](#) a decade ago.

And it was not the youth's parents who requested that the case be kept secret. The family's lawyer, John "Jay" Rosenquest, told Gievers the teen and his parents had discussed the litigation, and had decided to proceed openly.

"You should know at the outset that my clients are not seeking to have any of these proceedings remain confidential," Rosenquest said. "My clients' position, having spoken with their child, is that this should be a regular proceeding and not shielded from the Sunshine Laws."

The youth, Rosenquest said, could not participate in the hearing because he was away at camp.

The health department's lawyer, Nichole Geary, said the agency did not take a position on whether the case should be kept secret.

Gievers, whose legal practice mostly involved child welfare and foster care before she became a judge, ordered the health department to refile its petition with the child's name protected, and said she would open the matter to the public once that occurred, by Tuesday.

"We can protect against access to confidential information by the court directing [the Herald] to not disclose the names if any names happen to be mentioned," Gievers said.

Gievers rejected the teen's parents' desire to open the records in the case — at least for now. Gievers said she would appoint a lawyer — either Miami guardianship and probate attorney

Richard C. Milstein, whose practice often involves LGBT issues, or Coral Springs children's advocate Andrea Moore — to be a “guardian” over the teen's interests. The designated lawyer is expected to report back to Gievers on whether the teen's identity should remain confidential.

In contrast, documents related to the litigation against the Department of Corrections have remained entirely open.

That dispute began Dec. 14, 2015, when an Okeechobee Correctional Institution inmate filed a civil rights complaint against the FDC, the corrections department's secretary, Julie Jones, and Gov. Rick Scott. The inmate identified herself as “Justin Lee Naber, also known as/goes by Stacy Lorraine Naber.”

To residents of Pasco County, the male name might sound familiar. Naber was [convicted](#) of murder in November 2013. A jury said Naber stabbed a roommate to death amid an argument over rent money two years earlier. News accounts also linked Naber to the 2005 killing of a 73-year-old man in Albuquerque.

“Inmate Naber has a gender identity disorder,” the complaint said, and “identifies exclusively as a female person. Inmate Naber experiences severe mental anguish as inmate Naber is prohibited by law [from changing] his/her name to Stacy Lorraine Naber.”

This March, the ACLU of Florida took up Naber's cause, and filed a 24-page amended complaint on her behalf. The ACLU believes the state law that bans felons from changing their names is discriminatory, unconstitutional, and has the consequence of hindering the treatment of Naber's mental health. Naber, the suit says, suffers from “gender dysphoria,” and has become depressed and suicidal because she is barred from expressing herself as a woman in prison.

Naber, 30, “is serving a life sentence without the possibility of parole, her rights will never be restored, and thus she can never obtain a legal name change or be recognized by the name that accords with her gender identity for the remainder of her life,” the suit says. “Though for a non-transgender person the adoption of a new name might be a matter of preference, for transgender people, a change of name is a form of medical treatment.”

The prison chief, Jones, has asked U.S. District Judge Robin L. Rosenberg to toss the complaint. In her motion, Jones made one concession, referring to the inmate by using female pronouns: “her” and “she” and “herself.”

That appears to be where state prison administrators draw the line, however.

The corrections department disputes Naber's diagnosis, saying prison doctors have diagnosed the inmate with an “ego-dystonic sexual orientation” condition, which arises when one is uncomfortable with his or her sexual attractions.

The diagnosis was abandoned by the American Psychiatric Association, which publishes the country's standard diagnostic manual, almost 30 years ago. The World Health Organization retains the diagnosis in its manual, but the group has recommended that it be “deleted in its entirety” in the next edition.

In any case, two prison doctors who made the diagnosis say in court papers they are not refusing medical care to Naber, a cornerstone of the inmate's case. “Rather,” the doctors say, Naber “simply disagrees with” their diagnosis.

Jones also suggested the prison system has “legitimate penalogical interests of security and administration” in ensuring inmates go only by the names they used when they were incarcerated. “Prisons have the right to classify inmates under their committed names,” she wrote, adding: “Courts should defer to prison officials in the operation of those internal matters.”

Judge Karen Gievers