

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PRINCESS JANAE PLACE, JULES DONAHUE,  
and JAIME MITCHELL,

Plaintiffs,

-against-

OFFICE OF TEMPORARY AND DISABILITY  
ASSISTANCE, OFFICE OF TEMPORARY AND  
DISABILITY ASSISTANCE COMMISSIONER  
MICHAEL HEIN in his official capacity, NEW  
YORK STATE DEPARTMENT OF HEALTH,  
NEW YORK STATE DEPARTMENT OF  
HEALTH COMMISSIONER HOWARD ZUCKER  
in his official capacity, NEW YORK STATE, NEW  
YORK STATE GOVERNOR ANDREW CUOMO  
in his official capacity, NEW YORK CITY, NEW  
YORK CITY DEPARTMENT OF SOCIAL  
SERVICES, NEW YORK CITY DEPARTMENT  
OF SOCIAL SERVICES COMMISSIONER  
STEVEN BANKS in his official capacity,

Defendants.

INDEX NO: \_\_\_\_\_

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. This case challenges New York State benefits policies that unlawfully discriminate on the basis of gender identity. Under these policies, nonbinary New Yorkers seeking desperately needed emergency assistance to which they are entitled, as well as access to a host of other state-run benefits and resources, are misgendered and forced to lie under oath about their gender identity or face delays and outright denials. The plaintiffs—organizational plaintiff Princess Janae Place, along with individual plaintiffs Jules Donahue and Jaime

Mitchell—have all been harmed by New York’s discriminatory policies and seek their immediate rescission.

2. Specifically, New York State maintains a “Welfare Management System” that requires the entry of a gender marker but does not recognize “X” (or any other nonbinary) gender markers. Consequently, gender nonbinary people applying for any of the benefits or services administered via that system—including emergency SNAP benefits (also known as food stamps), homeless services, Medicaid services, and HIV/AIDS services—must either agree to select an “M” or “F” marker and be misidentified throughout the state system or face a refusal to process their application. Once tagged with an inaccurate “M” or “F” designation, a nonbinary person will be subjected to misgendering every time anyone inside or outside the agency has access to their benefits-related information.

3. The Commissioner of the New York City Department of Social Services, the agency tasked with administering state benefits programs in New York City, has stated unequivocally that the challenged policies *must* be changed—and the system updated to incorporate an “X” gender marker designation—for the city agency to “ensure compliance with” antidiscrimination law and to “accurately and timely process applications for benefits and services.” In response, the state has doubled down on its refusal to change its discriminatory policies.

4. In other contexts, New York State has recognized its obligation to accurately identify the gender of nonbinary people—birth certificates in New York include an “X” option in the “sex” field, and the state has publicly committed to providing driver’s licenses with an “X” option in the near future—but it has chosen to establish a different standard of treatment for New York’s poorest and most vulnerable residents. For them, the state conditions access to lifesaving

assistance on relinquishing their right to have their gender identity respected. This decision is consistent with the state's neglect of the Welfare Management System in general: outside the context of gender recognition, the same outdated computer system that New York refuses to reprogram to avoid delays and unnecessary denials of benefits to nonbinary people regularly creates severe problems for others seeking to apply for assistance, correct their information, and provide required updates to the state.

5. Through this action, the plaintiffs seek declaratory and injunctive relief based on the defendants' violation of the New York State Human Rights Law, the New York State Civil Rights Law, the New York City Human Rights Law, and the New York State Constitution.

### **PARTIES**

6. Plaintiff Princess Janae Place ("PJP") is a community-based organization led by, and for, transgender people of color located in the Bronx, New York. The mission of PJP is to help people of trans experience maximize their full potential as they transition from homelessness to independent living by offering a safe space for transgender people to connect with community, access gender-affirming support, engage in educational and recreational activities, and receive referrals to comprehensive services including government housing assistance, health care, and other benefits. PJP's membership consists primarily of transgender and nonbinary individuals who access PJP's services.

7. Plaintiff Jules Donahue is a transgender nonbinary resident of New York City who uses the gender-neutral honorific title Mx. and they/them/their pronouns. Mx. Donahue has valid government-issued identification that identifies their gender as "X." Mx. Donahue receives cash assistance, SNAP, heating assistance ("HEAP"), and Medicaid via the defendants'

benefits system, having first applied on July 11, 2020, through New York City's Department of Social Services.

8. Plaintiff Jaime Mitchell is a transgender nonbinary resident of New York City who uses they/them/their pronouns and generally avoids honorific titles. Jaime has a New York State birth certificate that identifies their gender as "X." Jaime receives SNAP and Medicaid via the defendants' benefits system.

9. Defendant New York State Office of Temporary and Disability Assistance ("OTDA") is a state agency organized under the laws of the State of New York. In conjunction with the New York State Department of Health, OTDA runs, manages, and maintains the state's Welfare Management System ("WMS"), and it creates and enforces the policies requiring nonbinary applicants for benefits in New York State to select either "M" or "F" as their gender marker.

10. Defendant Michael Hein is sued in his official capacity as Commissioner of OTDA. He is charged with enacting, amending, and implementing the rules that regulate OTDA and the performance of the duties of its officers, agents, and other employees, including policies related to the use of gender designations in WMS and on applications for benefits.

Commissioner Hein's administration and enforcement of OTDA rules and policies are actions taken under the color of state law.

11. Defendant New York State Department of Health ("DOH") is a state agency organized under the laws of the State of New York. In conjunction with OTDA, DOH runs, manages, and maintains the state's Welfare Management System ("WMS"), and it creates and enforces the policies requiring nonbinary applicants for benefits in New York State to select either "M" or "F" as their gender marker.

12. Defendant Howard Zucker is sued in his official capacity as Commissioner of DOH. He is charged with enacting, amending, and implementing the rules that regulate DOH and the performance of the duties of its officers, agents, and other employees, including policies related to the use of gender designations in WMS and on applications for benefits. Commissioner Zucker's administration and enforcement of DOH rules and policies are actions taken under the color of state law.

13. Defendant New York State is the entity pursuant to whose laws the defendant state agencies were created and operate.

14. Defendant Andrew Cuomo is sued in his official capacity as Governor of New York State. Governor Cuomo supervises the implementation and enforcement of state laws and regulations by the agencies under his control, including OTDA and DOH. Governor Cuomo's supervision of OTDA and DOH are acts taken under color of state law.

15. Defendant New York City is a city organized under the laws of New York State. The defendant New York City Department of Social Services is an agency of New York City.

16. Defendant New York City Department of Social Services ("DSS") is a city agency established under the laws of New York State and New York City. Working with OTDA and DOH, the DSS runs, manages, and maintains the benefits-application process for New York City residents seeking state and city benefits, and it enforces the policies requiring nonbinary applicants for benefits in New York City to select either "M" or "F" as their gender marker.

17. Defendant Steven Banks is sued in his official capacity as Commissioner of the DSS. He is charged with supervising, enacting, amending, and implementing the policies that regulate DSS and the performance of the duties of its officers, agents, and other employees, including policies related to the use of gender designations on applications for benefits.

Commissioner Banks's administration and enforcement of DSS rules and policies are actions taken under the color of state law.

### **JURISDICTION AND VENUE**

18. All of the facts herein occurred in New York State, and a substantial portion of the events or omissions giving rise to the claims in this case arose in New York County.

19. Multiple defendants' offices are located in New York County. The individual plaintiffs reside in New York City, and the organizational plaintiff has its headquarters in New York City.

20. Venue is proper in New York County pursuant to CPLR § 503(a).

### **STATEMENT OF FACTS**

#### ***Nonbinary Gender Identity and Gender Dysphoria***

21. Jules Donahue and Jaime Mitchell are New York residents who are transgender and whose gender identities are nonbinary, as are many of the members and clients of PJP.

22. Everyone has a gender identity, which is one's internal sense of being male, female, or a gender outside of those binary gender classifications. For most people, their internal sense of sex matches the sex designated on their original birth certificate (often referred to in as one's "assigned sex at birth"). By contrast, a transgender person has a gender identity that is different from the sex erroneously assigned to that person at birth. A nonbinary person has a gender identity that is neither strictly male nor female. Gender identity is a core part of a person's identity.

23. While the legal recognition of nonbinary gender identities in the United States is relatively recent, gender identities outside of the male and female binary classifications have always existed.

24. The largest and most comprehensive recent national survey of transgender people in the United States reported that 35 percent of the respondents identified as nonbinary.<sup>1</sup> Based on that percentage, there are at least hundreds of thousands of people in the United States with nonbinary gender identities, including tens of thousands in New York.

25. Consistent with the growing awareness of these facts—and prompted by the advocacy and increasing visibility of nonbinary, intersex, and transgender New Yorkers—in recent years New York State and New York City have updated their policies to include an “X” option in the “sex” field on birth certificates. In addition, New York City issues official municipal identification cards (“NYC IDs”) with an “X” option, and in response to litigation New York State has publicly committed to providing driver’s licenses with an “X” option in the “sex” field.<sup>2</sup>

26. Outside New York, at least 18 other U.S. jurisdictions—including Arkansas, California, Colorado, Connecticut, the District of Columbia, Hawai’i, Illinois, Indiana, Maine, Maryland, Minnesota, Nevada, New Hampshire, New Jersey, Oregon, Pennsylvania, Vermont, and Washington—also provide some form of legal recognition of nonbinary gender markers. And outside of the United States, many other countries—including Australia, Bangladesh, Canada, Germany, India, Malta, Nepal, New Zealand, and Pakistan—offer some form of a nonbinary gender marker on government documents.

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<sup>1</sup> See James, S.E., Herman, J.L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (2017) at 23, 43.

<sup>2</sup> See Plaintiffs’ Brief, *Saba v. Cuomo*, 20-cv-05859-LJL, ECF 28 (SDNY, filed Nov. 20, 2020) (noting disputes about the timing and exact terms of New York State’s future driver’s license policy); Defendants’ Brief, ECF 35 (filed Dec. 16, 2020) (stating that “DMV will begin issuing ‘X’ gender licenses through an automated process as soon as the necessary modification is complete”) (emphasis in original).

27. Medical consensus recognizes that one's sex is comprised of host of factors, including hormone levels, secondary sex characteristics, chromosomes, gonads (ovaries or testes), internal reproductive organs, external genitalia and, most importantly, the innate, internal sense of one's sex. Individuals can have a combination of typically male and female characteristics, so doctors rely on an individual's self-reported sex as the dispositive factor.

28. Gender dysphoria is a serious medical condition that refers to the psychological discomfort and distress that results from an incongruence between the one's assigned sex at birth and one's gender identity. Many, but not all, transgender and nonbinary people have a diagnosis of gender dysphoria.

29. The American Psychiatric Association's (the "APA's") Diagnostic and Statistical Manual 5th edition ("DSM-5") describes how a person with gender dysphoria experiences clinically significant distress based on this incongruence, and how this stress can be exacerbated by stigmatization, discrimination, and victimization.

30. Individuals living with gender dysphoria often experience severe psychological harm and suffering, including anxiety, depression, and/or thoughts of suicide.

31. Gender dysphoria is, however, highly treatable.

32. A well-established medical consensus finds that social and legal transition to living consistently with one's affirmed gender—along with, as appropriate, hormone therapy, surgery, and counseling—can successfully alleviate gender dysphoria. By contrast, medical consensus finds that failing to treat transgender people, including nonbinary people, in a manner consistent with their gender identity can cause significant harms.

33. The World Professional Association for Transgender Health ("WPATH"), the Endocrine Society, and the APA have developed the standard of care for treatment of gender



dysphoria. This treatment is endorsed by the American Medical Association (“AMA”) and numerous other professional organizations such as the American Psychological Association. Proper treatment is vital to combating the severe psychological harm—including depression, anxiety, and suicidality—that individuals may experience in connection with their gender dysphoria.

34. WPATH specifically addresses the importance of obtaining accurate “gender marker[s] on identity documents” and on ensuring that “organizations and institutions” accurately note a person’s self-identified gender identity, as part of the recommended treatment to help alleviate gender dysphoria. In fact, one study found a drastic reduction in suicide attempts for transgender people, including nonbinary transgender people, who had even just one identity document that accurately reflected their gender identity.<sup>3</sup>

35. The experiences of nonbinary New Yorkers provide insight into the vital importance of having one’s gender identity accurately recognized, and the harms of having one’s gender identity ignored or misrepresented by the government. In testimony before the New York City Council regarding the City’s plan to add an “X” sex marker option to birth certificates in 2018, one person stated, “I am a transgender non-binary individual and my pronouns are they, them, and theirs. I am misgendered as female every day. . . . On doctor’s forms to email sign-ups, I’m asked to pick ‘male’ or ‘female’. . . . I am continually confronted with being ‘othered.’”<sup>4</sup> Another noted the acute harms of being nonbinary “in a society that

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<sup>3</sup> Greta R. Bauer, et al., *Intervenable factors associated with suicide risk in transgender persons: a respondent driven sampling study in Ontario, Canada*, 15.1 BMC Pub. Health 525 (2015).

<sup>4</sup> AC Dumlao, Testimony Before the NYC Council Committee on Health Concerning Int. 0954-2018 (June 13, 2018), *available at* <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6326369&GUID=7A5382AA-F10D-40E3-8988-6B22CC64A703>.

negates your existence.”<sup>5</sup> Nonbinary people around the country have shared similar experiences when confronted with unlawful government policies that limit the availability of a nonbinary gender option.<sup>6</sup>

### *Jules Donahue*

36. Jules Donahue is a thirty-year-old resident of Brooklyn, New York. Mx. Donahue has worked as a legal assistant in the past and is currently working to complete law school.

37. Mx. Donahue is transgender and nonbinary, uses the honorific title Mx., and uses and they/them/their pronouns. Mx. Donahue has valid government-issued identification that identifies their gender as “X.”

38. Mx. Donahue sees a therapist regularly and they have discussed the effect of misgendering on symptoms they experience associated with gender dysphoria. Part of the treatment recommended by their therapist includes living consistently as a nonbinary person and having their gender identity acknowledged and respected in everyday life.

39. Like many New Yorkers, Mx. Donahue has experienced acute financial hardship during the COVID-19 pandemic. They lost their job, faced mounting bills, and were unable to find work as the city and state remained largely shut down and residents faced the threat of

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<sup>5</sup> Meril Mousoom, Testimony Before the NYC Council Committee on Health Concerning Int. 0954-2018 (June 13, 2018), *available at* <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6326369&GUID=7A5382AA-F10D-40E3-8988-6B22CC64A703>.

<sup>6</sup> *See* Brief of Amicus Curiae Basic Rights Oregon and ACLU of Oregon, *Matter of Hollister*, CA No. A171609, at 18-19 (Ore. Ct. App., Nov. 7, 2019) (collecting first-person accounts of nonbinary people denied access to accurate gender markers, including the following: “I have seen so many really hard emotional responses to people having to choose only one [gender] and sometimes having to choose the wrong one. . . . It creates so many institutional barriers as well. . . . It seems really superficial to people who don’t experience it—just the changing of gender markers—but it’s not. It’s actually hugely impactful.”), *available at* [https://aclu-or.org/sites/default/files/aclu\\_or\\_bro\\_amicus\\_brief\\_hollister.pdf](https://aclu-or.org/sites/default/files/aclu_or_bro_amicus_brief_hollister.pdf). The Oregon Court of Appeals in that case went on to hold that, under an Oregon statute permitting a court-ordered “change of legal sex,” the “sex designation must affirm the petitioner’s gender identity whether that is male, female, or nonbinary.” *Matter of Hollister*, 470 P.3d 436, 443 (Ore. Ct. App. 2020).

serious illness and potential death if they left their homes. While they have been out of work, Mx. Donahue has sought out and participated in opportunities to volunteer for nonprofit organizations.

40. As the pandemic lockdown stretched on, Mx. Donahue became worried that, without assistance, they could not afford to continue paying rent or purchasing food and other necessities. Without health insurance, Mx. Donahue also worried that any health crisis—including COVID-19—could lead to financial disaster.

41. Mx. Donahue knew that New York State offers several benefits and services designed to provide assistance to people struggling to afford health insurance, food, and rent, and they sought information regarding the application process for such benefits on the website of the NYC DSS.

42. Based on that information, Mx. Donahue believed that they would qualify for SNAP benefits, Medicaid, heating assistance, and cash assistance. The prospect of the assistance offered by these programs came as a great relief to Mx. Donahue, because the assistance would address some of Mx. Donahue's most pressing concerns regarding food, housing, and health insurance.

43. On July 11, 2020, when they began the application process online via the DSS's online portal, however, Mx. Donahue encountered for the first time the system's inability to recognize their gender identity.

44. At an early stage in the online application, Mx. Donahue was required to choose an option in a drop-down box marked "Gender." Mx. Donahue looked for an option marked "X," "nonbinary," or "other" that would have been an accurate representation of their gender identity. The only options were "Male" and "Female." Because the box was marked "\*REQUIRED,"

Mx. Donahue could not continue with the application—and could not complete it—without choosing either “Male” or “Female” as their gender.

45. Mx. Donahue was forced to choose between selecting an inaccurate gender designation and forgoing the emergency benefits for which they qualified pursuant to the policies and practices of the defendants. Specifically, the state defendants who control WMS require the entry of a gender designation into that system before anyone’s application for benefits is considered or approved, and they refuse to create any gender designation options other than “Male” and “Female.”

46. For Mx. Donahue, the defendants’ rejection of their gender identity was disappointing, surprising, and harmful. It called to mind other instances in which Mx. Donahue has been misgendered or otherwise discriminated against for being nonbinary, and it was particularly harmful because the discrimination appeared to be endorsed and required by the government itself. Mx. Donahue was confronted with this discrimination at a particularly vulnerable moment when they were seeking emergency assistance during a global pandemic.

47. Faced with this difficult choice, Mx. Donahue had no good option. Ultimately, because Mx. Donahue recognized that foregoing assistance would place them in severe economic and physical jeopardy, they selected a binary gender designation on the online application form and completed the application process.

48. At the end of the online application process, Mx. Donahue was required to certify, under penalty of perjury, that all the information they had provided was accurate. Mx. Donahue knew that their gender-related information was *inaccurate*, but because they had no option to provide accurate information and no ability to complete the application without

selecting a gender designation, they were forced to provide a certification that they knew to be false.

49. Mx. Donahue was approved for and began receiving cash assistance, SNAP, heating assistance, and Medicaid via the defendants' benefits system. Mx. Donahue continues to rely on this assistance.

50. At the same time, Mx. Donahue is aware that, as a result of the defendants' policies and practices, their gender is misidentified throughout the WMS system. People inside and outside of the defendants' respective agencies who have access to all or part of Mx. Donahue's file—including the many government employees to whom Mx. Donahue must turn when they have questions about their benefits, when they engage in required updates and interviews regarding their benefits, and when they need assistance regarding their benefits—consequently misgender Mx. Donahue based on that inaccurate WMS record.

51. After their benefits began, Mx. Donahue called the DSS directly to discuss their case and to specifically request that their gender designation be updated to "X" to reflect their nonbinary gender identity. Over the phone, DSS denied their request.

52. This system-wide and ongoing misgendering causes Mx. Donahue ongoing and severe distress.

53. Pursuant to the defendants' policies and practices, for as long as Mx. Donahue continues to qualify for benefits, they will be required to regularly submit recertification application materials that force them to select an inaccurate sex designation of "Male" or "Female" and to certify the accuracy of that information. Their continued receipt of benefits will be contingent on these recertifications.

*Jaime Mitchell*

54. Jaime Mitchell is a forty-year-old resident of New York City.

55. Jaime is transgender and nonbinary, uses they/them/their pronouns, and generally avoids using honorific titles. Jaime has a New York State birth certificate that identifies their gender as “X.”

56. Jaime has known that they were transgender since they were two years old—when they first understood the concept of gender. They have been diagnosed with gender dysphoria and receive regular gender-affirming treatment for gender dysphoria at their health care provider, covered by Medicaid. Part of their treatment for gender dysphoria includes living consistently as a nonbinary person and having their gender identity acknowledged and respected in everyday life.

57. Jaime is also a person with a disability that affects their ability to work—the result of a brain injury that occurred when they were thirteen—and they receive Supplemental Security Income (“SSI”) and Social Security Disability Insurance (“SSDI”) to meet their basic needs.

58. Along with SSI, Jaime has qualified for SNAP benefits and Medicaid for varying periods of time over the course of many years. Most recently, Jaime has qualified for and consistently received SNAP benefits and Medicaid for approximately two years. They continue to do so, and they rely on these programs to be able to afford food, housing, and health care.

59. Jaime has faced misgendering and discrimination based on their nonbinary gender identity for years. In particular, having government documents and records that misidentified their gender has led to constant stress, anxiety about being outed, and interactions that regularly led to misgendering and discrimination.

60. However, when they became aware that New York had updated its policy to allow nonbinary people to obtain a birth certificate that correctly identified their gender as “X,” Jaime was gratified and hopeful that they would no longer face government-sanctioned or government-required discrimination. They obtained a corrected birth certificate with a sex designation of “X” on January 20, 2021. Since that time, having a government document correctly identifying their gender has been vital to lessening the number of situations where they are misgendered.

61. On February 28, 2021, Jaime’s counsel wrote to the DSS to request that Jaime’s benefits-related records be updated to reflect their nonbinary gender identity. DSS responded in writing on March 16, 2021, and stated that, pursuant to OTDA policy and due to the limitations of WMS, DSS could not update Jaime’s records to reflect their nonbinary gender identity. DSS confirmed that the state system would continue to identify them by an inaccurate gender designation.

62. Jaime is aware that, as a result of the defendants’ policies and practices, their gender is misidentified throughout the WMS system. People inside and outside of the defendants’ respective agencies who have access to all or part of Jaime’s file—including the many government employees to whom Jaime must turn when they have questions about their benefits, when they engage in required updates and interviews regarding their benefits, and when they need assistance regarding their benefits—consequently misgender Jaime based on that inaccurate WMS record.

63. This system-wide and ongoing misgendering causes Jaime ongoing and severe distress and humiliation.

64. Pursuant to the defendants' policies and practices, for as long as Jaime continues to qualify for benefits, they will be required to regularly submit recertification application materials that require them to select an inaccurate sex designation of "Male" or "Female" and to certify the accuracy of that information. Their continued receipt of benefits will be contingent on these recertifications.

*Princess Janae Place*

65. PJP is a community-based organization in the Bronx, New York. It is led by transgender people of color, and its mission is focused on representing and serving transgender people of color, including nonbinary people.

66. More specifically, PJP is an organization that helps people of trans experience maximize their full potential as they transition from homelessness to independent living by offering a safe space for them to connect with community, access gender-affirming support, engage in educational and recreational activities, and receive referrals to comprehensive services including government housing assistance, health care, and other benefits. PJP's membership consists primarily of transgender and nonbinary individuals who access PJP's services and participate in membership activities.

67. PJP has many nonbinary members who qualify for benefits through the defendants' programs and for whom the receipt of benefits is contingent on selecting "Male" or "Female" as their designated sex in the WMS system.

68. Because PJP's primary function is to assist its transgender and nonbinary members with obtaining resources and benefits, its challenge to the defendants' gender marker policy and the failings of the WMS system is central to the organization's purpose and advances that purpose.



69. PJP is also forced to divert organizational resources to support its members when they encounter obstacles to obtaining or maintaining benefits pursuant to the defendants' policies.

70. PJP has diverted resources from existing PJP programs to help its members navigate these obstacles. This includes resources diverted to explain to members that nonbinary people cannot currently have their gender identity accurately designated in the benefits system, and resources diverted to assist people who are experiencing acute hardships because they do not—or do not yet—have access to all of the benefits for which they qualify.

71. Because of the defendants' discriminatory policies, PJP spends a significant amount of time advising nonbinary members on the specific ways they are forced to navigate the defendants' online systems using inconsistent gender markers and the barriers they will encounter. PJP also spends a significant amount of time advising nonbinary people who are considering updating their gender marker to "X" on other documents—including birth certificates—on the ways in which that change may create conflicts with the defendants' systems and result in confusion, barriers to access, and harm.

72. Through this action, PJP seeks to further the interests and vindicate the rights of its nonbinary members and the larger nonbinary community in New York.

***The State's Ongoing and Knowing Violation of the Plaintiffs' Rights***

73. The New York State Office of Temporary and Disability Assistance is the agency responsible for supervising programs that provide assistance and support to eligible families and individuals. OTDA programs include temporary cash assistance; assistance in paying for food (SNAP); heating assistance ("HEAP"); overseeing New York State's child

support enforcement program; determining certain aspects of eligibility for Social Security Disability benefits; and supervising homeless housing and services programs.

74. OTDA's benefits processes are all run through its Welfare Management System, the statewide computer database that collects information about benefit recipients, determines initial and ongoing eligibility for assistance, and tracks the distribution of benefits.

75. The WMS, first implemented in 1977, is described in Social Services Law section 21 as having the express purpose of "promoting efficiency in local district determinations of eligibility for public assistance and care and other programs" and "expedit[ing] such determinations."

76. However, in the years since its implementation, it has become a notoriously outdated computer system with a long history of complications, errors, and bugs that have caused problems for the vulnerable people who rely on state benefits and emergency assistance programs. For example, it required litigation to correct the "error in the state's computer system, WMS," that resulted in the widespread unlawful denial of benefits to certain victims of domestic violence and to certain lawful permanent residents.<sup>7</sup>

77. Reports have critiqued everything from WMS's lack of "scalability"—in a 2011 analysis that concluded the system would "not be able to support" its mission by 2013<sup>8</sup>—to its inability to properly interface with other state databases, which has resulted in a regular "disruption of coverage for beneficiaries."<sup>9</sup> Researchers looking into barriers that face children

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<sup>7</sup> *M.K.B. v. Eggleston*, 445 F. Supp. 2d 400, 425 (S.D.N.Y. 2006).

<sup>8</sup> New York State Health Foundation, *Preparing New York's Information Technology Infrastructure for Health Reform: A Gap Analysis* (May 2011) at 6, available at [https://info.nystateofhealth.ny.gov/sites/default/files/preparing\\_new\\_yorks\\_information\\_technology\\_infrastructure\\_for\\_health\\_reform.pdf](https://info.nystateofhealth.ny.gov/sites/default/files/preparing_new_yorks_information_technology_infrastructure_for_health_reform.pdf).

<sup>9</sup> New York State Health Foundation, *Lessons From New York* (Sept. 2012) at 7, available at <https://nyshealthfoundation.org/wp-content/uploads/2017/12/lessons-from-new-york-building-a-better-medicaid->

in need of state assistance have highlighted the WMS's "inability to adapt" as an issue preventing the tracking and identification of such children, with a particular focus on the "onerous process" associated with "the addition of new fields."<sup>10</sup>

78. While reporting suggests that OTDA recognized the need to "replace the statewide welfare management system (WMS)—a legacy system first implemented in 1977"—as early as 2014,<sup>11</sup> on information and belief, the state has abandoned those efforts and continues to rely on a tool that regularly harms the people it was built to help.

79. The New York State Department of Health also uses the WMS, and along with OTDA it is responsible for maintaining the system.

80. The Department of Social Services is the New York City social services agency that directly connects people in New York City to various city and state benefits, including those overseen by OTDA. Regarding the provision of benefits administered by OTDA, the DSS is forced to comply with OTDA policies and use OTDA's computer systems, including WMS.

81. Pursuant to OTDA's policies, applicants for benefits are required to submit certain information in order to have their eligibility considered and, ultimately, in order to begin obtaining the benefits for which they qualify. One required piece of information is their gender designation, which then populates the WMS "sex" field in the database. Without this

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eligibility-and-enrollment-system-for-duals.pdf.

<sup>10</sup> Jodi Bitterman, Jennifer Edwards, & Eileen Ellis, *Maximizing Enrollment in New York: Results from a Diagnostic Assessment of the State's Enrollment and Retention Systems for Kids*, Robert Wood Johnson Foundation (Feb. 2010), at 21, available at <https://nyshealthfoundation.org/wp-content/uploads/2017/12/maximizing-enrollment-new-york-february-2010.pdf>.

<sup>11</sup> *Medicaid eligibility and enrollment systems: Which states still need to modernize* (Jan. 22, 2015), available at <https://iq.govwin.com/neo/marketAnalysis/view/283?title=Medicaid-eligibility-and-enrollment-systems-Which-states-still-need-to-modernize&researchTypeId=1>.

information, an application cannot be completed, will not be considered, and cannot trigger the commencement of any benefits.

82. Despite the fact that New York birth certificates recognize three different sex designations—“male,” “female,” and “X”—WMS will only recognize “M” or “F” as a valid option. WMS will not allow a nonbinary person—for example, someone who has an “X” sex designation on their valid New York City birth certificate—to be recognized as anything other than male or female.

83. When people fill out the OTDA-mandated forms required to apply for benefits—or to renew or update benefits—they must certify under penalty of perjury that all information contained in their application is correct, including the gender designation. For nonbinary people, they are thus forced to either lie about their gender under penalty of perjury or decline to fill out a necessary form and forego the benefits for which they qualify.

84. In addition to being a required field for identification purposes, the WMS’s “sex” field has practical and ongoing effects on a person’s eligibility for certain benefits and on restrictions in coverage that may apply to them. In certain circumstances, for example, an “F” designation in WMS will trigger approval for certain medical services, while an “M” will trigger denial or an error. Similarly, the pregnancy allowance, a supplemental benefit provided to assist with the additional expenses and nutrition requirements of pregnancy, requires an “F” designation in WMS in order to receive the benefit. For nonbinary people—and transgender people in general—these default settings regularly result in improper denials.

85. Nonbinary people, LGBTQ advocates, and the Commissioner of the DSS himself have all alerted OTDA to the severe harm caused by its policies and have pleaded with the agency for years to remedy the ongoing discrimination those policies require.

86. In an April 2019 letter to OTDA Commissioner Hein,<sup>12</sup> DSS Commissioner Banks noted that he and his staff had advocated on the issue with OTDA for several months and requested that OTDA “immediately . . . [r]ecognize ‘X’ as a valid option when placed in the ‘Sex’ field in the State’s Welfare Management System (WMS).” Commissioner Banks was explicit, and he detailed at length the ways in which OTDA’s current policy unlawfully discriminates on the basis of gender identity and prevents the city agency from providing access to benefits to nonbinary people.

87. He noted that “the recognition of Gender X in WMS and other state systems is crucial in order to accurately and timely process applications for benefits and services.” This is because “applications for [SNAP, cash assistance, and Medicaid] cannot be registered in the State WMS without the designation of a gender. Since the State WMS does not currently allow the registration of an application with Gender X, an individual who presents a birth certificate with Gender X is essentially blocked from applying for public benefits as Gender X. Apart from the serious issue of gender discrimination this raises, it impedes [DSS]’s ability to comply with federal and state requirements to promptly process applications within required timeframes.” He noted that SNAP benefits and emergency cash assistance require expedited processing so that people experiencing crises can access needed emergency benefits right away.

88. Commissioner Banks went on to note that “the State has made a determination that . . . ‘F’ will be used as a default for individuals who would otherwise identify as X. The State’s determination not to allow . . . clients to register a case with an ‘X’ value renders a birth certificate with an X value, obtained pursuant to the Local Law, essentially meaningless in direct conflict with our commitment to serving all New Yorkers in need with dignity and respect.”

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<sup>12</sup> The plaintiffs’ counsel obtained this letter, on DSS letterhead and dated April 2, 2019, pursuant to a Freedom of Information Law request.

89. In addition, he explained that OTDA’s current “gender-based edits in WMS”—restricting access to certain benefits for those with an “M” gender marker and restricting access to other benefits for those with an “F” gender marker—“may result in unjust restrictions in services, coverage or disbursement of entitlements for non-binary and transgender New Yorkers due solely to their sex designation in WMS.”

90. In response, also in April 2019,<sup>13</sup> OTDA Commissioner Hein did not dispute that OTDA’s policy caused all of the harms identified by DSS Commissioner Banks. Nevertheless, he stated that OTDA would not change its policy. He cited generally the difficulty of inputting “modifications to all linked systems” and the risk of creating problems processing the new “X” designations. He did not state that making the requested change would be impossible, or that the necessary “modifications to all linked systems” could not be made, but rather that OTDA would not make the change because “WMS does not have this capacity at this time.”

91. Internal OTDA emails from the fall of 2018—produced pursuant to a Freedom of Information Law (“FOIL”) request—reveal that an initial assessment performed by the Office of Information Technology Services (“OITS”) had preliminarily identified the WMS database components that referenced the “sex” field, had determined which of those components would require an edit to accommodate “X,” and had generally begun preparing a list of tasks to be completed “[i]f we were to do the project.”

92. Beyond Commissioner Hein’s April 2019 letter, the FOIL production does not reveal why OTDA abandoned these preparations and ultimately determined that it would not, in fact, “do the project.” On information and belief, OTDA refused to pursue the system change—

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<sup>13</sup> Commissioner Hein’s response, on OTDA letterhead and dated April 25, 2019, was part of the same FOIL production that included Commissioner Banks’s letter.

and has refused to pursue it since—because it did not wish to expend the minimal resources required to properly edit the system and ensure that the edit would be successful.

93. On March 16, 2021, DSS Commissioner Banks wrote another letter to OTDA Commissioner Hein reiterating the urgency of his years-long series of requests that OTDA update WMS to recognize an “X” option. Specifically referencing plaintiff Jaime Mitchell’s dilemma—and DSS’s inability to correct Jaime’s records in WMS—Banks wrote that “it is critical that the Sex designation in WMS is updated.” He highlighted that he and his DSS colleagues “have raised [this issue] with OTDA since 2019,” and he again noted that, under state and local law, “there is a clear obligation to comply with the client’s request [for an “X” gender marker] as it relates to their benefits.”

94. OTDA has not changed its position.

95. OTDA’s refusal stands in stark contrast to the efforts made by New York State agencies that serve the general population—i.e., agencies that do not exclusively serve people whose income and other vulnerabilities render them uniquely beholden to the policies and bureaucracies of the state. While New York State has recognized its obligation to accurately designate the gender of nonbinary people on their birth certificates and on their driver’s licenses, it has chosen to apply a different rule to New York’s poorest and most vulnerable residents.

96. This lawsuit seeks to correct that imbalance for the plaintiffs and to force the defendants to take steps to ensure that all New Yorkers—regardless of their income—are treated with the basic dignity and respect that comes from government recognition of and respect for their gender identity.

**First Claim for Relief**

97. The plaintiffs re-allege all preceding paragraphs as if fully set forth herein. The defendants' actions violate the New York State Human Rights Law, Executive Law § 296.

**Second Claim for Relief**

98. The plaintiffs re-allege all preceding paragraphs as if fully set forth herein. The defendants' actions violate the New York Civil Rights Law § 40-c.

99. The plaintiffs have complied with the requirements of New York State Civil Rights Law § 40-d by serving notice on the state Attorney General.

**Third Claim for Relief**

100. The plaintiffs re-allege all preceding paragraphs as if fully set forth herein. The defendants' actions violate the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107.

**Fourth Claim for Relief**

101. The plaintiffs re-allege all preceding paragraphs as if fully set forth herein. The defendants' actions violate the Equal Protection guarantees of the New York State Constitution, including but not limited to Article I, § 11.

**Fifth Claim for Relief**

102. The plaintiffs re-allege all preceding paragraphs as if fully set forth herein. The defendants' actions violate of the Due Process guarantees of the New York State Constitution, including but not limited to Article I, §§ 1 and 6.

**PRAYER FOR RELIEF**

WHEREFORE, the plaintiffs respectfully request judgment as follows:

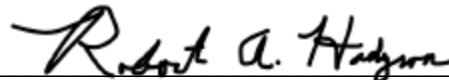
- A. Declare that the defendants' actions violate the statutes and constitutional provisions associated with each of the claims listed above;



- B. Issue injunctive relief against the defendants, enjoining them to recognize “X” as a valid sex and gender option in all policies and practices related to state- and city-administered benefits programs, including by ensuring that:
- i. the WMS database, and all related state systems required to process applications for benefits and distribute such benefits, recognize “X” as a valid option when placed in the “sex” field; and
  - ii. the content of the “sex” field does not delay or otherwise hinder access to services for nonbinary and transgender people; and
  - iii. all application materials, instructions, public guidance, and related materials associated with the benefits-application process are amended to clarify that nonbinary people can select a gender designation of “X”; and
  - iv. the defendants train all staff involved in the benefits process on these updates and on the proper treatment of nonbinary people; and,
- C. Award the plaintiffs costs and attorneys’ fees; and
- D. Grant such other relief as the Court deems proper.

Dated: March 29, 2021  
New York, NY

Respectfully submitted,



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*\*Admission to the New York Bar pending*