Chair Lee, Vice Chair Cleary, and Committee members:

On behalf of the ACLU of North Dakota, I submit testimony in opposition to HB 1297.

All citizens, including transgender people, need accurate and consistent identity documents that reflect their authentic selves. These documents allow people to travel, start new jobs, open bank accounts, and enroll in school.

At the core of verifying and updating ID documents is a birth certificate. Therefore, this testimony focuses on ID documents broadly, including birth records and broader repercussions of not being able to change gender on birth records.

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When a trans person is forced to show ID documents that don't match who they are, they can face harassment, discrimination and even violence. A third of the trans people who responded to a 2015 survey of trans people across the country "were verbally harassed, denied benefits or service, asked to leave, or assaulted" after showing an ID with a name or gender that did not match their gender presentation.

This is a matter of basic safety. Having to turn over your license to the police can be stressful for anyone, and that stress can be amplified for transgender people. Every time someone has to show an ID that fails to match their gender to a store clerk, security guard, or TSA agent, they are at risk.

Medical and mental health professionals have long recognized the importance of updated identity documents as a part of gender transition. The American Medical Association, the American Psychological Association and others support allowing trans people to access ID that reflects their gender without proof of medical intervention or other clinical documentation.

Imposing burdensome and invasive requirements like proof of particular surgeries or other medical care on people who are seeking to update their ID documents means that many trans people will not be able to get an ID that matches who they are.

There is no one-size fits all path for gender transition. Many trans people do not want or need any particular medical treatment – and it may be out of reach financially for others. That's why the American Medical Association has adopted a policy urging states to eliminate any requirement that transgender people have surgery in order to amend their ID documents.

The federal government allows trans people to update a binary gender marker on their passports and social security cards without any intrusive surgical requirement, and a majority of states now do as well. These rules allow access to a usable ID, which lets trans people participate more safely in public life.

Self-attestation is already used on state IDs and licenses for information such as height, weight, hair color, and eye color. Trans people themselves know their own gender identity — in fact, they are the ones who report their gender to health care providers. Requiring a healthcare provider to "certify" what someone tells them is

their gender creates a significant unnecessary expense for anyone trying to update their identification documents.

Requiring health care providers, judges, or other officials to verify someone's gender also puts unnecessary barriers in place for trans people who just want an accurate form of identification and may not have access to medical providers or the courts.

Ultimately there is no reason to prohibit the updating of birth records to reflect gender identity other than to discriminate against transgender persons and send a message that the state does not consider them whole citizens.

We urge you to vote "do not pass" on HB1297.

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Related legal decisions:

Ray v. Himes, No. 2:18cv00272 (S.D. Ohio Sep. 12, 2019) (denying motion to dismiss complaint challenging Ohio's refusal to allow correction of gender markers on birth certificates for transgender people, and holding that the plaintiffs stated a claim for violation of constitutional privacy rights).

Arroyo Gonzalez v. Rossello Nevares, 305 F. Supp. 3d 327 (D.P.R. 2018) (striking down Puerto Rico's restriction on gender changes on birth certificates).

F.V. v. Barron, 286 F. Supp. 3d 1131 (D. Idaho 2018) (striking down Idaho restrictions on birth certificate updates as violating Equal Protection and finding that transgender status constitutes a suspect class triggering heightened equal protection scrutiny).

Love v. Johnson, 146 F. Supp. 3d 848, 852 (E.D. Mich. 2015) (denying government motion to dismiss lawsuit challenging Michigan surgical requirements for update to gender on state driver's license and identification).

K.L. v. State, Dept. of Admin., Div. of Motor Vehicles, No. 3AN-11-05431-CI, 2012 WL 2685183, at *6-8 (Alaska Super. Mar. 12, 2012) (striking down state law barring trans people from updating the sex designation on drivers licenses because the "absence of any procedure for changing the sex designation on an individual's license does not bear a close and substantial relationship to the furtherance of the state's interest in accurate documentation and identification. Indeed, the absence of any such policy can actually result in inaccurate and inconsistent identification documents.").