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Legislative & Administrative Notes

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LEGISLATIVE & ADMINISTRATIVE *notes*

approved her to begin the evaluation process for Gender Dysmorphia, which takes about a year, and that her initial evaluation ‘can happen in the next few months.’” “Finally,” he wrote, “Harrison has not only failed to show that she faces imminent irreparable harm, but that she faces any harm at all,” which is “fatal to her motion.” The recommendation to District Judge Susan Paradise Baxter is to deny the motion.

TEXAS – *Grace v. Smith*, 2023 U.S. Dist. LEXIS 10828 (N.D. Texas, Jan. 23, 2023) – Transgender woman state prisoner is receiving hormones but her requests for gender-affirming surgery have been stymied and she is upset about being transferred from a female facility to a male facility. She filed a petition for habeas corpus. U.S. District Judge Mark Pittman (Trump appointee) found that the court lacked jurisdiction, because the subject matter of her suit did not fall into the habeas corpus category as it related to conditions of confinement rather than claims of unlawful confinement and thus should have been brought under 42 USC 1983. The court also denied inmate’s request for appointment of counsel.

WASHINGTON – *Turner v. Ralkey*, 2023 WL 401931 (W.D. Wash., Jan. 25, 2023) – Transgender woman state prison inmate asserted numerous claims, mainly relating to housing and cellmates, and being misgendered by a corrections officer using inappropriate pronouns to refer to her. District Judge Tana Lin (Biden appointee) accepted the Magistrate Judge’s recommendation to grant summary judgment for the defendants. Plaintiff complained of having been put in situations she considered unsafe, but Magistrate Judge concluded that plaintiff failed to provide evidence showing defendants both knew of and disregarded risk to plaintiff’s safety in making housing

assignments, even when they celled her with a convicted sex offender. She is not alleging that she was actually attacked. As to pronouns, they are held not to rise to the level of 8th Amendment violations, and placing her in administrative segregation for 81 days did not violate her due process rights.

WISCONSIN – *Perkins v. Lawrence*, 2023 WL 22631, 2023 U.S. Dist. LEXIS 98 (E.D. Wis., Jan. 3, 2023) – In this opinion, Magistrate Judge Duffin (whom we met above in the 7th Circuit case) allows *pro se* plaintiff Gregory Perkins to proceed with several claims against Corrections officials. Perkins alleges he filed a PREA complaint on behalf of another prisoner who Perkins claims was being subjected to sexual harassment by another inmate. He alleges that as a result of this, he was subjected to retaliation, as to which he recites specifics against some defendants and generalities against the others. Magistrate Duffin finds that the specific allegations are sufficient to survive screening, but the general ones fall short of even the very permissive pleading rules afforded *pro se* inmates. The judge does grant leave for Perkins to proceed without prepaying the filing fee, but denies a motion to appoint counsel to represent Perkins, advising that Perkins should first make an effort to obtain counsel, leaving the issue of appointment to be held aside until Perkins provides evidence his efforts to find counsel have been unproductive.

LEGISLATIVE & ADMINISTRATIVE NOTES

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UNITED STATES FOOD AND DRUG ADMINISTRATION – The FDA announced late in January that it is revising the rules governing blood donation to remove categorical bans

on donations by gay and bisexual men that were put into place in the 1980s to prevent the entry of HIV into the blood supply, *Associated Press* reported on January 27. The original rules had previously been modified from a lifetime ban to a ban on donations by individuals who had sexual activity within a specified period prior to the proposed blood donation date, tracking evidence about how long it takes from exposure to the development of antibodies that could register on the screening test now required by federal regulations of all donated blood. The new rules will abandon a categorical ban and instead focus on individualized screening and testing.

ARIZONA – On January 2, 2023, newly inaugurated Governor Katie Hobbs, a Democrat, issued Executive Order 2023-01, directing state agencies to establish procedures by April 1 to address employment discrimination by the government on the grounds of race, color, sex, pregnancy, childbirth, medical conditions, political or religious affiliation, culture, creed, social origin, genetic information, sexual orientation, gender identity, national origin, ancestry, age, disability, military service, or marital status. *Thomson Reuters*, Jan. 5.

UTAH – Utah became the first of several anticipated states to pass laws during 2023 banning gender-affirming care for minors. The ban on surgical alteration is partly symbolic, since most specialists in this field will not perform genital-altering surgery on minors. What bites is the ban on medical transition care such as puberty blockers and hormones, both treatments that remain available for other diagnoses, such as premature or delayed puberty among cisgender youth. The statute, which went into effect January 28 upon signing by Governor Spencer Cox

INTERNATIONAL *notes*

shortly after it cleared the legislature, “grandfathers” minors who had been diagnosed with gender dysphoria and begun receiving gender-affirming care prior to the effective date of the law, which will apply to any minor diagnosed with gender dysphoria from that date forward. The ACLU of Utah and National Center for Lesbian Rights quickly indicated that a challenge to the law will be filed, presumably as soon as they can find plaintiffs. Among other grounds for challenging the law is that it was rushed through the legislature without an opportunity for hearings, so legislative findings are not based on evidence. More significantly, of course, similar laws in Arkansas and Alabama were quickly subjected to preliminary injunctions, with two federal district judges having concluded that plaintiffs were likely to win on the merits on their constitutional challenges under Due Process and Equal Protection (although the Supreme Court’s 2022 ruling in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228, may put a damper on the Due Process claims if the plaintiffs draw a conservative judge). Similar bills have been introduced in two dozen other states, some of which extend the ban into young adulthood as late as 26 years old.

INTERNATIONAL NOTES

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CHINA – On January 24, *thediplomat.com* published an article by Darius Longarino and Yanhui Peng describing the difficulties faced by LGBT people in China who encounter employment discrimination. While mentioning several cases, they focused on the case of Chai Cheng, who was a flight attendant for China Southern Airlines. He was dismissed after a video of him kissing a male CSA pilot in an elevator went viral. Chai sued for lost wages. The employer claimed, based on speculation

and uncorroborated assertions, that Chai’s discharge was justified on safety grounds, casting aspersions on his mental health and claiming that due to the widespread circulation of the video, it is possible he would be recognized by passengers leading to disruption on flights. A Shenzhen court, without opining whether sexual orientation discrimination by employers is actionable in China, found that the employer met its burden for justifying the discharge.

COLOMBIA – *El Pais* reported on January 2 that Colombia’s highest court ruled in favor of three men who lived together as a family for ten and years and the two who claimed survivor beneficiary rights when one died. The ruling came in a dispute over entitlement to pension funds for surviving spouses. Justice Santander Rafael Brito stated that “The pension fund was trying to impose a definition of a family that was against equality and discriminatory.” Commented *El Pais*, “Until now, Colombian law allowed survivor benefits to be split between the deceased’s spouse and his or her permanent partner. In other words, between the widow or widower and their lover, who had to live in separate houses. But it did not allow granting benefits to members of stable, polyamorous relationships who lived together.” In a statement to the Supreme Court’s media relations department, reported *El Pais*, “the presiding magistrate in the case said, ‘The number of permanent partners is irrelevant. In this case there were three, but there can be more, all with the same proportional rights. The legal issue to resolve was whether, for purpose of distributing survivor pension benefits, simultaneous cohabitation with a permanent partner should be understood as the simultaneity of multiple households, and does not contemplate a single household with multiple members.’”

INDIA – *LiveLaw.ind* reported on January 6 that a three-judge bench of the Supreme Court of India (Chief Justice DY Chandrachud, Justice PS Narasimha, and Justice JB Pariwala), was transferring to itself all the petitions pending in Indian trial courts seeking recognition of same-sex marriages, and listed the petitions to be heard on March 13, 2023. Petitions had been pending in the High Courts of Delhi, Gujarat, and Kerala. The court gave the government until February 15 to file petitions on the issues. The court appointed “nodal counsels” on behalf of petitioners and the national government (Union of India) and charged them with preparing a compilation of precedents, documents, and legislative materials relevant to the matter. Some of the petitioners are same-sex couples who married in other countries (including the U.S.) and sought recognition of their marriages in their home country of India.

ISRAEL – Intense concern has been expressed in the liberal part of the Jewish press about the impact of the new, far-right governing coalition led by Prime Minister Benjamin Netanyahu on LGBT rights in Israel. Israel alone among Middle Eastern nations has developed a robust body of law protecting the equality rights of LGBT people, although there are still gaps. (For example, because marriage in Israel is controlled by orthodox Jewish authorities, civil marriage is not available, and although same-sex marriages performed elsewhere have certain legal recognition, they are not treated as equal to different-sex couple marriages in all respects.) Israeli anti-discrimination law currently prohibits sexual orientation discrimination, and government funding has been available to LGBT community and service organizations. Since some of the coalition partners have traditionally been deeply opposed to LGBT rights, doubts have been expressed about the Prime Minister’s statement that there