

GENDER IDENTITY AND THE LAW

DAVID B. CRUZ
JILLIAN T. WEISS

CAROLINA ACADEMIC PRESS

Gender Identity and the Law

Gender Identity and the Law

David B. Cruz

NEWTON PROFESSOR OF CONSTITUTIONAL LAW
USC GOULD SCHOOL OF LAW

Jillian T. Weiss

SPECIAL CO-COUNSEL TO OUTTEN & GOLDEN, LLP
LGBTQ PRACTICE GROUP



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2021
David B. Cruz and Jillian T. Weiss
All Rights Reserved

ISBN 978-1-5310-1587-9
e-ISBN 978-1-5310-1588-6
LCCN 2020946870

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*For J.C., and trans youth everywhere, with the hope that this book
may in some measure help make your journey easier*

—DBC

Contents

Table of Cases	xv
Introduction	xxvii
Chapter 1 • A Survey of Sex/Gender Variation	3
A. From the Ancients Through Early Moderns	3
The Construction of Homosexuality	4
B. Nineteenth and Twentieth Century Normalization and Medicalization	6
The Meaning of “Transgender”	6
C. Non-European Gender Variance	11
D. Sex and Gender Under Women’s and Homophile Movements	14
The History of Transphobia	15
Chapter 2 • Conceptualizing Sex/Gender	19
A. Scientific/Medical Conceptions of Sex/Gender	20
Human Sex Development	20
<i>In re Heilig</i>	21
<i>Gender and Genitals: Constructs of Sex and Gender,</i> Ruth Hubbard	31
<i>Lessons from the Intersexed,</i> Suzanne J. Kessler	35
B. Legal Protections for Persons with Intersex Conditions	38
<i>M.C. v. Aaronson Complaint</i>	38
<i>M.C. ex rel. Crawford v. Amrhein</i>	54
<i>Crawford v. Medical University of South Carolina</i>	60
Chapter 3 • Anti-“Cross-Dressing” Laws	65
<i>City of Columbus v. Zanders</i>	66
<i>City of Cincinnati v. Adams a.k.a. Harris</i>	70
Note on the Intermediate Appellate Decision in <i>City of</i> <i>Chicago v. Wilson</i>	73
<i>City of Chicago v. Wilson</i>	75
<i>Doe v. McConn</i>	79
<i>Muhamad Juzaili Bin Mohd Khamis & Ors. v. State Government</i> <i>of Negeri Sembilan & Ors.</i>	83

Chapter 4 • Youth in Out-of-Home Care	99
<i>Doe v. Bell</i>	100
<i>Duronslet v. County of Los Angeles</i>	110
<i>In re Brian L., Also Known as Mariah L. v. Administration for Children’s Services</i>	118
<i>D.F. v. Carrion</i>	124
Chapter 5 • Employee Rights Under Civil Rights Laws and the Constitution	135
A. Early Judicial Approaches to Anti-Transgender Discrimination	137
Note on <i>Holloway v. Arthur Andersen</i> and <i>Sommers v. Budget Marketing</i>	137
<i>Ulane v. Eastern Airlines, Inc.</i> (District Court)	139
<i>Ulane v. Eastern Airlines, Inc.</i> (Circuit Court)	146
B. Supreme Court Turning Points	154
<i>Price Waterhouse v. Hopkins</i>	155
<i>Joseph Oncale v. Sunowner Offshore Services, Inc.</i>	167
C. Sex Stereotyping	171
Note on Early Sex Stereotyping Rulings	171
<i>Smith v. City of Salem</i>	174
Note on <i>Barnes v. City of Cincinnati</i>	183
<i>Glenn v. Brumby</i>	185
D. Categorical Sex Discrimination	195
Note on <i>Smith v. City of Salem</i>	195
Diane Schroer and the Library of Congress	197
<i>Schroer v. Billington (Schroer III)</i>	199
<i>Working with Clients to Develop Compatible Visions of What It Means to “Win” A Case: Reflections on Schroer v. Billington, Sharon M. McGowan</i>	213
Note on <i>Glenn v. Brumby</i>	227
<i>Macy v. Holder</i>	228
<i>Bostock v. Clayton County</i>	244
Note on <i>Bostock’s</i> Treatment of But-For Causation	280
E. Workplace Restroom Access	283
<i>Cruzan v. Special School District, #1</i>	284
Note on <i>Kastl v. Maricopa County Community College School District</i>	288
<i>Etsitty v. Utah Transit Authority</i>	291
<i>Lusardi v. McHugh</i>	302

Chapter 6 • Military Service	315
<i>The Invisible Army: Why the Military Needs to Rescind Its Ban on Transgender Service Members</i> , Allison Ross	316
Elimination of the Transgender Military Servicemember Ban Under the Obama Administration and Reinstatement by Donald Trump	324
<i>Doe 1 v. Trump</i>	326
Note on <i>Stone v. Trump</i> (trial court opinion granting preliminary injunction)	350
Note on <i>Karnoski v. Trump</i> (district court decision granting preliminary injunction)	353
Note on <i>Stockman v. Trump</i> (district court decision granting preliminary injunction)	356
Trump Trans Ban Version 2.0	356
Note on <i>Stockman v. Trump</i> (decision refusing to dissolve preliminary injunction)	357
<i>Doe 2 v. Trump</i>	359
<i>Doe 2 v. Shanahan</i>	376
Transgender Veterans' Healthcare	380
Chapter 7 • Public Accommodations and Housing	383
A. Public Accommodations	383
<i>McGrath v. Toys "R" Us, Inc.</i>	387
<i>Hispanic AIDS Forum v. Estate of Bruno</i>	394
<i>Department of Fair Employment and Housing v. Marion's Place</i>	404
B. Housing	415
<i>Smith v. Avanti</i>	418
<i>Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression</i> , N.Y.C. Commission on Human Rights	425
Chapter 8 • Parenting	435
<i>Christian v. Randall</i>	436
<i>Cisek v. Cisek</i>	439
Note on the Varying Relevance of Marital Status to Trans Parenthood Determinations	441
<i>In re Marriage of B., aka B. (Anonymous) v. B. (Anonymous)</i>	443
<i>J.L.S. v. D.K.S.</i>	445
<i>In re the Marriage of Magnuson</i>	457
<i>Daly v. Daly</i>	462

<i>Palmore v. Sidoti</i>	472
<i>M.B. v. D.W</i>	476
Note on <i>In the Matter of M (Children)</i>	482
Chapter 9 • Immigration by and Asylum for Transgender Persons	487
<i>Miranda v. INS</i>	489
<i>Hernandez-Montiel v. INS</i>	493
<i>Avendano-Hernandez v. Lynch</i>	509
<i>Matter of Christian J.C.U. a/k/a Monica C.U.</i>	518
<i>In re Lovo-Lara</i>	523
Chapter 10 • Religious Exemptions from Anti-Discrimination Protections	531
A. Foundations and Evolution of Free Exercise Law	531
B. Religiously Justified Resistance to Civil Equality	538
Mississippi’s H.B. 1523	540
C. Contemporary Gender Identity Non-Discrimination Exemption Claims	547
<i>Franciscan Alliance, Inc. v. Burwell</i>	548
<i>EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.</i>	563
Chapter 11 • Health Insurance Exclusion and Discrimination	583
A. Individual Insurance	583
<i>Doe v. Blue Cross & Blue Shield</i>	584
Note on <i>Radtke v. Miscellaneous Drivers & Helpers Union Local #638</i>	589
Note on <i>Davidson v. Aetna Life & Casualty Insurance</i> and <i>Mario v. P & C Food Markets</i>	591
The Affordable Care Act	594
<i>Franciscan Alliance, Inc. v. Burwell</i>	595
Note on Medical Cost Tax Deductions as Quasi-Insurance	606
<i>O’Donnabhain v. Commissioner of Internal Revenue</i>	608
B. Medicare, Medicaid, and Other Government Health Insurance	633
Note on <i>G.B. v. Lackner</i>	633
Note on <i>Rush v. Parham</i>	635
<i>Pinneke v. Preisser</i>	637
<i>Smith v. Rasmussen</i>	641
<i>Good v. Iowa Department of Human Services</i>	646
Department of Health and Human Services Departmental Appeals Board NCD 140.3, Transsexual Surgery	654

Chapter 12 • Incarcerated and Institutionalized Persons’ Safety and Health Care	669
A. Failures of Care	670
1. Failure to Protect	670
<i>Farmer v. Brennan</i>	671
Note on <i>Greene v. Bowles</i>	685
Note on <i>Schwenk v. Hartford</i>	687
<i>Giraldo v. California Department of Corrections and Rehabilitation</i>	688
<i>The Only Way to End Racialized Gender Violence in Prisons is to End Prisons</i> , Dean Spade	698
Note on U.S. Department of Justice, Federal Bureau of Prisons, <i>Transgender Offender Manual</i>	702
2. Failure to Treat	705
<i>Brown v. Zavaras</i>	706
<i>Fields v. Smith</i>	710
<i>Kosilek v. Spencer</i>	718
Note on Trump Administration BOP Regulations Regarding Medical Care for Trans Inmates	752
<i>Keohane v. Jones</i>	753
Note on <i>Keohane v. Florida Department of Corrections Secretary</i>	762
<i>Battista v. Clarke</i>	768
<i>Hicklin v. Precythe</i>	774
Note on <i>Edmo v. Idaho Department of Correction and Edmo v. Corizon, Inc.</i>	788
B. Sex-Segregated Prisons	791
“Trapped” in <i>Sing Sing: Transgendered Prisoners Caught in the Gender Binarism</i> , Darren Rosenblum	792
Note on <i>Lamb v. Maschner</i>	803
<i>Tates v. Blanas</i>	804
Note on <i>Estate of DiMarco v. Wyoming Department of Corrections</i>	816
Note on <i>Crosby v. Reynolds</i>	819
 Chapter 13 • Student Rights Under Title IX and Other Laws	 821
<i>Doe v. Yunits I</i>	824
California Assembly Bill No. 1266	834
Privacy for All Students, <i>Frequently Asked Questions about the A.B. 1266 Referendum</i>	836
<i>Doe et al. v. Regional School Unit 26</i>	839

<i>Guidance for Massachusetts Public Schools: Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity</i>	849
U.S. Departments of Justice and Education, <i>Dear Colleague Letter</i>	851
<i>Juliet Evancho v. Pine-Richland School District</i>	861
Note on <i>Whitaker v. Kenosha Unified Board of Education</i>	871
The Gavin Grimm Litigation	876
<i>G.G. v. Gloucester County School Board</i> (4th Cir. 2016)	877
Davis Concurrence in <i>G.G. v. Gloucester County School Board</i> (4th Cir. 2017)	892
<i>Grimm v. Gloucester County School Board</i> (E. D. Va. 2018)	895
Note on <i>Grimm v. Gloucester County School Board</i>	907
<i>Doe v. Boyertown Area School District</i>	913
Note on <i>Parents For Privacy v. Barr</i>	936
Chapter 14 • Medicalization and Disability	941
Note on Gender Identity Disorder in DSM-IV™	941
<i>Undiagnosing Gender</i> , Judith Butler	943
Note on Controversy Over Use of Disability Laws to Reach Anti-Transgender Discrimination	955
<i>Beyond a Medical Model: Advocating for a New Conception of Gender Identity in the Law</i> , Franklin H. Romeo	956
<i>Pursuing Protection for Transgender People Through Disability Laws</i> , Jennifer L. Levi and Bennett H. Klein	959
<i>Getting Sex “Right”: Heteronormativity and Biologism in Trans and Intersex Marriage Litigation and Scholarship</i> , David B. Cruz	961
Note on <i>Sommers v. Iowa Civil Rights Commission</i>	963
<i>Doe v. Boeing Co.</i>	965
<i>Dobre v. National Railroad Passenger Corp.</i> (“Amtrak”)	974
Note on <i>Conway v. City of Hartford</i>	979
Note on <i>Holt v. Northwest Pennsylvania Training Partnership Consortium</i>	980
<i>Belinda Joelle Smith v. City of Jacksonville Correctional Institution, et al.</i>	982
<i>Carla Enriquez v. West Jersey Health Systems</i>	994
<i>Oiler v. Winn-Dixie</i>	1003
<i>Doe v. Yunits II</i>	1011
DSM-V™	1017

<i>Gender Dysphoria, Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-V™), APA</i>	1019
<i>A Bare Desire to Harm: Transgender People and the Equal Protection Clause</i> , Kevin M. Barry, Brian Farrell, Jennifer L. Levi & Neelima Vanguri	1022
<i>Blatt v. Cabela’s Retail</i>	1033
<i>Working with Clients to Develop Compatible Visions of What It Means to “Win” A Case: Reflections on Schroer v. Billington</i> , Sharon M. McGowan	1038
Chapter 15 • Name Changes and Naming Practices	1047
<i>In the Matter of Anonymous</i>	1048
Early Pennsylvania Name Change Cases: <i>Dickinson</i> and <i>Dowdrick</i>	1053
<i>In re Petition of Richardson to Change Name</i>	1055
<i>In re Harris</i>	1058
<i>Matter of McIntyre</i>	1065
<i>Matter of Rivera</i>	1069
<i>In re A.L.</i>	1070
Sample Name Change Petition	1077
<i>Lusardi v. McHugh</i>	1081
<i>Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression</i> , N.Y.C. Commission on Human Rights	1091
Chapter 16 • Identity Documents	1097
A. Birth Certificates	1098
<i>Anonymous v. Weiner</i>	1100
Note on <i>Hartin v. Director of Bureau of Records and Statistics</i>	1103
<i>Anonymous v. Mellon</i>	1104
<i>K. v. Health Division, Department of Human Resources</i>	1108
Note on <i>In re Heilig</i>	1111
Note on <i>Somers, D.R.G.</i> , and Multi-State Circumstances in Birth Certificate Cases	1113
<i>In re Redacted</i>	1116
<i>F.V. v. Barron</i>	1122
<i>Arroyo Gonzalez v. Rossello Nevares</i>	1129
B. Driver’s Licenses and State Identification Cards	1138
<i>Transgender Warriors: Making History from Joan of Arc to Rupaul</i> , Leslie Feinberg	1139

<i>K.L. v. State of Alaska</i>	1141
<i>Love v. Johnson</i>	1148
C. Passports	1154
State Department Policies	1154
Note on <i>Zzyym v. Kerry</i> and <i>Zzyym v. Pompeo</i> Trial	
Court Decisions	1155
<i>Zzyym v. Pompeo</i>	1159
Chapter 17 • Marriage	1175
<i>Corbett v. Corbett (Otherwise Ashley)</i>	1178
<i>M.T. v. J.T.</i>	1190
Note on Marriage Eligibility in Australasia	1195
Note on <i>Littleton v. Prange</i>	1200
<i>Goodwin v. United Kingdom</i>	1202
<i>In re Estate of Gardiner</i>	1215
Note on Gebhardt, <i>Full Faith and Credit for Status Records</i>	1225
Note on Cruz, <i>Sexual Judgments</i>	1227
<i>In re Marriage License for Nash</i>	1232
<i>Kantaras v. Kantaras</i>	1239
<i>Getting Sex “Right”: Heteronormativity and Biologism in</i> <i>Trans and Intersex Marriage Litigation and Scholarship,</i> David B. Cruz	1243
Index	1247

Table of Cases

- Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach, 1038, 1044, 1045
- Adams v. City of Fremont, 691
- Adams v. Howerton, 524, 527
- Adkins v. City of New York, 340, 341, 865, 904, 1126
- Administration v. Nelson, 1133
- Adventists v. McGill, 565
- Alexander v. Choate, 645
- Alexander v. Gardner-Denver Co., 309
- Alexander v. Weiner, 785
- Allard v. Baldwin, 783
- Allard v. Gomez, 783
- Allen v. Wright, 365
- Alliance v. Rue, 1144
- Ambat v. City & County of San Francisco, 309
- Andersen v. Exxon, 998
- Anderson v. Cold, 438
- Anderson v. Creighton, 56, 59
- Andrews v. Albertson's, 988
- Andrews v. Ballard, 1042
- Anonymous v. Anonymous, 1189, 1241
- Anonymous v. Mellon, 1104–1108**
- Anonymous v. Weiner, 1051, 1099–1103
- Arroyo Gonzalez v. Rossello Nevares, 1129–1138
- Attias v. Carefirst, 338
- Attorney General for the Commonwealth v. Kevin, see Re Kevin
- Attorney General v. Otahuhu Family Court, 23, 1195–1197
- Attorney-General of New York v. Soto, 1114
- Auer v. Robbins, 880
- Avendano-Hernandez v. Lynch, 508–517, 530**
- B v. B, 1189, 1241
- Baballah v. Ashcroft, 513
- Back v. Hastings on Hudson Union Free School District, 182
- Baehr v. Lewin, 526
- Baker v. General Motors Corp., 1230
- Baker v. Nelson, 1200
- Baldwin v. Foxx, 240–241
- Barber v. Bryant, 540, 547
- Barnes v. City of Cincinnati, 183–184, 188, 208, 215, 236, 578**
- Barron v. Baltimore, 531
- Barron v. Safeway, 971
- Bartos v. MHM, 1036
- Battista v. Clarke, 725, 726, 732, 734–736, 739, 746, 747, 767–773**
- Beal v. Doe, 638, 639, 643
- Beard v. Whitmore, 884, 887
- Bearinger v. Iowa, 650
- Beeson v. ARCO, 971
- Bell v. Wolfish, 677, 678, 715, 732
- Bellinger v. Bellinger, 26, 1205, 1208, 1209, 1211, 1213
- Bennett v. Spear, 334, 364
- Bethel v. Fraser, 828
- Bibby v. Philadelphia Coca Cola Bottling Co., 179
- Bivens v. Albuquerque, 827
- Bivens v. Six Unknown Named Federal Agents, 670, 672
- Blackmore v. Kalamazoo, 782
- Blackwell v. United States Department of the Treasury, 955, 989

- Blatt v. Cabela's Retail, Inc.**, 935, 963, 1032–1037
- Bloch v. Ribar, 1150
- Blozis v. Mike, 830
- Board of Education of the Highland Local School District v. U.S. Department of Education, 341, 863, 865, 904, 1032
- Board of Trustees of the University of Alabama v. Garrett, 375
- Boddie v. Connecticut, 527
- Boer-Sedano v. Gonzales, 513
- Boerne v. Flores, 535, 574, 688
- Bonkowski v. Oberg, 1035
- Borse v. Piece, 922
- Bostic v. Rainey, 894
- Bostic v. Schaefer, 894
- Bostock v. Clayton County, Georgia**, 64, 73, 95, 96, 108, 117, 137, 145, 151, 152, 154, 164, 165, 170, 195, 241, 242–280, 280–283, 284, 290, 302, 313, 380, 383, 414, 415, 424, 444, 488, 561, 562, 579, 604, 705, 860, 964, 980, 1010, 1032, 1090, 1110, 1128, 1173, 1176
- Bowe v. Colgate, 991
- Bowen v. Gilliard, 904
- Bowers v. Hardwick, 505, 1042, 1107
- Boy Scouts of America v. Dale, 499
- Bradley v. Pizzaco of Nebraska, Inc., 569
- Brannum v. Overton, 884, 887
- Braunfeld v. Brown, 556, 576
- Brewer-Strong v. HNI Corp., 649
- Broadus v. State Farm Ins. Co., 171
- Brookline v. Goldstein, 826
- Brown v. Board of Education, 831, 833, 1224
- Brown v. Dade Christian Schools, Inc., 538
- Brown v. Plata, 712, 724
- Brown v. Zavaras**, 294, 706–709, 1128
- Buchanan v. Warley, 475
- Buck v. Bell, 58
- Burlington N. & S.F.R. Co. v. White, 246, 257
- Burrage v. United States, 280, 282, 283
- Burwell v. Hobby Lobby Stores, Inc., 533–535, 555–557, 560–562, 568, 570, 573, 575–578, 580, 688
- Califano v. Yamasaki, 559, 603
- Cameron v. Tomes, 725, 772
- Caminetti v. United States, 210
- Campaign for Southern Equality v. Bryant, 547
- Canada (Attorney General) v. Ward, 499
- Cannon v. University of Chicago, 880, 902
- Carcaño v. Cooper, 838
- Carcaño v. McCrory, 863
- Carcieri v. Salazar, 601
- Carey v. Lovett, 1001
- Carlson v. Boston, 899
- Carlson v. Green, 672
- Chalifoux v. New Caney Independent School District, 826
- Chaney v. Plainfield Healthcare Ctr., 238
- Chaplaincy of Full Gospel Churches v. England, 347
- Chevron U.S.A. Inc. v. Echazabal, 106
- Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., , 498, 525, 599, 600
- Christian v. Randall**, 435–439
- Christiansen v. Omnicom, 902
- Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 532, 537, 577
- Cisek v. Cisek**, 439–441
- City of Arlington, Tex. v. F.C.C., 599
- City of Boerne v. Flores, 535, 574, 688
- City of Chicago v. Wilson (Illinois Supreme Court)**, 74–78, 81, 93
- City of Chicago v. Wilson (intermediate appellate court)**, 73–74

- City of Cincinnati v. Adams A.K.A. Harris**, 69–73
- City of Cleburne v. Cleburne Living Ctr., Inc., 114, 186, 187, 192, 375, 475, 476, 854, 864, 904, 910, 1124
- City of Columbus v. Zanders**, 66–69, 71
- Civil Rights Cases, The, 384
- Civil Service Comm’n v. Pennsylvania, 977
- Clapper v. Amnesty Int’l USA, 338, 363
- Clark v. Jeter, 187, 1125
- Clark v. State Emps. Appeals Bd. 842
- Clarke v. Shoreline, 970
- Cleveland v. United States, 527
- Cloninger v. Russell, 463
- Clowes v. Terminix, 998, 1000, 1001
- Cohen v. California, 71
- Commonwealth v. Goodman, 1061, 1066
- Commonwealth v. Young, 287
- Conlon v. InterVarsity Christian Fellowship/USA, 565
- Conway v. City of Hartford**, 979–980
- Cook v. Farm Serv. Stores, 1235
- Corbett v. Corbett**, 23, 26, 590, 794, 1138, 1176, 1177–1189, 1192, 1193, 1194, 1195–1196, 1197, 1201, 1204, 1209, 1244
- Corley v. United States, 555
- Cossey v. United Kingdom, 1202, 1206, 1207, 1212
- Cote v. Georgia, 841
- Cox v. Denny’s, Inc., 171
- Craig v. Boren, 191
- Crain v. Commissioner, 618
- Crane v. Commissioner, 618
- Crawford as parents of M.C. Crawford v. Medical University of South Carolina**, 60–64
- Crawford v. Clarke, 712
- Crosby v. Reynolds, 799, 819
- Cruzan v. Special School District No. 1**, 284–288, 299, 310, 854, 938
- Cummings v. Greater Cleveland Regional Transit Authority, 153
- Cutter v. Wilkinson, 574
- D.F. v. Carrion** – see **Matter of D.F. v. Carrion**
- Dahl v. Secretary, 708
- DaimlerChrysler Corp. v. Cuno, 363
- Daly v. Daly**, 439, 461–472, 476, 481
- Damron v. Damron, 460
- Daniels v. Williams, 1149, 1150
- Dartt v. Browning, 1014
- Daury v. Smith, 819, 1133
- Davidson v. Aetna Life & Casualty Insurance Co.**, 591–594
- Davis v. Monroe, 923
- Davis v. Passman, 182, 340
- De’lonta v. Angelone, 783
- De’lonta v. Johnson, 666, 742, 784
- Delgado v. Holder, 512
- Delgado v. Trax, 692
- Department of Agriculture v. Moreno, 375, 1030
- Department of Fair Employment and Housing v. Marion’s Place**, 403–415
- DeSantis v. Pac. Tel. & Tel. Co., Inc., 179
- DeShaney v. Winnebago County Department of Social Services, 670, 673
- Desir v. Ilchert, 504
- DesRosiers v. Moran, 726, 770
- Diaz v. Pan American World Airways, Inc., 207, 238, 309
- Dickie v. Commissioner, 618
- Dillon v. Frank, 180
- DiMarco v. Wyoming**, see **Estate of Miki Ann DiMarco v. Wyoming Department of Corrections**
- Dobre v. National Railroad Passenger Corporation (“Amtrak”)**, 171, 960, 973–979, 981
- Doe 1 v. Trump (district court 2017)**, 364

- Doe 1 v. Trump (district court 2019)**, 325–349, 350, 364
- Doe 2 v. Esper**, 376
- Doe 2 v. Shanahan**, 326, 349, 359, 376–380
- Doe 2 v. Trump**, 358–376
- Doe v. Alaska**, 1143
- Doe v. Alexander**, 585
- Doe v. Bell**, 100–109
- Doe v. Blue Cross & Blue Shield**, 584–589, 1076
- Doe v. Boeing**, 960, 965–973, 999
- Doe v. Boyertown Area School District**, 891, 907, 912–936
- Doe v. Brockton School Committee**, 824, 1010
- Doe v. City of Belleville**, 179
- Doe v. Commonwealth’s Attorney**, 74
- Doe v. Luzerne**, 865, 887, 915, 922
- Doe v. McConn**, 27, 78–82, 466, 585
- Doe v. Minnesota Department of Public Welfare and Hennepin County Welfare Board**, 633, 638, 639
- Doe v. Regional School Unit # 26**, 838–848
- Doe v. Rostker**, 586
- Doe v. United Consumer Financial Services**, 173, 183
- Doe v. United Services Life Insurance Co.**, 586
- Doe v. United States Postal Service**, 955, 976
- Doe v. Wooten**, 758
- Doe v. Yunits I (2000)**, 93, 106, 823–834, 1010, 1011
- Doe v. Yunits II (2001)**, 833, 1010–1017
- Dothard v. Rawlinson**, 163, 990, 992, 993
- Dudgeon v. UK**, 1207
- Edmo v. Corizon, Inc.**, 767, 788–790
- Edmo v. Idaho Department of Correction**, 767, 788–790
- EEOC v. Fremont Christian School**, 538
- EEOC v. Pacific Press Publishing Association**, 538, 573
- EEOC v. Preferred Mgmt. Corp.**, 577
- EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.**, 242, 280, 561–581, 902
- Elrod v. Burns**, 347, 782
- Elzie v. Aspin**, 347
- Emory v. Sec’y of Navy**, 341, 342
- Employment Division, Department of Human Resources v. Smith**, 533, 535, 537
- Enriquez v. West Jersey Health Systems**, 994–1002
- Estate of Miki Ann DiMarco v. Wyoming Department of Corrections**, 816–818
- Estelle v. Gamble**, 670, 671, 673, 674, 680, 683–685, 707, 712, 714, 724–727, 730, 736, 770, 783, 788
- Etsitty v. Utah Transit Authority (2005)**, 189, 237, 290
- Etsitty v. Utah Transit Authority (2007)**, 189, 237, 290–202, 310, 421
- Evancho v. Pine-Richland School District**, 341, 861–871, 872, 904, 923, 935, 1032, 1126
- F.V. v. Barron**, 1121–1128
- Falcon v Alaska Public Offices Commission**, 1143
- Farmer v. Brennan**, 670–685, 687, 694, 696, 724, 770, 792, 795, 813, 1000
- Farmer v. Carlson**, 679
- Farmer v. Haas**, 501, 672, 706, 707
- Farrar v. Hobby**, 388, 389
- Farrow v. West**, 754
- Faulkner v. Jones**, 888, 891
- Fay v. Commissioner**, 616
- Fernandez v. Wynn Oil Co.**, 207, 238, 309, 569
- Fields v. Smith**, 710–717, 729, 743, 773, 783
- Fortner v. Thomas**, 921
- Francis Coralie Mullin v. Union of India**, 87

- Franciscan Alliance, Inc. v. Azar, 605
Franciscan Alliance, Inc. v. Burwell,
 548–561, 594–606
 Franciscan Alliance, Inc. v. Price, 605
 Franklin v. Gwinnett County Public
 Schools, 923
 Fricke v. Lynch, 828
 Friends of the Earth, Inc. v. Laidlaw
 Env'tl. Servs. (TOC), Inc., 369
 Frontiero v. Richardson, 114, 115, 190,
 708
 Fulcher v. Secretary of Veterans
 Affairs, 381, 382
 Fulton v. City of Philadelphia, 537, 580
 Furman v. Georgia, 278
- G.B. v. Lackner**, 633–635
**G.G. ex rel. Grimm v. Gloucester
 Cty. Sch. Bd.** (4th Cir. 2016), 601,
 876–891, 906
**G.G. ex rel. Grimm v. Gloucester Cty.
 Sch. Bd.** (4th Cir. 2017), 892–894,
 910
 G.G. ex rel. Grimm v. Gloucester Cty.
 Sch. Bd. (U.S.), 601, 870
 Gajovski v. Gajovski, 1236
 Gay Rights Coalition of Georgetown
 Univ. Law Ctr. v. Georgetown Univ.,
 499, 500
 Geduldig v. Aiello, 653
 Gilligan v. Morgan, 378
Giraldo v. California, 688–698
Glenn v. Brumby, 164, 184–195,
 227–228, 233, 236–237, 341, 666, 853,
 854, 863, 865, 902, 908, 1032
 Goins v. West Group, 224, 285, 300,
 397, 822, 839
 Goldman v. Weinberger, 344, 378, 379
 Gonzales v. Carhart, 645, 715
 Gonzales v. O Centro Espirita
 Beneficente Uniã do Vegetal, 533,
 534, 556, 560, 568, 574, 576, 577
 Gonzales v. Thomas, 507
**Good v. Iowa Department of Human
 Services**, 646–653
- Goodridge v. Department of Public
 Health, 1224
Goodwin v. U.K., 30, 1176, 1202–
 1214
 Graham v. Richardson, 1233
Greene v. Bowles, 685–687
 Greeno v. Daley, 712
**Grimm v. Gloucester County School
 Board** (E.D. Va. 2018), 895–907
**Grimm v. Gloucester County School
 Board** (E.D. Va. 2019), 907–912
 Griswold v. Connecticut, 75, 81, 819,
 916, 1133
 Gross v. FBL Financial Services, Inc.,
 280
 Grossman v. Bernards Township Board
 of Education, 137, 975
 Gunn v. Lane, 1119
- Haig v. Agee, 1160, 1161
 Haines v. Kerner, 707
 Hales v. Ojai Valley Inn and Country
 Club, 409
 Harper v. Edgewood Board of
 Education, 823, 829
 Harris v. Capital Growth Investors
 XIV, 110, 403, 408–411 Harris v.
 Forklift Systems, Inc., 168, 169, 1081,
 1085
**Harris Funeral Homes – see EEOC v.
 R.G. & G.R. Harris Funeral Homes,
 Inc.**
**Hartin v. Director of the Bureau of
 Records and Statistics**, 26, 1103
 Havey v. Commissioner, 618, 631
 Heckler v. Mathews, 365, 869
 Helling v. McKinney, 671, 683, 726
Hernandez-Montiel v. INS, 492–508,
 513, 516
Hicklin v. Precythe, 767, 773–788
 Higgins v. New Balance Athletic Shoe,
 Inc., 179, 235, 902
 Hishon v. King & Spalding, 709
**Hispanic AIDS Forum v. Estate of
 Bruno**, 393–403, 433

- Hively v. Ivy Tech Community College of Indiana, 264, 270, 275, 277–279, 902
- Hollingsworth v. Perry, 346
- Holloway v. Arthur Andersen & Co.**, 114, 115, 137–138, 139, 148–150, 153, 172, 178, 179, 183, 189, 210, 211, 294, 634, 708, 1126, 1128, 1233
- Holt v. Hobbs, 533
- Holt v. Northwest Pennsylvania Training Partnership Consortium, 980–981
- Hope v. Pelzer, 56
- Horne v. Flores, 377
- Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C., 257, 536
- Hudson v. McMillian, 673, 674, 683
- Hudson v. Palmer, 670, 673, 674, 677, 733
- Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston (GLIB), 383
- Hutto v. Finney, 677, 678, 682
- In re Anonymous (1968), 144, 1193
- In re Anonymous (1992), 1060, 1063, 1068, 1069
- In re Brian Harris a/k/a Lisa Harris**, 1058–1063
- In re Brian L., Also Known as Mariah L. v. Administration for Children’s Services**, 117–124, 126, 129, 132
- In re Center for Military Readiness, 376
- In re Cox, 408
- In re Estate of Gardiner**, 23, 27, 1177, 1215–1225, 1228–1230, 1235–1237, 1241
- In re Heilig**, 20–31, 109, 226, 1111–1113
- In re Lovo-Lara**, 522–530, 590
- In re Marriage License for Nash**, 1231–1239, 1241
- In re Marriage of B., a/k/a B. (Anonymous) v. B. (Anonymous)**, 66, 443–444, 1189
- In re Marriage of Black, 476
- In re Marriage of Cabalquinto, 458, 459, 461
- In re Marriage of Magnuson**, 456–461
- In re Marriage of Simmons**, 439, 441–443
- In re Marriage of Tipsword, 476
- In re Navy Chaplaincy, 366
- In re Petition of Richardson to Change Name**, 1055–1057
- In re Redacted**, 942, 1115–1121
- In re the Name Change of A.L.**, 1070–1076, 1102
- In the Matter of M (Children)**, 482–485
- In the Matter of Robert Henry McIntyre**, 1057, 1063–1068
- In the Matter of Toboso-Alfonso, 500, 505
- In the Matter of William R. Rivera**, 1060, 1068–1070
- INS v. Cardozo-Fonseca, 488
- INS v. Jong Ha Wang, 490
- INS v. Stevic, 497
- International Union v. Johnson Controls, 238
- J.E.B. v. Alabama ex rel. T.B., 192, 242
- J.L.S. v. D.K.S.**, 445–456, 481
- Jacobs v. Commissioner, 614, 621
- Jameka K. Evans v. Georgia Regional Hospital et al., 164, 193, 241, 242
- James v. Ranch Mart Hardware, Inc., 171
- Jameson v. United States Postal Service, 1086
- Jespersen v. Harrah’s Operating Co., 65, 208
- John Doe and Jane Doe v. Prudential Insurance Co., 584, 587

- Johnson v. Fresh Mark, Inc., 183
 Johnson v. Santa Clara County
 Transportation Agency, 168
 Johnston v. University of Pittsburgh,
 864, 923, 1032
 Jordan v. Gardner, 682
 Julie Nemecek v. Spring Arbor
 University, 183
- K v. Health Division, Department of
 Human Resources, 1108–111**
- K.L. v. Alaska, Department of
 Administration, Division of Motor
 Vehicles, 1140–1147, 1152**
- Kaeo-Tomaselli v. Butts, 417
 Kaeo-Tomaselli v. Pi‘ikoi Recovery
 House for Women, 417
 Kallstrom v. City of Columbus, 1150
 Kantaras v. Kantaras, 1239–1243
 Karin T. v. Michael T., 441–443
 Karnoski v. Trump (district court
 2017), 353–355, 788
 Karnoski v. Trump (district court
 2018), 370
 Karnoski v. Trump (district court
 2019), 375, 376
 Karnoski v. Trump, 926 F.3d 1180
 (9th Cir. 2019), 358, 372, 376, 379,
 909
 Kastl v. Maricopa County Community
 College District (2004), 288–290,
 310
 Kelley v. Johnson, 75, 76, 81
 Kent v. Dulles, 1161
 Keohane v. Florida Department of
 Corrections Secretary, 762–767
 Keohane v. Jones, 753–762
 King v. Burwell, 600
 Knussman v. Maryland, 190
 Koire v. Metro Car Wash, 408
 Konitzer v. Frank, 785
 Korematsu v. United States, 750,
 893
 Kosilek v. Maloney, 718, 784
 Kosilek v. Spencer, 717–752, 764, 765,
 783, 786
 Kothmann v. Rosario, 784
 Kreis v. Sec’y of Air Force, 378
- LaFleur v. Bird-Johnson Co., 823
Lamb v. Maschner, 803
 Latta v. Otter, 116, 514, 1125
 Lawrence v. Texas, 58, 375, 1042, 1198
 Lee v. Downs, 888
 Lewis v. Heartland Inns of Am., 234
 Lewis v. Triborough, 927
 Little Sisters of the Poor Home for the
 Aged v. Sebelius, 560
**Littleton v. Prange, 27, 1177, 1200–
 1202, 1218, 1219, 1222, 1237, 1241**
 Lofton v. Secretary of Dept. of
 Children & Family Services, 476
 Long v. Nix, 707
 Lopez v. River Oaks Imaging &
 Diagnostic Group, Inc., 188, 237
 Los Angeles Department of Water &
 Power v. Manhart, 152, 159, 243,
 249–251, 268, 908, 1007
Love v. Johnson, 1147–1154
 Loving v. Virginia, 474, 1237
 Lujan v. Defenders of Wildlife, 325
**Lusardi v. McHugh, 302–313, 853, 854,
 1081–1091**
 Lyng v. Castillo, 340, 864
- M.B. v. D.W., 439, 476–482**
**M.C. v. Aaronson (complaint), 38–54,
 63**
**M.C. ex rel Crawford v. Amrhein,
 54–60**
 M.T. v. J.T., 22, 27, 144, 466, 526, 997,
 1054, 1091, 1176, 1189–1195, 1196,
 1219, 1242
Macy v. Holder, 152, 228–242, 1081
 Madrigal v. Holder, 513, 516
 Maffei v. Kolaeton Industry, 23, 391,
 392, 401
 Maggert v. Hanks, 26, 713

- Maher v. Roe, 635
Mario v. P & C Food Markets, Inc.,
 591–594
 Marks v. United States, 282
 Maryland v. King, 558
 Massachusetts Board of Retirement v.
 Murgia, 340, 1233
 Masterpiece Cakeshop, Ltd. v.
 Colorado Civil Rights Comm’n,
 273, 537, 547
 Mathis v. Fountain-Fort Carson
 School District , 311
 Matter of Acosta, 497–499, 502
 Matter of Arroyo v. New York City
 Health & Hosp. Corp., 391
Matter of Christian J.C.U. a/k/a
Monica C.U. (Jorge R.C.), 517–
 522
Matter of D.F. v. Carrion, 124–133
 Matter of Tenorio, 500
 Maxwell v. Maxwell, 476
 McAllen Grace Brothers Church v.
 Salazar, 577
 McBride v. Peak Wellness Ctr., Inc.,
 421
 McClure v. Harris, 585
 McDonnell Douglas Corp. v. Green,
 281, 290, 293, 295–296, 310, 1010
McGrath v. Toys “R” Us, Inc., 387–
 393, 394, 395, 401
 McLaughlin v. Florida, 474
 Medina v. Income Support Div., 234
 Meritor Savings Bank, FSB v. Vinson,
 166, 167, 169, 238
 Meriwether v. Faulkner, 707, 713,
 794
 Michaels v. Akal Security, Inc., 237
 Minersville School District v. Gobitis,
 532
Miranda v. INS, 489–492
 Mississippi Univ. for Women v. Hogan,
 187
 Mitchell v. Axcan Scandipharm, 189,
 237
Muhamad Juzaili Bin Mohd Khamis
& Ors. v. State Government of
Negeri Sembilan & Ors., 82–97
 Muller v. Oregon, 1237
 National Federation of Independent
 Business v. Sebelius, 594
 National Legal Services Authority v.
 Union of India, 92
 Nevada Dep’t of Human Res. v. Hibbs,
 191
 Nevada v. Hall, 1235
 Newman v. Piggie Park Enterprises,
 Inc., 538
 Newport News Shipbuilding & Dry
 Dock Co. v. EEOC, 152, 168, 176,
 238
 Nguyen v. INS, 191
Nichols v. Azteca Restaurant
Enterprises, Inc., 172–173, 179, 190,
 235 296, 902
 Nixon v. Adm’r of Gen. Servs., 1150
 Norsworthy v. Beard, 115, 782, 790
 Northeastern Florida Chapter of
 Associated Gen. Contractors of Am.
 v. City of Jacksonville, Fla., 335, 372,
 869
 Norwood v. Dale Maintenance System,
 Inc., 929
 Nunez v. Pachman, 916
O’Donnabhain v. Commissioner of
Internal Revenue, 606–632, 666,
 787, 942
 Obergefell v. Hodges, 354–355, 539,
 540, 868, 893, 1126–1128, 1176
 Ohio Civil Rights Commission v.
 Dayton Christian Schools, 538–539
Oiler v. Winn-Dixie La., Inc., 66, 189,
 1002–1010
 Olmstead v. United States, 916
Oncale v. Sundowner Offshore
Services, 154, 166–170, 172, 189,
 198, 209, 211, 238, 243, 249, 250,

- 252, 254, 268, 290, 293, 294, 296,
853, 901, 1086
- Ornelas v. United States, 725, 726, 738
- Orr v. Orr, 191
- Padula v. Webster, 340
- Palmer v. Thompson, 474
- Palmore v. Sidoti**, 343, 349, 462, 472–
476, 482, 547, 854, 871, 993, 1010
- Parents for Privacy v. Barr**, 908,
936–940
- Parents for Privacy v. Dallas School
District No. 2, 907–908
- Pauley v. BethEnergy Mines, Inc.,
882
- Pearson v. Callahan, 56
- Pennsylvania Dept. of Corrections v.
Yeskey, 255
- Pennsylvania v. West Virginia, 678
- Pension Benefit Guarantee Corp. v.
LTV Corp., 152–153, 212, 253
- People v. Grunau, 928–929
- Perry v. Brown, 346
- Personnel Administrator of
Massachusetts v. Feeney, 474
- Phillips v. Martin Marietta Corp., 234,
243, 249–253, 256, 268, 269, 707
- Phillips v. Michigan Department of
Correction, 707
- Phillips v. Seattle, 968
- Pierre v. Pierre, 471–472
- Pinneke v. Preisser**, 636–640, 643, 644,
652
- Pitcherskaia v. INS, 504
- Planned Parenthood of Southeastern
Pennsylvania v. Casey, 56, 57, 1045,
1134
- Plessy v. Ferguson, 750, 830, 833,
1238
- Powell v. Schriver, 1078, 1144, 1151
- Presbytery of New Jersey of Orthodox
Presbyterian Church v. Florio, 539
- Prescott v. Rady Children’s Hospital-
San Diego, 604
- Price Waterhouse v. Hopkins**, 64, 115,
154–165, 170–173, 175–185, 187–189,
193–195, 197, 198, 208, 209, 211, 215,
216, 228, 233–238, 241, 243, 247, 263,
264, 280–282, 294–296, 310, 341,
349, 400, 409, 421, 579, 590, 602,
604, 829, 830, 833, 853, 859, 901, 902,
908, 1002, 1007, 1008, 1125, 1128
- Prowel v. Wise Business Forms, Inc.,
234, 863, 902
- Public Citizen v. United States
Department of Justice, 211
- Quinn v. Nassau County Police
Department, 830
- Radice v. New York, 1237
- Radtke v. Miscellaneous Drivers &
Helpers Union Local #638**, 589–
591
- Re Kevin**, 219, 223, 224, 1197–1200,
1209, 1218, 1219, 1242
- Redhead v. Conf. of Seventh-Day
Adventists, 577
- Redman v. County of San Diego, 696,
813
- Reed v. Reed, 277
- Rees v. UK, 1202, 1206, 1207, 1209,
1210, 1212
- Rene v. MGM Grand Hotel, Inc., 179,
209
- Reno v. Flores, 919, 922
- Rentos v. Oce-Office Sys., 392, 401
- Republican Party of Minnesota v.
White, 107
- Reyes-Reyes v. Ashcroft, 507
- Reynolds v. United States, 532
- Rhodes v. Chapman, 673, 674, 681, 682
- Richards v. Thurston, 76, 829
- Richards v. United States Tennis Assn.,
18, 401, 633, 1054, 1105
- Roberts v. U.S. Jaycees, 573
- Robinson v. Shell Oil Co., 881
- Rochin v. California, 58

- Roe v. Roe, 460
- Roe v. Wade, 56, 75, 81, 585, 819, 916, 1133
- Rolon v. Kulwitzky, 408, 410
- Romer v. Evans, 114, 165, 343, 344, 346, 375, 383–385, 546, 547, 817, 863, 869, 1124
- Rosa v. Park West Bank & Trust Co.**, 172, 180, 188, 189, 215, 235, 829, 853, 902
- Rosenberger v. Rector & Visitors of the Univ. of Va., 571
- Rostker v. Goldberg, 345, 378, 379
- Rotary Club of Duarte v. Board of Directors of Rotary International, 408
- Roth v. United States, 70
- Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR), 363, 571
- Rush v. Parham**, 635–636, 640
- S.E.G. v. R.A.G., 476
- Saenz v. Roe, 1115
- Sanchez-Trujillo v. INS, 497
- Sangha v. INS, 504
- Santosky v. Kramer, 463
- Schonauer v. DCR Entertainment, Inc., 928
- School Board of Nassau County v. Arline, 106, 989–992
- Schroer v. Billington (D.D.C. 2006)** (Schroer I), 189, 197–198, 213–227, 294, 1037–1046, 1095
- Schroer v. Billington (D.D.C. 2007)** (Schroer II), 198, 208, 213–227, 1037–1046, 1095
- Schroer v. Billington (D.D.C. 2008)** (Schroer III), 65–66, 198–212, 213–227, 237, 239, 853, 1037–1046, 1095
- Schwenk v. Hartford**, 115, 171–172, 178, 179, 188, 189, 233–235, 687–688, 830, 853, 902, 1128
- Scott v. Sanford, 893, 1237
- Sepulveda v. Ramirez, 884, 887
- Sessions v. Morales-Santana, 272
- Shapiro v. Thompson, 1114
- Sheffield and Horsham v. United Kingdom, 1202, 1206, 1207, 1209, 1211, 1212
- Simonton v. Runyon, 235
- Skinner v. Oklahoma ex rel. Williamson, 56–58
- Smith v. Avanti**, 417, 418–423, 424
- Smith v. City of Jacksonville Correctional Institution**, 981, 982–992, 993
- Smith v. City of Salem**, 119, 173, 174–182, 183, 184, 188, 189, 193, 195–197, 208, 211, 214, 215, 233, 236, 294, 295, 299, 421, 422, 578, 590, 853, 902, 1232
- Smith v. Rasmussen**, 641–645, 652, 783, 784
- Somers v. Superior Court, 1113–1114
- Sommers v. Budget Marketing, Inc.**, 137–138, 148, 150, 178, 183, 189, 294, 590, 963, 975
- Sommers v. Iowa Civil Rights Commission**, 138, 649, 960, 963–965, 976, 979, 981, 999
- Soneeya v. Spencer, 767, 784, 785
- Spain v. Procurier, 677, 684
- Spence v. Washington, 826
- St. Mary’s Honor Ctr. v. Hicks, 204
- Stanley v. Illinois, 478
- Stanton v. Stanton, 190
- Starrett v. Commissioner, 616, 618
- Stockman v. Trump (9th Cir. 2019), 357
- Stockman v. Trump (district court 2017)**, 356
- Stockman v. Trump (district court 2018)**, 357–358, 379
- Stone v. Trump (district court 2017)**, 350–353, 1124
- Stone v. Trump (district court 2019), 376, 379
- Stoumen v. Reilly, 408, 410
- Strauder v. West Virginia, 474

- Students and Parents for Privacy v. U.S. Dep't of Education, 919
- Supre v. Ricketts, 707, 708, 792
- Susan B. Anthony List v. Driehaus, 338, 364
- Tanner v. Oregon, 1118, 1119
- Tarasoff v. Regents of University of California, 692, 695
- Tates v. Blanas, 803–816**
- Taylor v. Dep't of the Air Force, 1087
- Texas Department of Community Affairs v. Burdine, 205
- Texas v. Johnson, 826, 827
- Texas v. United States (5th Cir. 2015), 559, 603
- Texas v. United States (district court 2016), 600, 604
- Thomas v. Bryant, 712
- Thomas v. Gonzales, 507, 513
- Tinker v. Des Moines Independent Community School District, 71, 91, 826, 827
- Tooley v. Van Buren Public Schools, 311
- Torraco v. Maloney, 724, 737
- Tronetti v. Healthnet Lakeshore Hosp., 189
- Trop v. Dulles, 674, 753
- Trump v. Hawai'i, 349, 375
- Trump v. Karnoski (Supreme Court), 379
- Trump v. Stockman (Supreme Court), 379
- Turner v. Safley, 786
- Ulane v. Eastern Airlines, Inc. (circuit court), 138, 145–146, 146–151, 151–153, 154, 164, 171–173, 178, 179, 183, 189, 198, 210–212, 294, 295, 590, 830, 975, 1006, 1008, 1218, 1223, 1237**
- Ulane v. Eastern Airlines, Inc. (district court), 138, 139–145, 152, 164, 198, 1223**
- United States v. Bailey, 681
- United States v. Burke, 573
- United States v. Morrison, 687
- United States v. O'Brien, 70, 826
- United States v. Oregon State Medical Soc., 678
- United States v. Virginia, 116, 117, 187, 191, 192, 272, 277, 342, 343, 903, 1121
- United States v. Windsor, 342, 344, 346, 1126–1128
- United States v. Witkovich, 1034
- University of Tex. Southwestern Medical Center v. Nassar, 245, 280, 283
- Vallecillo-Castillo v. INS, 506
- Vance v. Ball, 1087
- Varnum v. Brien, 114, 653
- Village of Arlington Heights v. Metro. Hous. Dev. Corp., 182, 192, 344
- Vitug v. Holder, 515
- Voluntary Association of Religious Leaders, Churches, and Organizations v. Waihee, 539
- Voyles v. Ralph K. Davies Medical Center, 137, 148, 189
- Washington v. Glucksberg, 355, 919, 937, 1043–1045
- Washington v. Harper, 673, 677
- Weinberger v. Wiesenfeld, 191
- West Virginia State Board of Education v. Barnette, 532, 868
- Whalen v. Roe, 1042, 1133, 1136, 1150
- Wheaton College v. Burwell, 580
- Whitaker v. Kenosha Unified Board of Education, 871–876**
- Whitley v. Albers, 674, 682, 715, 725
- Whitman v. American Trucking Assns., Inc., 256
- Wilkinson v. Austin, 818
- Williams v. North Carolina (Williams II), 1227
- Williams v. Trans World Airlines, Inc., 207
- Wilson v. Seiter, 671, 675, 680, 681, 683, 731, 782, 796

- Windsor v. United States, 114,
1123–1128
- Winston v. Lee, 58
- Winter v. Natural Resources Defense
Council, Inc., 347, 378, 557, 781, 914,
1204
- Wisconsin v. Yoder, 532, 573
- Wittmer v. Phillips 66 Co., 242, 265,
301
- Wroblewski v. City of Washburn, 709
- X, Y and Z v. UK, 1206, 1208, 1214
- Yonaty v. Mincolla, 1147
- Youngberg v. Romeo, 770–771
- Zablocki v. Redhail, 1233
- Zarda v. Altitude Express, Inc.,**
241–242; see also **Bostock v. Clayton
County, Georgia**
- Zemel v. Rusk, 1161–1162
- Zenobia v. Harris, 834
- Zuni Public School District No. 89 v.
Department of Education, 211
- Zzyym v. Kerry, 63, 1155–1158**
- Zzyym v. Pompeo (circuit court), 63,**
1136, 1158–1173
- Zzyym v. Pompeo (district court), 63,**
1155–1158
- Zzyym v. Tillerson, 1172

Introduction

Over the past decades, a framework has begun to emerge in U.S. law regarding gender identity and expression, shaping the rights of millions of people who are transgender or “trans,” used here to include gender non-conforming, nonbinary, and other related categories. Having evolved from a patchwork quilt of statutory laws, administrative regulations and policies, and judicial opinions, the emergent framework contains many tensions and inconsistencies yet to be resolved.

The authors of this casebook bring distinct perspectives from within the LGBTQ+ community. David Cruz is Newton Professor of Constitutional Law at the University of Southern California Gould School of Law, a cisgender, out gay Latino, who has written extensively on U.S. constitutional law and sex, gender, and sexual orientation law. He first taught a course on gender identity and the law in 2010. Jillian Weiss, a transgender woman, has a practice primarily representing transgender clients in employment discrimination matters. She is also a retired Professor of Law and Society from Ramapo College of New Jersey and former executive director of the Transgender Legal Defense and Education Fund, and she has widely published in the area of transgender rights.

This casebook is designed to provide students a comprehensive understanding of the decades-long revolution in law and society regarding the concepts of gender identity and expression that affect trans individuals in many related contexts. A background chapter explains the modern conceptions of gender identity and expression, and their relation to traditional notions of sex and gender, that have driven extensive legal developments resulting in hundreds of decisions in areas of law commonly considered unrelated. The book invites students to examine these concepts in a range of contexts nearly as broad as the lives we all live, including government identification, parenting and youth care, schools, employment, disability, healthcare, housing, public accommodations, immigration, and incarceration. It encourages students to analyze how these varied areas are or should be understood as interrelated and integrated, and what they mean for traditional legal and social understandings of sex and gender.

This book enables examination of its topics from the standpoint of trans persons, foregrounding their lived experience and the discriminatory effects of transphobia, transmisogyny, and transmasculine erasure. This stands in distinction to approaches that theorize transgender people’s experiences of law as fundamentally outgrowths of gender or sexual orientation biases. This focus enables students to

theorize the legal wrongs against trans persons as wrongs qua wrongs against their lived identities, understanding them as trespasses against their right to live in their chosen gender, rather than merely as sequelae of incorrect stereotypes of their gender assigned at birth. At the same time, the advances in the social statuses and legal rights of trans people are inseparable from “gender” issues and issues of sex, gender, sex roles, and sex stereotyping.

Students should carry away from a course taught from this casebook an understanding of how gendered our law is, how entrenched gender identity biases are, and ways in which the law has been used to lessen the oppressions experienced by trans people. This book’s role is not only to facilitate teaching the specifics of this area of law, but to show new lawyers how effective the law can be in combatting social ills as well as ways in which it is less effective or ill-suited to the task of social change. It shines an analytic spotlight on a population subject to numerous social harms in which law has sometimes been complicit and whom increasingly law is developing to protect. It is our hope this will inspire a new generation of lawyers to pursue justice for trans people.

In editing materials for this book, the authors have omitted footnotes without indication; preserved original footnote numbering for those sources where footnotes were retained; used lowercase letters for footnotes we have authored; omitted citations and sometimes parentheticals without indication; and altered citations’ formats (e.g., reporters, short form vs. long form) and omitted pinpoint citations generally without indication. Although not entirely consistently in this first edition, the authors tried to indicate with “[*sic*]” when opinions first use terminology that is today widely regarded as derogatory or outdated; we have also albeit incompletely tried to list the movement organizations that have litigated so many of the cases presented. The undercompensated and sometimes unsung efforts of dedicated movement lawyers have been key to the evolution in the law examined in this text.

This book has been a labor of love—a great labor—over many years, and we are profoundly grateful that it has come to fruition. We are thankful that Erwin Chemerinsky put us in touch with Carol McGeehan at Carolina Academic Press, which has been excited about and critical to this book—and we thank Carol, Keith Sipe, Scott Sipe, Ryland Bowman, Jennifer Hill, and everyone at CAP who touched this project. Jillian Weiss would like to thank David Cruz, who has spent so many years in pursuit of justice for trans people, for which she is personally grateful. Having talked together about co-authoring such a casebook for over a decade, it is David’s mastery of the subject matter, dedication, and tireless enthusiasm in the face of many distractions that made this very timely book happen. David Cruz would like to thank Jillian Weiss, whose legal scholarship on transgender issues, advocacy, and life lived out loud and proud have inspired him for decades. He would not have attempted this project without her. He gives special thanks to law professors Dean Spade and Janet Halley for sharing their transgender law course materials with him when he was preparing to teach his first class in this area, as well as to Alex Bastian, Mark Ohl, and Tina Sohaili, the intrepid USC Gould School of Law students who

showed up at 8:00 a.m. for this new course, whose weekly insights about the material helped influence his thinking about the field, and whose discussions of RuPaul's Drag Race helped ensure the course never lost touch with the culture that has been changing in ways necessary to allow gender identity and expression law to develop in the more open and inclusive ways as so much of it has. A legion of student research assistants have helped with trans law research, including (with profound apologies to anyone inadvertently omitted) Alex Bastian, Emily Cronin, Edward Demirjian, Nicholas Duncan, George Ellis, Robina Gallagher, Kate Im, John Korevec, Sabrina Kumre, Tiffany Li, Abby Lu, Mack Matthews, Chris McElwain, Melissa Mende, Paul Moura, Jacob Ordos, Gus Paras, Brett Pugliese, Eric Remijan, Christina Roberto, Gabriela Rodriguez, Matthew Schuman, Travis Schumer, Melissa Shinto, Jessica Bromall Sparkman, Kerry Sparks, Queenie Sun, Christina Tapia, Jill Vander Borgh, Helen You, and especially Ryan Gorman, whose work for this book was instrumental in helping the authors bring it to completion. The brilliant and talented USC Gould School of Law librarians particularly including Judy Davis, Diana Jaque, Paul Moorman, Brian Raphael, and Karen Skinner have helped with research over many years. Kathleen Perrin, founder and president of Equality Case Files, has selflessly brought her expertise to bear to provide David research on trans legal issues, often on very short time frames. The USC Gould School of Law and its Deans Scott Bice (who hired David), Matt Spitzer (under whom he earned tenure following selfless mentoring by Mary Dudziak and Jody Armour), Ed McCaffery, Bob Rasmussen, and Andrew Guzman (under whom David became the Newton Professor of Constitutional Law, for which he is also grateful to the late Mr. and Dr. Newton) provided economic and other support for his scholarship on LGBTQ+ issues starting at a time when those were much less recognized as worthwhile areas of scholarly inquiry. David owes a special debt to his assistant and dear friend Katie Waitman, whose great talents, sound judgment, and tremendous labors, from the earliest phases of the project to the very end, have made this casebook possible and much better than it would otherwise have been. David also thanks his family, including especially his parents Sue (who passed during the completion of this book) and Nick, for their support and sacrifices. Finally syntactically but first and foremost substantively, David thanks his husband and partner of decades Steve Greene, for encouraging him to go to law school and to pursue his commitment to justice for LGBTQ+ people, for putting up with the long hours David put in on this book everywhere including with his laptop on his lap in the car every week for well over a year, and for unflagging love and support.

