

MEMORANDUM

The Minnesota Department of Human Rights has completed its investigation of the above-referenced matter. Based upon the results of that investigation, the Commissioner makes the following determination:

1. Evidence is sufficient to conclude that there is **PROBABLE CAUSE** to credit the charging party's allegation of an unfair discriminatory practice by the respondent, as prohibited by Minnesota Statutes, section 363A.12. The charging party alleged being discriminated against in the area of public services, on the basis of sexual orientation, as prohibited by the Minnesota Human Rights Act. The charging party alleged the respondent demanded she produce documentation of her gender due to her sexual orientation/gender identity.
2. The charging party is a transgender woman who was a member of the respondent operated community center in 2011 and 2012. In response to a complaint from another member of the club about the charging party speaking to other members while in the women's changing room, the respondent city council drafted and approved an ordinance called the "Gender Discrimination Policy" on April 9, 2012.
3. The Gender Discrimination Policy reads:  
It is the policy of the (*respondent*) that City facilities of any kind or nature that are labeled "Men" or "Women" or other words to indicate gender, are for use by those persons of the biological gender so indicated. If in doubt, the City may require proof of biological gender by means of production of a birth certificate issued by the State of the person's birth.

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4. The charging party was then requested to either produce her birth certificate or use the family locker rooms when she attempted to return to the respondent's community center.
5. Since the ordinance was passed, the charging party is the only individual required to produce a birth certificate to use any gender-specific facilities of the respondent.
6. The sole issue to be determined is whether the respondent is subjecting the charging party to an unfair discriminatory practice in the access to, admission to, full utilization of or benefit from a public service due to her sexual orientation.
7. The parties agree, under the Minnesota Supreme Court's 2001 decision in *Goins v. West Group*, that the respondent has the right, although they are not required, to limit the use of facilities labeled "Men" or "Women" by biological gender.
8. The respondent had knowledge that the charging party was a transgender individual, drafted this ordinance in response to a situation in which she was involved, and has applied the policy only to the charging party.
9. The respondent ordinance as written, places a burden of proof of gender only on a class of people protected under the Minnesota Human Rights Act.

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10. The respondent confirmed no individuals other than the charging party have been required to produce a birth certificate to use any respondent facilities throughout the city designated for use by gender.
  11. While the respondent ordinance does not specifically state only transgender individuals are required to produce a birth certificate to use facilities, the language used and application support the charging party's claim her transgender status was the basis for subjecting her to this undue burden.
  12. The respondent's likening the Gender Discrimination Ordinance to requiring individuals provide proof of age prior to selling them alcohol is not comparable. This verification of age, usually done with an accessible driver's license or identification card, is a requirement of a state law, not a voluntary ordinance.
  13. If the respondent believes that the production of a birth certificate is not burdensome or embarrassing, then the respondent should require all individuals produce a birth certificate prior to using any city wide facilities labeled for use by a specific gender.
  14. The respondent's Gender Discrimination Ordinance violates the Minnesota Human Rights Act's fundamental prohibition on discrimination against people who are, or are perceived to be, transgender individuals. The Department, therefore, finds PROBABLE CAUSE for sexual orientation discrimination as alleged in this case.
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