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Emerging LGBT Issues – A Focus of Transgender Developments[1]

A Research Primer of This Impactful Area of Law

[by Attorney Debbie Weecks© June 2017]

This Primer identifies some recent sources of law and procedure regarding specific LGBT but primarily, transgender developing legal issues. This document is not intended as a thorough exploration nor is it intended to be judgmental or conclusory. Rather, it is a starting point to an emerging area of law for attorney audience members who may research further or be otherwise involved in the myriad issues arising in any legal arena.

The recurrent themes touched upon herein and by today's presenters (Attorneys Stanna Slater and Debbie Weecks) should resonate as impactful and important for all Arizona attorneys. Please see Ms. Slater's materials herein, including her essay, materials related to Arizona's Bar & Judicial ethics' codes, & court rule.

Law school taught us that the law is not static. Legal concepts about rights, obligations, constitutional interpretation, and legal developments emerge over time. Thus, this reference Primer, for continued research, proceeds in the following order:

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[1] A resource guide for further legal study, assembled by Debbie Weecks first for The 1st Annual CLE Marathon, June 1st -2nd, 2017 (The Law Office of Debbie Weecks, Post Office Box #1731, Sun City, AZ 85372-1731. www.weeckslaw.com Telephone 623-933-4877), and supplemented for the JAGC Luke AFB co-presentation scheduled for 08 June 2017.

I. Military – Mirroring the Nation?

VA Survivor Benefits. Prior to the *Obergefell* case [infra @pg.10] addressing gay marriages in 2015, there was law compelling that the VA could have recognized that some same-gender marriages would be treated as valid for survivor benefit purposes. "(*a)Whenever, in the consideration of any claim filed by a person as the widow or widower of a veteran for gratuitous death benefits under laws administered by the Secretary, it is established by evidence satisfactory to the Secretary that such person, without knowledge of any legal impediment, entered into a marriage with such veteran which, but for a legal impediment, would have been valid, and thereafter cohabited with the veteran for one year or more immediately before the veteran's death, or for any period of time if a child was born of the purported marriage or was born to them before such marriage, the purported marriage shall be deemed to be a valid marriage, but only if no claim has been filed by a legal widow or widower of such veteran who is found to be entitled to such benefits. No duplicate payments shall be made by virtue of this subsection."* 38 USC 103(c).

Active Military --- October 1st, 2016; Commander's Training Handbook

Perhaps none has been greater in the course of the past decades than the societal challenge of military equality in treatment and opportunity of all soldiers, airmen, and sailors. One by one, barriers to service opportunities have been addressed and modified, such as women in combat roles, followed by declarations by gay and lesbian troops without risk of military discharge based upon those declarations. The United States Department of Defense has many special reports on many topics of historical and societal import related to treatment, rights, and responsibilities of our troops. On 30 June 2016, history was further impacted when it was announced that transgender troops may serve openly. Policy admitting transgender members under new recruitment standards and policies takes effect next month, on 01 July 2017. All legal counsel on base can be best prepared by downloading the 01 October 2016 Commander's Training Handbook, Medical Guidance, and Policies and Procedures including gender transition medical care to service members and recognizing "gender markers" in DEERS (Defense Eligibility Enrollment System).

By Veterans' Day, there were various news reports of "more than 100 transgender troops" seeking counselling, medical treatment, or opposite gender recognition, including Vanden Brook, Tom "Troops seek help for gender transition" (USA Today Exclusive 11 November 2016). Download the handbook at https://www.defense.gov/Portals/1/features/2016/0616_policy/DoDTGHandbook_093016.pdf?ver=2016-09-30-160933-837

For further detail in the military context, *please see* https://www.defense.gov/News/Special-Reports/0616_transgender-policy/. For further information on the challenges, legal arguments, or supportive information, *also see* http://www.transequality.org/know-your-rights/military-records.

Prisoner Demands. This rise is seeing a parallel in a much less sympathetic group, that of prison populations. For instance, state-funding of re-assignment surgery of Shiloh Heavenly Quine, a homicide convict in California. According to an article about that inmate, a representative of the California Department of Corrections stated that the Eighth Amendment requires "that prisons provide inmates with medically necessary treatment for medical and mental health conditions, including inmates diagnosed

with gender dysphoria." Thompson, Don, "California funds 1st U.S. inmate sex reassignment," Associated Press, as appeared in The Arizona Republic (08 January 2017).

Rights of Medical Providers to Refuse?

And that same week, news broke of a New Jersey transgender man alleging discrimination against a Catholic hospital for refusing to allow his hysterectomy at its facility. Jionni Conforti filed his lawsuit to compel the completion of his transition as to this medical procedure. *Conforti v. St. Joseph's Healthcare System et alia,* 2:17-cv-00050 (USDC New Jersey) filed 05 January 2017.

And, curiously, *Conforti* is cited (pg.8, fn3) in *Gloucester v. G.G.* in an amicus brief filed *The General Conference of the Seventh Day-Adventists and The Becket Fund for Religious Liberty in Support of Petitioner,* that Petitioner being Gloucester in the Gavin Grimm lawsuit. [*See infra* @ pg.5].

The *amicus* states its question presented as: "Should this Court reduce social conflict concerning religious liberty and transgender rights by allowing Congress and state legislatures to balance competing interests in the first instance?" The Becket Fund is identified as a law firm seeking to preserve rights for religious objectors of LGBT rights. The brief includes a tie-in of urging that Title IX's "sex" discrimination prohibition context not be broadened to a "gender identity," invoking anticipated negative service effects on medical treatment provider choices and grants under the Runaway and Homeless Youth Act.

That brief provides a state-by-state chart of legislation akin to the Religious Freedom Restoration Act, 42 U.S.C. 2000 bb *et seq.* The AZ chart includes these A.R.S. cites:

§§ 20-632.01, 41-1421, 41-1442, 41-1462, 41-1463, 41-1464, 41-1491.14, 41-1491.15, 41-1491.20, 41-1491.21, 42-3751, 41-1493 to 1439.02 (1999) categorized as addressing:	Sex, Insurance Practices, Voting, Public Accommodation, Employment, Housing, Government Contracts

The *amici* is available for your further reading at

http://www.scotusblog.com/wp-content/uploads/2017/01/16-273-amicus-petitioner-generalcounselforseventhdayadventistsandthebecketfund.pdf

A.R.S. New Chapter 11.2, Title 36 prohibiting discrimination against health care providers.

And along the same lines, in Arizona, Senate Bill 1439 has been signed by the Governor, permitting medical facilities and personnel to opt-out of implementing life-ending measures. Chapter 73 (53rd Legis. 1st Reg.Sess. 2017) is a curiosity because it does permit medical personnel to abstain from behavior which the individual provider would find objectionable. However, the defined behaviors are in the nature of assisted suicide activity; itself not permitted in Arizona.

The new Arizona statute truly begs the question of its purpose, since assisted suicide is unlawful in Arizona. Here's some edited content.:

"36-1322. Discrimination prohibited; immunity. A. A PERSON MAY NOT DISCRIMINATE AGAINST A HEALTH CARE ENTITY ON THE BASIS THAT THE HEALTH CARE ENTITY DOES NOT PROVIDE, ASSIST IN PROVIDING OR FACILITATE IN PROVIDING ANY HEALTH CARE ITEM OR SERVICE FOR THE PURPOSE OF CAUSING OR ASSISTING IN CAUSING THE DEATH OF ANY INDIVIDUAL, SUCH AS BY ASSISTED SUICIDE, EUTHANASIA OR MERCY KILLING." [. . .] Continuing: "Sec.2. Construction. This act does not create or recognize a right to assisted suicide, euthanasia or mercy killing. The legislature does not intend to make lawful any action intended to cause or assist in causing a person's death that is currently unlawful." APPROVED BY THE GOVERNOR MARCH 24, 2017. FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 24, 2017.

And so, back to the legal challenge; is it discriminatory or does today's jurisprudence allow for opting out of participation when the affected actor objects to certain action?

In the Arizona legislative action example as in the Catholic hospital example, both involving medical providers who may object to the action others desire. May a provider be insulated by constitutional religious grounds from action desired by one with fundamentally differing views?

See http://www.lambdalegal.org/sites/default/files/conforti_nj_20170105_complaint.pdf for the Complaint for Declaratory, Compensatory, and Injunctive Relief.

News reports indicate denial and invocation of religious freedom arguments filed by the defendants although the response is not at Lamda's website. For the full pleadings, register at www.pacer.gov .

II. Bathroom Rules Matter
Gavin Grimm & His Plea to the Gloucester, VA School Board

G. G., by his next friend and mother, DEIRDRE GRIMM, Plaintiff
v. GLOUCESTER COUNTY SCHOOL BOARD, Defendant

By now, most of us have heard anecdotally about G.G., the then 15-year old transgender child who went before his school board seeking the right to use the bathroom of his choice. Under Title IX, public schools which receive federal funding should not discriminate based upon "sex" (*i.e.,* gender identity). In May 2016, then-President Obama issued his guide for students in public schools to exercise their bathroom and locker room type preferences. In February 2017, President Trump rescinded the Obama guide, but not without Gavin Grimm ["G.G." as plaintiff in the court case] fighting for his choice to be respected. Here's a brief look at some portion of the legal case pathway of G.G.'s notoriety.

Published: 31 May 2016 – " Appellee's petition for rehearing en banc and filings relating to the petition were circulated to the full court. No judge having requested a poll under Fed. R. App. P. 35 on the petition

for rehearing en banc, the petition is denied. " See the dissent of Circuit Judge Niemeyer, raising Auer at http://isysweb.ca4.uscourts.gov/isysquery/6af9969d-a536-4a9b-8612-083fc38d12ea/2/doc/

In June 2016, the United States District Court granted a preliminary injunction. Just under two months prior to our seminar now, (that is, in April 2017), the injunction was vacated.

Unpublished: 12 July 2016 – denying the school board's motion for stay pending appeal:

http://isysweb.ca4.uscourts.gov/isysquery/d98b9394-580e-43f3-a764-eebf0ebbe210/1/doc/161733R1.u.pdf#xml=http://New-ISYS/isysquery/d98b9394-580e-43f3-a764-eebf0ebbe210/1/hilite/

The Auer Doctrine – Controlled Deference to Administrative Interpretation

The United States Supreme Court granted *certiori* on 28 October 2016 in *16-273 GLOUCESTER COUNTY SCHOOL BOARD V. G.G.*, 822 F.3d 709 (4th Circ. 2016) The questions framed and accepted for cert were:

" QUESTION PRESENTED: Title IX prohibits discrimination "on the basis of sex," 20 U.S.C. § 1681(a), while its implementing regulation permits "separate toilet, locker rooms, and shower facilities on the basis of sex," if the facilities are "comparable" for students of both sexes, 34 C.F.R. § 106.33. In this case, a Department of Education official opined in an unpublished letter that Title IX's prohibition of "sex" discrimination "include[s] gender identity," and that a funding recipient providing sex-separated facilities under the regulation "must generally treat transgender students consistent with their gender identity." App. 128a, 100a. The Fourth Circuit afforded this letter "controlling" deference under the doctrine of *Auer v. Robbins*, 519 U.S. 452 (1997). On remand the district court entered a preliminary injunction requiring the petitioner school board to allow respondent-who was born a girl but identifies as a boy-to use the boys' restrooms at school. The questions presented are:

> 1. Should this Court retain the *Auer* doctrine despite the objections of multiple Justices who have recently urged that it be reconsidered and overruled?
>
> 2. If *Auer* is retained, should deference extend to an unpublished agency letter that, among other things, does not carry the force of law and was adopted in the context of the very dispute in which deference is sought?
>
> 3. With or without deference to the agency, should the Department's specific interpretation of Title IX and 34 C.F.R. § 106.33 be given effect?"

https://www.supremecourt.gov/qp/16-00273qp.pdf. On 06 March 2017, the United States Supreme Court vacated the judgment at 822 F.3rd 709, remanding to the 4th Circuit based upon the US Department of Education and Department of Justice, Guidance Document (22 Febr 2017).

G. G., by his next friend and mother, Deirdre Grimm Plaintiff – Appellee
v. GLOUCESTER COUNTY SCHOOL BOARD Defendant – Appellant

(4th Circ. Ct.App. 07 April as amended 18 April 2017) No. 16-1733 (4:15-cv-00054-RGD-DEM)
Following is a concurrent opinion, including the ACLU plaintiff Grimm's school board presentation.

DAVIS, Senior Circuit Judge, concurring:

" *I concur in the order granting the unopposed motion to vacate the district court's preliminary injunction and add these observations. G.G., then a fifteen-year-old transgender boy, addressed the Gloucester County School Board on November 11, 2014, to explain why he was not a danger to other students. He explained that he had used the boys' bathroom in public places throughout Gloucester County and had never had a confrontation. He explained that he is a person worthy of dignity and privacy. He explained why it is humiliating to be segregated from the general population. He knew, intuitively, what the law has in recent decades acknowledged: the perpetuation of stereotypes is one of many forms of invidious discrimination. And so he hoped that his heartfelt explanation would help the powerful adults in his community come to understand what his adolescent peers already did. G.G. clearly and eloquently attested that he was not a predator, but a boy, despite the fact that he did not conform to some people's idea about who is a boy.1 FN 1 Footage of his compelling statement to the School Board is available at:* **https://www.youtube.com/watch?v=My0GYq_Wydw&feature=youtu.be**

"Regrettably, a majority of the School Board was unpersuaded. And so we come to this moment. High school graduation looms and, by this court's order vacating the preliminary injunction, G.G.'s banishment from the boys' restroom becomes an enduring feature of his high school experience. Would that courtesies extended to others had been extended to G.G.

"Our country has a long and ignominious history of discriminating against our most vulnerable and powerless. We have an equally long history, however, of brave individuals—Dred Scott, Fred Korematsu, Linda Brown, Mildred and Richard Loving, Edie Windsor, and Jim Obergefell, to name just a few—who refused to accept quietly the injustices that were perpetuated against them. It is unsurprising, of course, that the burden of confronting and remedying injustice falls on the shoulders of the oppressed. These individuals looked to the federal courts to vindicate their claims to human dignity, but as the names listed above make clear, the judiciary's response has been decidedly mixed. Today, G.G. adds his name to the list of plaintiffs whose struggle for justice has been delayed and rebuffed; as Dr. King reminded us, however, "the arc of the moral universe is long, but it bends toward justice." G.G.'s journey is delayed but not finished.

"G.G.'s case is about much more than bathrooms. It's about a boy asking his school to treat him just like any other boy. It's about protecting the rights of transgender people in public spaces and not forcing them to exist on the margins. It's about governmental validation of the existence and experiences of transgender people, as well as the simple recognition of their humanity. His case is part of a larger movement that is redefining and broadening the scope of civil and human rights so that they extend to a vulnerable group that has traditionally been unrecognized, unrepresented, and unprotected. G.G.'s plight has shown us the inequities that arise when the government organizes society by outdated constructs like biological sex and gender. Fortunately, the law eventually catches up to the lived facts of people; indeed, the record shows that the Commonwealth of Virginia has now recorded a birth certificate for G.G. that designates his sex as male.

"G.G.'s lawsuit also has demonstrated that some entities will not protect the rights of others unless compelled to do so. Today, hatred, intolerance, and discrimination persist — and are sometimes even promoted —but by challenging unjust policies rooted in invidious discrimination, G.G. takes his place among other modern-day human rights leaders who strive to ensure that, one day, equality will prevail, and that the core dignity of every one of our brothers and sisters is respected by lawmakers and others who wield power over their lives.

"G.G. is and will be famous, and justifiably so. But he is not "famous" in the hollowed-out Hollywood sense of the term. He is famous for the reasons celebrated by the renowned Palestinian-American poet Naomi Shihab Nye, in her extraordinary poem, Famous. Despite his youth and the formidable power of those arrayed against him at

every stage of these proceedings, "[he] never forgot what [he] could do."2 Judge Floyd has authorized me to state that he joins in the views expressed herein." "2 See N. S. Nye, Famous:

"The river is famous to the fish.
The loud voice is famous to silence,
which knew it would inherit the earth
before anybody said so.
The cat sleeping on the fence is famous to the birds
watching him from the birdhouse.
The tear is famous, briefly, to the cheek.
The idea you carry close to your bosom
is famous to your bosom.
The boot is famous to the earth,
more famous than the dress shoe,
which is famous only to floors.
The bent photograph is famous to the one who carries it
and not at all famous to the one who is pictured.
I want to be famous to shuffling men
who smile while crossing streets,
sticky children in grocery lines,
famous as the one who smiled back.
I want to be famous in the way a pulley is famous,
or a buttonhole, not because it did anything spectacular,
but because it never forgot what it could do."

http://isysweb.ca4.uscourts.gov/isysquery/26bec08e-1d86-4e65-97d3-4a0e4a3d98f5/6/doc/161733R1.P.pdf#xml=http://New-ISYS/isysquery/26bec08e-1d86-4e65-97d3-4a0e4a3d98f5/6/hilite/ Cross reference please to pg.3, *supra*, re *Conforti.*

III. "Biased-Based Policing" – "Fair and Impartial Manner" Law Enforcement

An important aspect of daily life is the potential each of us has to encounter an officer, whether at a routine traffic stop or during an investigation. The United States Department of Justice has a role in investigating and resolving certain civil rights claims related to policing of our communities. Many of us will recognize the professional and dedicated work force of our officers, and we will admire their role in public safety. Sometimes, however, it has taken advocacy and scrutiny at local and federal levels to achieve reform of broken systems.

For instance, in an Investigation of the New Orleans Police Department, United States Department of Justice Civil Rights Division (US S.Ct. 14-1473-7, 16 March 2011) included in its report that the NOPD at the time of the NOPD Report lacked "In the absence of mechanisms to protect and promote civil rights, officers too frequently use excessive force and conduct illegal stops, searches, and arrests with impunity. .. The Department has failed to take meaningful steps to counteract and eradicate bias based on race, ethnicity, and LGBT status in its policing practices, .." (NOPD Report @ pg.11 of 158).

A few short years later, the NOPD report was followed by another city's police force under public and legal scrutiny. The resulting document there is entitled Investigation of the Newark Police Department, United States Department of Justice Civil Rights Division, United States Attorney's Office (US S.Ct. 14-1473-6, 22 July 2014). The NPD Report explains that the Department of Justice investigated claims that the Newark PD allegedly violated civil rights of residents through "excessive force, unwarranted stops, and arrests, and discriminatory police actions." NPD Report, Executive Summary. In the end, reform measures were to be implemented

collaboratively among the Newark PD, the city, the community, and the U.S. Department of Justice. You can find that report at the United States Supreme Court website with this link.:

https://www.supremecourt.gov/opinions/urls_cited/ot2015/14-1373/14-1373-7.pdf

The NPD Report summarizes sources of law invoked including

- Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141");
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI"); and
- Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act").

It states in relevant part: "*Section 14141 prohibits government authorities from engaging in a pattern or practice of law enforcement misconduct that violates individuals' constitutional or federal statutory rights. Title VI and the Safe Streets Act together prohibit discrimination on the basis of race, color, sex, religion, or national origin by the recipients of certain federal funds*." The NPD Report is lengthy and covers many aspects of the Newark policing practices. In the context of today's seminar topic, however, it is included here as food for thought for attorneys. One latter portion of the NPD Report included this:

"*C. Policing Related to Sexual Orientation and Gender Identity. During the investigation there was anecdotal evidence that the NPD has engaged in discriminatory policing practices based on sexual orientation or gender identity. The investigation did not produce evidence sufficient to demonstrate a pattern or practice in this area. The LGBT community expressed concerns about the NPD's lack of responsiveness to complaints about violent assaults against LGBT individuals, as well as harassment of female transgender persons by NPD officers—including the mistaken assumption that all female transgender persons are prostitutes. They also described a lack of cultural competence and insensitivity by NPD officers when engaging the LGBT community, and the transgender community, in particular.*

"The NPD does not appear to have any policy or training that would provide officers guidance on how to interact respectfully and effectively with LGBT individuals. Community advocates report that NPD command staff are amenable to training on LGBT issues, although none had yet occurred. The NPD should engage with the LGBT community around the concerns noted, and develop training on policing related to sexual orientation and gender identity." Report IV.C. For the Independent Monitor's First Quarterly Report including appendices with surveys resulting from the Consent Decree in *United States v. City of Newark et al* [Civil Action #2:16-CV-01731 (MCA)(MAH), 24 April 2017, go to https://www.justice.gov/usao-nj/page/file/959831/download .

IV. ARIZONA – BEFORE OBERGEFELL & FORWARD.

For historical reference we should be mindful of Arizona's now moot law of marriage as being only a union between a man and a woman. Of course, the status nationwide was altered in 2015. Read the opinion at the consolidated cases of *Obergefell v. Hodges (14-556); Tanco v. Haslam (14-562); DeBoer v. Snyder (14-571); Bourke v. Beshear (14-574)*, 576 U.S. ___ (June 2015) [states must issue marriage licenses equally to same gender couple & recognition of out-of-state marriages lawfully performed (14th Am. Basis)]

https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf for the Opinion; and
http://www.acluohio.org/archives/cases/obergefell-v-hodges for the underlying pleadings.

PRE-*OBERGEFELL*, THIS AUTHOR WONDERED – How much longer would it be before gay marriage would be recognized in Arizona? By the time of a certain year 2014 classroom handout prepared by this author, cases were trickling across our landscape locally making a dent. Then *Obergefell* changed a nation. The cites that

follow include your link to oral argument and to the stories underlying the litigation; legacies worthy of remembrance.

1. **Pre-*Obergefell* NINTH CIRCUIT COURT OF APPEALS**. On 08 September 2014, the Ninth Circuit streamed oral arguments about same gender marriage in these combined cases: *JACKSON V. ABERCROMBIE*, 12-16996; -16998 (HAWAIIAN CASE), *SEVCIK V. SANDOVAL*, 12-17668 (NEVADA CASE), AND *LATTA V. OTTER*, 14-35420; -25421 (IDAHO). A broad ruling by the Ninth Circuit could have bound Arizona. However, on 10 October 2014, document #178 *Jackson* was docketed as moot because Hawaii had enacted a Marriage Equality Act and the real parties in interest had wed. View the pleadings, follow the logic, and read one religious zealot's letter in contradiction in the record at www.pacer.gov For historical context, again, pre-Obergefell, view the video at http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000006537

See also Latta v. Otter, 771 F.3d 456, 464-65 (9th Cir. 2014)(unconstitutionality of marital statute banning same gender marriage); *Majors v. Horne*, 14 F. Supp. 3d 1313, 1315 (D. Ariz. 2014) (enjoining the ban).

2. **Pre-*Obergefell* ARIZONA CASES BEFORE THE US DISTRICT COURT**. ON JANUARY 6, 2014, again, pre-*Obergefell*, a complaint was filed seeking to set aside Art.30, Sec.1, AZ Constitution and A.R.S. 25-101, both of which limited marriage to one man and one woman. Download the pleadings in the cases of *Connolly and Terrel L. Pochert, Suzanne Cummins and Holly N. Mitchell, Clark Rowley and David Chaney, R. Mason Hite IV and Christopher L. Devine, Meagan and Natalie Metz, Renee Kaminski and Robin Reece, and Jeffrey Ferst and Peter Bramley v. Roche,* 2:14-CV-00024-JWS, at www.Pacer.gov. The Connolly Court concluded, in relevant part: "For the reasons given in the preceding section of this order, plaintiffs' motion for summary judgment at docket 47 is granted as follows: this court hereby declares Article 30, Section 1, of the Arizona Constitution ; A.R.S § 25–101(C) and A.R.S. § 25–125(A) unconstitutional by virtue of the fact that they deny same-sex couples the equal protection of the law. It is further ordered that defendants are hereby ordered to permanently cease enforcement of those provisions of Arizona law declared unconstitutional by this order." Joseph CONNOLLY, et al. v. Michael K. JEANES, et al., Defendants, 73 F.Supp.3d 1094, 1096 (USDC AZ 2014).

Also see the related case of Majors v. Horne. Most intriguingly, however, will be the stories behind the names. Read the article entitled "When they stopped waiting. The first suit to undo Arizona's gay-marriage ban didn't begin with an orchestrated effort. It started with a simple question." by SHAUN MCKINNON. The article is available still today either by subscription at www.azcentral.com going to www.google.com and cutting/pasting the following as your search.:

HTTP://WWW.AZCENTRAL.COM/LONGFORM/LIFE/AZ-NARRATIVES/2014/07/26/GAY-MARRIAGE-LAWSUIT-IN-ARIZONA-WHEN-THEY-STOPPED-WAITING/13183861/

3. **Pre-*Obergefell, In re Beatie v. Beatie, 235 Ariz. 427 (Ariz. App., 2014) ; Majors v. Jeanes, 48 F.Supp.3d 1310 (D. Ariz., 2014)* -- LGBT & GAY CALIFORNIA MARRIAGES RECOGNIZED IN ARIZONA.** And finally, pre-Obergefell, two Arizona cases had recognized marriages in specific circumstances. One of those cases was wherein the United States District Court (AZ) recognized the California gay couple's marriage with a TRO prohibiting enforcement of the Arizona Constitution's and statutory bans in that case. That court ordered the Arizona Department of Health Services to list Mr. McQuire on the deceased Mr. Martinez's death certificate. *See Nelda Majors et al v. Michael K. Jeanes (Clerk of the Superior Court*), 2-14-CV-00518 JWS (TRO Judge Sedwick, issued 12 September 2014). In the other of the two cases, the court in *Beatie* found subject matter jurisdiction for a transgender couple's divorce to proceed wherein: (i) a female's birth certificate was amended to male; (ii) she gave birth afterwards, and (iii) the parties then resided in Arizona, wishing to proceed with their marital dissolution case. Legal concepts explored by that appellate court decision included:

- Full faith and credit of marriage deemed valid in another state;
- Recognition of amended birth certificate; and
- A.R.S. 25-112; 101.

To read *Beatie* go to http://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2014/CV%2013-0209.pdf . Finally, a recent article discussing The Freedom to Marry's strategy and goals is available at www.azbar.org under Change of Venue, Freedom to Marry and Loving's Legacy (Eigo, Tim; May 2017, pg.84 conversation of Professor Kaipo Matsumura and Evan Wolfson coordinated by the Arizona LGBT Bar Association).

4. **AZ Post-*Obergefell*** will no doubt see a leveling playing field in family law cases. Plenty of legal issues remain regarding recognition of foreign state partnerships that are not actual statutory marriages and regarding parentage. Ms. Slater's materials discuss the State Bar's and judiciary's prohibitions on gender discrimination. Parallel to these emerging equalities for the LGBT community in legal forum are cases now citing to *Obergefell* in state courts. For instance,in Arizona *Obergefell* is cited heavily in two recent appellate court cases. Those are *McLaughlin v. Jones*, 240 Ariz. 560, (Ariz. App., 2016) and *Doty-Perez v. Doty-Perez*, ___ Aris. ___, (App.Div.One 2016). *McLaughlin* applied equitable estoppel against a birth parent wishing to rebut a presumption of parentage during marriage [through argument equating the paternity statutory scheme] wherein one of the mothers had not adopted but the parents were a married couple. The *McLaughlin* couple separated prior to the *Obergefeld* decision but had intended an adoption. *McLaughlin* is distinguished in *Doty-Perez* (denying parental status to the one non-adoptive parent of foster children who failed to petition for adoption during the couple's marriage).

V. Name Changes.

In Arizona, name changes are fairly simple to accomplish. For transgender people seeking a new lawfully recognized name, there is statutory law facilitating that name change.

1. **Updating a Name for Active Military**. Form DD-214 Updates. *See* 10 U.S.C. § 1552 (a)(1) on removing an injustice as a reason for an update to a name on a DD-214, using form DD Form 149.

2. **Updating a Name by Amending a Birth** Certificate. In Arizona, there is specific provision for amending a birth certificate, stated as follows at A.R.S. §36-337.

"A. The state registrar shall amend the birth certificate for a person born in this state when the state registrar receives any of the following: ….. 3. For a person who has undergone a sex change operation or has a chromosomal count that establishes the sex of the person as different than in the registered birth certificate, both of the following: (a) A written request for an amended birth certificate from the person or, if the person is a child, from the child's parent or legal guardian. (b) A written statement by a physician that verifies the sex change operation or chromosomal count." www.azleg.gov

3. **Petitioning the Court to Change A Name**. The Superior Court in Maricopa posts free on-line forms and instruction (PDF, fillable, etc.) at the Self Service Center:

http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/Forms/CivilCases/

Thank you for your valuable service, JAGC attorneys & staff!

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