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Introduction

Over the past decade, antidiscrimination laws have increasingly covered transgender plaintiffs in at least some cases (Currah, Green, & Stryker, 2008). Minneapolis passed the first local ordinance protecting gender identity in 1975, and Minnesota passed the first state law in 1993 (Currah & Minter, 2000). Today, 13 states and the District of Columbia protect gender identity through state law (Levi & Redman, 2010). Despite this growing trend, most people are still unprotected by state or local laws. At the federal level, antidiscrimination law does not include gender identity. In fact, federal disability antidiscrimination law specifically excludes gender identity as a category.¹ Nonetheless, transgender advocates have increasingly won protection for transgender persons under sex antidiscrimination law (Turner, 2007). In particular, in employment, public accommodations, and prisons, courts have been willing to treat discrimination against transgender persons as discrimination based on sex.

In many senses this is a victory. Transgender advocates argue that this type of protection treats gender identity as a status that forms a core part of personal identity (Currah & Minter, 2000). This status-based protection legitimizes transgender persons as a group, similar to other legally protected groups. Feminist scholarship has argued that expanding sex discrimination law to cover transgender

¹ There is strong debate amongst transgender advocates over the appropriateness of using disability law because of concerns over stigmatizing transgender persons. On the one hand, some advocates raise concerns with the stigma of disability law (Romeo, 2005). On the other hand, some advocates argue that disability law humanizes plaintiffs and should be understood in a technical, legal sense (Levi, 2006).
persons is consistent with a broader project of expanding how the law understands gender (Franke, 1995). The language in some of these cases does seem to expand judicial notions of gender. Courts explain that any gender nonconformity should be protected as sex stereotyping.

However, this use of sex antidiscrimination law to protect transgender persons may be more limited than it seems. In most cases, courts have required transgender persons to obtain a diagnosis of Gender Identity Disorder before they have been protected under antidiscrimination law (Romeo, 2005). While this medical model is consistent with how some trans people understand their gender, it is not the only way to understand gender identity expression (Minter & Keisling, 2010; Spade, 2003). In particular, this medical model precludes anyone who understand their gender as expressive or performative.

This potential clash of expanding sex antidiscrimination law based on a narrow understanding of gender raises two questions. First, how does the law actually conceptualize gender. Second, how do plaintiffs structure their own gender narratives in response to the law. This paper is a preliminary analysis of these questions. I have closely read plaintiffs’ court filings in several federal and state employment antidiscrimination cases, looking for how narratives about gender identity are presented. I compare these narratives to the law, arguing that the law restricts how plaintiffs’ conceptualize gender. Admittedly plaintiffs in any type of case will tailor their presentation of facts to what the law considers relevant. Social context is stripped from almost all legal proceedings. However, I am arguing

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2 By this I don’t mean to answer the legal question of what is considered sex discrimination. Instead, I interrogate the case law to see how gender is conceptualized.
that this is more than the usual process of highlighting certain facts and obscuring the rest. Here, the law shapes how gender identity is understood. Because I am only looking at plaintiffs’ court materials, I cannot definitively say whether this carries over outside the legal arena. At a minimum, this preliminary analysis traces a mechanism for the law to directly shape individual identities.

I have chosen to focus on plaintiff materials from prominent recent cases, as representative of how the law treats these cases. I particularly focus on materials from three cases involving transgender government employees. I also include two cases that present more expressive theories of gender to contrast the main cases. Finally, I consider cases involving lesbian or gay employees who claim that discrimination against them was based on gender nonconformity. These cases further illustrate how plaintiffs construct gender narratives.

Legal Background

In 1989, the U.S. Supreme Court dramatically extended the reach of Title VII by announcing a new theory of sex stereotyping ("Price Waterhouse v. Hopkins," 1989). Partners at Price Waterhouse denied a promotion to Ann Hopkins, despite her strong qualifications and evaluations. One partner suggested that Hopkins should “walk more femininely, talk more femininely dress more femininely, wear makeup, have her hair styled, and wear jewelry” ("Price Waterhouse v. Hopkins," 1989, p. 235). The Supreme Court held that Price Waterhouse could not refuse to promote Hopkins because she failed to comply with their stereotypes of femininity.

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3 Title VII applies equally to government and private employers.
This sex stereotype theory would appear to hold broad potential for protecting any gender nonconformity: discrimination based on gender nonconformity is discrimination for failure to comply with a sex stereotype. Indeed, some recent cases examined below seem to hold that, under Price Waterhouse, any gender nonconformity would be protected. For example, Smith explains that “discrimination against a plaintiff who is a transsexual—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against Ann Hopkins in Price Waterhouse, who, in sex-stereotypical terms, did not act like a woman” ("Smith v. City of Salem," 2004, p. 575). The court continued, “Sex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior” ("Smith v. City of Salem," 2004, p. 575). Although it doesn’t use the terms of protecting gender identity expression, Smith’s broad language almost seems to understand gender as expressed. Nonetheless, the court in Smith probably did not actually intend to protect any gender nonconformity (Kirkland, 2006; Kosbie). Despite its broad language, the court likely still had a narrow understanding of gender.

This broad language from cases like Smith clashes with the continued willingness of courts to uphold gendered dress codes. For example, in Jespersen, a court held that Harrah’s casino did not discriminate on the basis of sex stereotypes based on its dress code ("Jespersen v. Harrah’s Operating Co.,” 2004). Darlene Jespersen worked as a bartender at Harrah’s for years before the casino implemented a new dress code requiring women to wear makeup and style their hair. Men were only required to keep their hair and nails trimmed and clean. The
Sixth Circuit dismissed Jespersen’s claim that this dress code discriminated against her for failing to conform to a stereotype of feminine beauty.

As Jespersen illustrates, courts largely treat appearance as unimportant (Bartlett, 1994; Klare, 1992). Although the First Amendment protects dress in some (government) contexts, in most business contexts, dress and appearance are understood as matters of personal taste. Courts heavily defer to employer justifications for dress codes. Links between appearance and identity are largely ignored. Employers cannot unduly burden one sex more than the other with a dress code, but as with Jespersen, even this requirement is almost meaningless.

The strong language of Smith clashes with the treatment of appearance and dress codes. If gender nonconformity is expressed through dress and appearance, and dress and appearance are routinely dismissed, then the courts cannot really mean to protect any gender nonconformity. Moreover, as previously noted, courts almost always require a Gender Identity Disorder diagnosis before protecting transgender persons (Romeo, 2005). Under this medical model, doctors certify that a person's gender identity does not match his or her birth sex.

As a matter of law, I have concluded elsewhere that even under the expansive Smith interpretation, Title VII probably does not protect all gender nonconformity (Kosbie). In particular, courts appear to protect gender nonconformity when they understand it as part of a medically supervised gender transition process. This legal conclusion leaves open the question of how the law conceptualizes gender. Even if Title VII is narrower than first appears, some of the language from these cases initially appears to offer somewhat expansive understandings of gender. This also
leaves open the question of how the law influences plaintiffs’ narratives about gender identity. It is to that matter that I now turn.

**Gender Identity as Sex Stereotyping Under Title VII**

In perhaps the most prominent Title VII case by a transgender person, Dianne Schroer sued the Library of Congress after she was denied a position as a terrorism research analyst ("Schroer v. Billington," 2008). Schroer applied under the name of “David Schroer,” her name before she transitioned to a male gender identity. The Library gave the position to Schroer because she was “significantly better than the other candidates” ("Schroer v. Billington," 2008, p. 296). Schroer had an extensive background in the military, including various awards and time overseeing a counterterrorism unit. After being offered the position, Schroer met with her future supervisor to discuss her plan to begin work as “Dianne Schroer.” At a lunch conversation, her future supervisor asked “why in the world would you want to do that?” and later admitted that she thought photos of Schroer in women’s professional attire looked like “a man dressed in women’s clothing.” The library then rescinded the offer, alleging that Schroer might not appear credible when testifying before Congress because people would know she had previously been a man.

Philecia Barnes was promoted to police sergeant in 1998, after seventeen years with the Cincinnati Police Department (at the time, Philecia was still known as Phillip) ("Barnes v. City of Cincinnati," 2005). As part of the promotion, Barnes had to go through a probation period to determine if she was fit for service as a sergeant. At the time, Barnes was living as a woman away from work, but still wore men’s
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clothes at work. Other officers talked about how Barnes failed to be sufficiently
masculine. Barnes was the only sergeant placed on a special training program
during the probationary period, and eventually failed the probationary period (the
only officer to fail since at least 1993). The final reviews of Barnes’s probation
period claimed that Barnes failed to exhibit command presence.

Finally, Krystal Etistty was hired as a bus driver by the Utah Transit
Authority. However, after her supervisor learned of her planned gender transition,
she was required to use men’s restrooms while on the job. She was eventually fired
for failing to use men’s restrooms, despite presenting herself as a woman. UTA
claimed to be concerned with how passengers would respond to seeing a “male” bus
driver using the women’s restroom.

In all three of these cases, courts held that the employers engaged in sex
stereotyping against the transgender employees. These courts used the sort of
broad language that suggests that any gender nonconformity would be protected.
As discussed above, as a legal matter I would argue that these cases only protected
gender nonconformity when accompanied by a medical Gender Identity Disorder
diagnosis. Turning to the plaintiffs’ briefs, I also conclude that the plaintiffs’ gender
narratives are constricted by the law. The gender narratives are not as expansive as
the Smith language on gender nonconformity.

I find some limited evidence that plaintiffs talk about their gender in more
expansive terms of gender nonconformity. Schroer’s brief never appears to make
these sort of claims, but the other two suggest gender conduct as a choice to express
gender nonconformity. Etsitty’s brief notes “slowly, Plaintiff started wearing more
makeup such as eye-liner, mascara and lip gloss. Plaintiff also wore acrylic finger
nails and [a] name patch which said ‘Krystal.’” These two sentences are the only
place that the brief talks about gender appearance in a manner that could be
understood as being a choice. This language seems to lay the groundwork for a
claim that Krystal is using her appearance to express her nonconformity with
gender norms. However, this language is restricted because it is in the context of
explaining Krystal’s medically supervised gender transition. In the context of GID,
instead of being a claim to gender nonconformity, this becomes an understanding of
appearance as conforming to a psychologically determined true gender identity.4

Similarly, Barnes’s brief explains that “Lt. Col. Twitty had animus against Sgt.
Barnes because he was not masculine enough to lead the troops.” This language
also suggests that an understanding of gender identity as flexible. Gender
nonconformity might fall anywhere outside of traditional gender norms: Barnes is
not feminine, Barnes is just not masculine enough. However, Barnes’s narrative
then explains that Barnes was seen as an effeminate male and discriminated against
as a transsexual. After appearing to embrace the possibility of gender conduct as
expressing nonconformity, Barnes’s brief instead returns to gender conduct as
aligning with an internal gender identity.

The use of pronouns in these briefs also seems to deemphasize the idea of
gender conduct as expressing gender nonconformity. Instead, pronouns are aligned
with an understanding of proper medical scripts. While birth sex does not control

4 As suggested before, I do not mean to criticize use of the medical model of gender identity. Indeed,
some transgender plaintiffs understand their gender in this fashion. Instead, I mean to consider how
the law might limit narratives to this model.
Pronouns, medicine and law still determine proper pronouns. Barnes’s brief opens with a footnote explaining that Barnes will be referred to as “Phillip” and with male pronouns because “the City chose to use Phillip and male pronouns in its brief.” Pronouns are one of the most profound and basic ways for transgender persons to express their gender identity (Hale, 2009). For Barnes to so easily concede this choice suggests an understanding of gender as controlled by the law or by science. Similarly, Etsitty’s brief explains that “in this complaint we refer to Plaintiff using male pronouns as opposed to female pronouns since Plaintiff’s claims are based upon his biological sex as further described below.” Schroer’s brief is the only one not to follow this pattern. Instead, Schroer’s brief uses female pronouns at all times, even in sentences describing “David Schroer.” In this sense, even Schroer’s choice of gender narrative appears controlled by the GID model.

Similar to pronoun usage, the briefs seem to use the label “transsexual” to model gender as medically controlled. Early on, Barnes’s brief explains that “In 1999, Barnes was a male to female transsexual.” Most of the brief talks about Barnes as a man who exhibits increasingly feminine behavior. Thus, referring to Barnes as a transsexual lays the groundwork for explaining a man’s feminine behavior based on a psychological basis. Barnes does not present feminine behavior as expressing her female identity; she presents feminine behavior as part of her transsexuality. Etsitty’s brief follows a similar narrative sequence, opening with the note that “plaintiff … considers himself a pre-operative transsexual.” This narrative precludes the possibility of choosing how to express gender identity: a male-to-
female transsexual needs to begin expressing a female gender identity, consistent with medical procedures.

While Schroer’s brief does not use the term transsexual, it does present a narrative centered around her medically supervised gender transition. The brief notes,

Gender dysphoria, also known as gender identity disorder, is a medical condition in which a person's gender identity does not match his or her anatomical sex at birth. Medical specialists generally agree that gender dysphoria establishes itself very early, before a child is capable of making any conscious choice about his or her gender identity. ... A person’s gender identity cannot be changed.

The brief later explains that “gender dysphoria is a treatable condition, and does not have any negative impact on a person’s ability to be a productive member of society.” This focus on GID eliminates any possibility of a narrative of gender conduct as expressing a challenge to gender norms. Gender conduct is not expressing gender identity. Gender identity determines gender conduct.

Consistent with this presentation of gender identity, all the briefs seem to embrace a notion of gender as a binary. They present plaintiffs as either an effeminate male or as a (masculine) transgender female. This is striking in Schroer’s brief, which claims that “the members of the interview committee believed that Plaintiff was a man because, inter alia, the name on her application was ‘David J. Schroer’ and because she was dressed in traditionally masculine attire during her interview.” This narrative presents Schroer as a woman who happened to look like a man at the time of the interview. In fact, except for the name, the narrative reads
exactly as if Schroer was a cisgender\textsuperscript{5} woman who was mistaken for a man. There is not even the possibility of gender transition in that sentence, much less of breaking down a gender binary. In this presentation of narrative, Schroer must always be either male or female. Schroer’s narrative chooses to present her whole history as a woman, even pre-transition. Thus, in her narrative, Schroer was always a woman who looked like a man.

Barnes’s brief similarly embraces the gender binary, although it takes the opposite side of it: Barnes is presented as being an effeminate man.

Defendant attempts to characterize the Title VII claims in this case as claims based on the status of the plaintiff as a transsexual person. That is wrong. During all times relevant to this case, plaintiff presented himself as at work as a person of the male gender and worked as a male. The evidence is undisputed, however that he did not fit the stereotype of a macho male police sergeant.

Even though Barnes dressed as a woman off work, the brief clings to a narrative of gender as either male or female. In this case, we can see direct impact of the law. Title VII protects against discrimination “because of sex.” This has been interpreted by several courts not to protect against discrimination because of the status of being a transsexual. In order to comply with this understanding of the law, Barnes’s narrative presents her past experiences as being those of an effeminate male.

This role of the law in constricting gender narratives becomes even clearer when facts are transformed into legal claims.\textsuperscript{6} Various scholars have argued that sex stereotyping doctrine is problematic because of its use of the term “stereotype”

\textsuperscript{5} Someone who identifies with the gender that they were assigned to at birth.
\textsuperscript{6} I treat these claims as part of the gender narrative. Plaintiffs can choose how to present their claims, so I believe that these choices do reflect a sort of identity narrative.
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(Appiah, 2001; Kirkland, 2006). In particular, the law slips between normative stereotypes (employers cannot discriminate based on ideas about how men or women should behave) and statistical stereotypes (employers cannot discriminate against men or women who deviate from the normal range of behaviors associated with their gender). While the language of cases like Smith ("Smith v. City of Salem," 2004) appears to embrace the broad normative stereotype theory, courts really transform this into the narrower statistical stereotype. This allows the law to continue to embrace normative ideas about differences between men and women. 

Price Waterhouse ("Price Waterhouse v. Hopkins," 1989)did not mean that the partners could not embrace ideas about how men and women should behave. It meant that the partners could not punish Ann Hopkins, who happened to act different from how they expected women to act. This distinction may seem narrow, but is critical because of the range of freedom it gives an individual to express their gender. When sex antidiscrimination law is based on statistical stereotypes, it does not protect individuals' choice to act in certain fashions. It protects individuals who happen to have personalities that do not conform to the expectations for their gender. But, for example, Darlene Jespersen can still be required to wear makeup.

The gender narratives in transgender plaintiffs' briefs emphasize how their gender and employment experiences fit into the model of statistical stereotypes. Barnes’s brief explains that “Title VII protects Phillip Barnes from the City’s demoting him because of its belief that a male sergeant cannot be and must not be effeminate.” While this does appear to contain elements of both normative and statistical stereotypes, Barnes's whole brief presented a narrative of a man who
happened to be effeminate. The central legal concern is not that the Police Department cannot make gender distinctions. The central legal concern is that the Police Department cannot assume that all men will act in a masculine fashion.

*Schroer* makes this even clearer: “Defendant took these actions either because it perceived Plaintiff to be a man who did not conform with gender stereotypes associated with men in our society or because it perceived Plaintiff to be a woman who did not conform with gender stereotypes associated with women in our society.”

 Plaintiffs do not present narratives of gender conduct as expressing their gender identity. They do not express narratives claiming the right to choose their gender expression. They do not express narratives challenging the underlying gender binary. Instead, they present narratives of men who do not match the social expectations of men. These claims could almost be the same as claims that might be made by cisgender men, who are similarly perceived as effeminate.

 If the law protects sex stereotyping based on statistical stereotypes, then we would expect transgender plaintiffs to try to conform their narratives to this model. However, the underlying concern comes in when the law might shape how these plaintiffs understand their own gender. As Dean Spade explains, some people may not identify as male or female (Spade, 2003). Their identities may shift over time. And even if someone identifies as male or female, they may think of their conduct as expressing more complex sense of gender. They may specifically understand their conduct as expressing their gender. By conforming their narratives to the requirements of Title VII, Schroer, Etsitty, and Barnes all reject these possibilities.
It’s not clear whether or not this carries over into how they understand their gender outside of the legal materials. At a minimum though this traces a direct path from legal doctrine to individual identity construction.

There are at least some hints in the briefs of narratives suggesting gender conduct as a choice to express gender identity. Schroer’s brief notes “as part of her medical treatment … Plaintiff was about to change her name, begin dressing in traditionally feminine attire, and otherwise begin presenting herself full time as a woman.” Similarly, Etsitty’s narrative discusses her use of makeup and dress to present her female identity as part of her gender transition. In both of these examples, plaintiffs present narratives of gender being pre-determined. While conduct does express gender in some limited sense, conduct is not chosen specifically to express gender. Conduct follows from gender. Conduct does not express or construct gender. Barnes’s brief focuses on Barnes as an effeminate man. Only in footnotes does the brief even acknowledge that Barnes is effeminate because of being transgender. Barnes does not present effeminate behavior as a choice to express a female identity. Instead, Barnes’s narrative is of a man who just happens to be perceived as effeminate.

I now turn to a case that presents a more expressive narrative of gender. This contrast will make even clearer how Title VII law restricts the gender narratives of plaintiffs.

**Gender Identity as Expressive**

In *Doe v. Yunits*, a male-to-female transgender girl argued that freedom of speech should protect her right to gender identity expression at school ("Doe ex rel.
Doe v. Yunits,” 2000). Even though this case is not from the Title VII context, I use it to present an example of how a transgender plaintiff might employ a gender narrative that is emphasizes gender as expressive. In stark contrast to the Title VII cases, the brief starts by arguing for protection for “gender identity and expression.” Thus, immediately, gender conduct is expressive. While Pat Doe did follow a medical model of GID, as with the Title VII plaintiffs, her narrative of her transition is strikingly different. The brief explains “in early 1999, Pat first began to express her female gender identity.” This narrative emphasizes how Pat uses gender conduct and appearance to express and construct her gender identity.

In describing, GID, the brief explains that “Pat has a female gender identity and believes she is a girl” (emphasis added). Using the word “believe” emphasizes a greater degree of choice than in the Title VII cases. Pat presents a narrative where gender is a product of her choices. Gender nonconformity should be protected because of how it expresses gender.

Pat could present this gender narrative because she argued on the basis of First Amendment free speech rights. Freedom of Speech protects individual’s right to self-expression. In fact, to assert a First Amendment claim, Pat had to claim that her gender conduct was intended to express a message and that message was easily understood by the audience. The narratives from the Title VII cases, which downplayed gender conduct as a choice, would fail this First Amendment test. Conduct is protected under freedom of speech when the conduct is specifically intended to express a message. Pat Doe’s brief in Doe v. Yunits thus serves as a strong counter-example, illustrating how Title VII influences the construction of
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gender narratives in transgender litigants’ briefs. Doe’s brief presents gender identity as expressive, and it illustrates how a different body of law may encourage a different identity narrative.

Sexual Orientation as Sex Stereotyping Under Title VII

Finally, I consider how Title VII encourages certain gender narratives in cases of harassment based on sexual orientation. Courts have widely held that harassment based on sexual orientation is not covered under Title VII, sometimes noting that Congress has not amended Title VII to include sexual orientation. In many cases, courts have refused to protect lesbian and gay plaintiffs who allege sex stereotyping, claiming that the plaintiffs are trying to fit sexual orientation harassment into the frame of sexual harassment. In Higgins, Ayala Sepulveda, and Nichols, plaintiffs all presented Title VII sex discrimination claims after being harassed at work based partially on perceived homosexuality ("Ayala Sepulveda v. Municipality of San German," 2009; Higgins v. New Balance Athletic Shoe, Inc.," 1999; Nichols v. Azteca Restaurant Enterprises, Inc.," 2001). Briefs in these cases support the earlier contention that the law does not truly understand gender as socially constructed. Instead, plaintiffs fit same-sex attraction into the statistical sex stereotype box.

In all three cases, plaintiffs present harassment against them as being based on failure to comply with masculine gender stereotypes. Nichols’s brief explained, “Male co-workers continued to call him “queer,” “faggot,” “fucking faggot” and to tell

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7 As a matter of law, this should not be definitive. Courts could still interpret Title VII to cover sexual orientation.
Discrimination based on sexual orientation does include some element of gender norms. Homophobia towards gay men is often based on degrading stereotypes of women. However, by presenting heterosexism in terms of sex stereotyping, plaintiffs are forced to present themselves as gender nonconforming. These plaintiffs argue that they should be protected because their same-sex attraction should be understood as a non-normative gender identity. Thus, while simultaneously linking sexuality and gender norms, this also elides the actual relationship between sexuality and gender identity. Lesbians and gays may or may not be gender nonconforming. While they do not fit the heteronormative model, their gender identity expression may be traditionally masculine or feminine.

Moreover, by forcing plaintiffs to state these cases in terms of sex stereotyping, heterosexism is reduced to sexism. Ayala Sepulveda’s brief explains, “the Mayor’s denouncement [of Ayala Sepulveda’s relationship with another man] became an obvious declaration of the real motivating factor: discrimination against Plaintiff because he failed to meet the Municipality’s and the Mayor’s stereotype of masculinity.” Discrimination against Ayala Sepulveda based on his sexuality becomes discrimination based on his allegedly non-conforming gender behavior.
While heterosexism and sexism are related phenomenon, stating heterosexism in terms of statistical sex stereotypes masks a lot of the damage done. I do not mean to criticize the decision to pursue these cases under Title VII. Surely, the use of sex stereotypes is one wrong involved. Moreover, as a strategic matter these cases make sense when sexual orientation is not otherwise protected. Here I use these cases to reveal the limits of how the law conceptualizes gender. Discrimination has to be based on either sex or sexual orientation. The law fails to recognize the complex intertwining of gender and sexuality. This failure is part of the broader trend of antidiscrimination law conceptualizing gender as being natural and given. Even when courts protect transgender plaintiffs under sex discrimination law, thus moving beyond sex as strictly anatomical, the courts still conceptualize gender as describing a limited set of physical and psychological characteristics.

Conclusion

Now I want to return briefly to the question of how the law conceptualizes gender, which I have not focused on in this paper. How is the law understanding gender? The law is understanding gender as something that is given and dichotomous. Plaintiffs are not claiming to be expressing their gender. Gender is not socially constructed here. There’s minimal recognition of social construction insofar as stereotypes are a social construct. However, there’s no recognition that what is "male" and what is "female" is fundamentally itself a social construct. There’s no recognition that the binary division is a social construct.

My initial analysis of plaintiff briefs strongly suggests a mechanism for the law to shape individual understandings of gender identity. While I cannot say
whether these gender narratives translate outside of the legal arena, it is at least suggestive that the law is limiting some transgender persons’ ability to think of their gender in expressive terms. Further research should try to compare briefs to gender narratives from other sources. For example, by comparing how a plaintiff describes their gender in court documents and in personal notes, I could see whether this legal narrative actually translates to personal identities.

I also note that these are all cases involving male-to-female transgender women. I do not claim that this is necessarily representative of all transgender persons (Hale, 2009). I chose cases based on what was most heavily cited and discussed in the legal arena. Further research should look for cases involving female-to-male transgender men. To the extent that transgender men are underrepresented in the heavily cited cases, further research should also consider how the law understands transgender persons through a certain gendered prism.

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