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FRANK R. WOODBECK Director

SHELLEY HENDREN Administrator



COMMISSIONERS
Patricia Cafferata, Chair
James Campos
Swadeep Nigam
Lauren Scott
Tiffany Young

DRAFT

Minutes

Of the

Nevada Equal Rights Commissioners'

Meeting on June 18, 2013

1. Call to Order

Patricia Cafferata, Chair, called the meeting to order at 2:30 p.m.

2. Roll Call and Confirmation of Quorum, and Verification of Posting

Norma Delaney, Administrative Assistant III, called roll and confirmed that a quorum was present, and that the agenda had been posted and the certificates of posting are on file.

Members present: Patricia Cafferata, Chair; James Campos; Swadeep Nigam; Lauren Scott; Tiffany Young, Secretary.

Staff present: Shelley Hendren, Administrator, Nevada Equal Rights Commission (NERC); Michael J. Baltz, Chief Compliance Investigator, NERC; Rose Marie Reynolds, Deputy Attorney General (DAG); Roy Price, Compliance Investigator I, NERC; Vicki Fox, Compliance Investigator I, NERC; Katherine (KC) Reed, Compliance Investigator I, NERC; Javier Fernandez, Administrative Assistant II, NERC; and Norma Delaney, Administrative Assistant III, NERC.

Public present: Jane Heenan, Gender Justice Nevada; Vanessa Spinazola, American Civil Liverties Union of Nevada (ACLU Nevada); Tod Story, Executive Director, ACLU Nevada.

3. Public Comment

Jane Heenan, Co-Director, Gender Justice Nevada stated that Gender Justice Nevada is a community based, non-profit organization. She stated that she attended the meeting in January 2013 in which the Commission voted unanimously to pursue regulations in the Nevada Administrative Code (NAC) that would limit the definition of gender identity or expression as it exists in statute. Ms. Heenan stated that she is again appearing before the Commission to comment further why she believes their decision was made in error and is hopeful that the Commission will reconsider their decision and that they will more fully understand the ramifications of their decision.

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Ms. Heenan read her statement into the record and provided written statement of the same (See Attachment 1 – letter from Gender Justice Nevada dated June 18, 2013). Ms. Heenan also referenced points addressed in her written statement at the January 2013 meeting (See Attachment 2 - memo from National Gay and Lesbian Task Force dated January 22, 2013).

Ms. Heenan concluded that the language continues to be an uphill struggle for the transgender community; that business owners, state agencies, and places of public accommodation need to be educated as to who the transgender community is and how to meaningfully apply the laws and not single out this category. She stated that she is willing to work with businesses and/or state agencies to help provide this training and that she believes it would be a more reasonable response/approach so that the laws are not such a burden that the transgender community does not want to carry. She stated to put the language in the NAC is a slap in the face; she does not think it is fair; and that people in positions to put the language into the laws need to be educated. Ms. Heenan thanked the Commission for allowing her to comment.

4. Approval of the minutes of the January 24, 2013 Commission meeting.

Ms. Cafferata referenced minor corrections. Ms. Young made the motion to approve the minutes with corrections made; Mr. Nigam seconded the motion — motion carried. It was agreed that since Ms. Young, Secretary, would be in the Las Vegas area the following week, she would stop by the NERC office to approve corrections made and sign the minutes. (Due to a scheduling conflict, Ms. Young was not able to review/sign the minutes and they were emailed to her on July 3, 2013).

5. Discussion regarding Administrator's Report

A. Personnel - Staffing

Ms. Hendren advised that Andrea Mass, Compliance Investigator II, who worked for NERC for approximately 2 years, had left NERC for approximately 9-10 months, and has subsequently returned and was able to go back into her previous position and was able to pick up where she left off.

Ms. Hendren advised that NERC has 3 new Compliance Investigator I's and introduced Roy Price, who works out of the Sparks office; Vicki Fox and Katherine (KC) Reed who both work out of the Las Vegas office. Ms. Hendren read a short biography on each.

Ms. Hendren advised that NERC was still not fully staffed as there is an open Administrative Assistant II position in the Las Vegas office; however, interviews were conducted and Viviana Gledhill will start on June 24, 2013.

Ms. Hendren stated she wanted to recognize Michael Baltz, Chief Compliance Investigator, who recently graduated from the Certified Public Manager (CPM) program.

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Mr. Baltz stated that it was 18 months of very intensive training that took time away from his job duties and home life, but that it was worth every minute. He stated that it taught him different management strategies and prospectives, and he learned a lot about himself.

Ms. Cafferata congratulated Mr. Baltz and indicated that it is very intensive training.

B. Federal Fiscal Year 2013 (FFY13) Equal Employment Opportunity Commission (EEOC) work sharing agreement

Ms. Hendren advised that NERC just received a signed contract, 8 months into the federal fiscal year; that the contract references 499 cases for resolution, and that she asked for 700; that she will be asking for an upward modification and had already spoken to Olophius Perry, District Director, Los Angeles District Office, who stated he will speak to his counterpart in Washington, D.C. She advised that the EEOC has confidence in the quality of NERC's work. Ms. Hendren stated that as of the end of May 2013, NERC has closed 419 cases, but will hopefully find out by the end of July 2013 if the upward modification has been approved. She advised that if there is no upward modification, NERC will continue to provide service to the public. She advised that for the past couple of years, NERC has received \$650 per case closure.

Ms. Hendren stated that the contract calls for 39 intakes at \$50 each; that these are cases that NERC accepts the intake complaint form, meets with the Charging Party, formalizes a charge and transfers the case to the EEOC.

Ms. Hendren stated that the contract reflects a \$1400 reimbursement for NERC to attend the annual EEOC/FEPA Training Conference which is tentatively scheduled in August 2013.

Ms. Hendren stated that the sequestration is affecting the EEOC; that they are getting a 7% cut and expecting cuts for the next 2 years, and is passing those cuts onto the FEPAs (Fair Employment Practicing Agency). She concluded by advising that Mr. Perry is retiring the end of June 2013.

C. Budget – State Fiscal Year 2013 (SFY13)

Ms. Hendren advised that the budget report in the packet ends April 2013, and that the most recent budget ending May 2013 was inadvertently not forwarded and provides more specific information as the end the fiscal year approaches. She advised that she will provide the high-lites of the May 2013 budget.

Ms. Hendren advised a Work Program is completed to move funds from one category to another; that the process is for her to write a justification to the Financial Management (FM) office and if FM agrees, they enter information into their software program to move the funds. She advised Column 2, Work Program Adjustments, that NERC received permission to move money from Personnel Services to Operating Expenses in the amount of \$8,000 and that she was able to do so due to the salary savings as NERC lost 6

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investigative staff members within a 4-5 month period; that the funds were moved to cover the cost of armed security due to a shortfall and this is how NERC made up the difference.

Ms. Hendren advised that another area funds were moved was from Out-of-State Travel to the department's Cost Allocations. She explained that Cost Allocations are services provided to NERC by other agencies, i.e., Human Resources, Financial Management, Research & Development, IDP, computers, etc., and each state agency is charged a specific amount; that during an audit it was discovered NERC was not paying the proper charges and that there would also be a shortage for the following 2 fiscal years. She added that NERC did not use the funds available in Out-of-State travel and the funds were moved. Ms. Hendren added that even with the transferring of the \$8,000 and approximately \$10,000 used for overtime to close cases, NERC will be reverting approximately \$45,000 to the general fund from salary savings.

Ms. Hendren stated that in Operating Expenses, the May 2013 report shows an approximate \$2,000 shortfall and funds will be moved from In-State Travel to cover this cost through the end of the year.

Ms. Scott asked that when packets are assembled, if the heading portion could be at the binding area as it is difficult to write notes on the pages. Ms. Hendren agreed and advised it would be done from this point forward.

Mr. Nigam asked about the position upgrades that Ms. Hendren had previously discussed. Ms. Hendren advised that unfortunately this was not successful nor was it included in the Governor's proposed budget for SFY14/15.

In regards to Performance Indicators (PI), Ms. Hendren advised that over the past several meetings she has indicated PI number 1 is not an accurate measurement and has not been for over 8 years; that when NERC is fully staffed, it is at least a 4 week process from the time an individual files with NERC to their appointment with the intake officer; that when NERC has been understaffed such as over the past several months with only 3 investigators performing intakes, it was a 6-8 week process; that 22 days is not doable. She added that the new PIs will be for the new performance based budget, and this PI will not be included with the start of SFY14.

In regards to PI number 2, Ms. Hendren stated that when staff left, their cases were added to the current workload pending assignment to investigation; that the 180 days for case age is a federal benchmark and NERC continues to track this closely. She added that even with the shortage of investigative staff, NERC was able to show a 10% improvement since the end of May 2013.

In regards to PI number 4, Ms. Hendren stated that Dennis Maginot, Compliance Investigator II, is the mediator and that his success rate is **outrageous** (emphasis added) and that more cases are going to mediation.

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In regards to PI number 5, Ms. Hendren stated that 67% of the contract should be met at this time and that NERC is currently at 63% of contract met. She referenced her prior comment that the new contract is for 499 case closures for contract credit and NERC is currently at 419 case closures.

Ms. Hendren stated that under the new performance based PIs, NERC will have 1 "activity" with 3 PIs – case age of 180 days as previously mentioned; cases closed at mediation which is a quality measurement; and the number of cases closed which is a quantity measurement.

Ms. Hendren referred to the Commissioners' Report and wanted to point out that with one month left in the SFY, NERC was able to obtain slightly above \$1.5 million in settlement benefits which is more than ever previously reported. She related to the success of the mediation program with 67% of cases settled in mediation, in addition to cases successfully settled in conciliations.

Ms. Hendren stated that in regards to case types, the report shows 6 cases in regards to State Only and that this number will eventually drop to 0 as sexual orientation and gender identity or expression bases are now covered federally.

D. Outreach

Ms. Hendren advised that for SFY13, NERC provided 44 sessions and reached 816 individuals; that she is discovering while the audience may be smaller, she is providing more sessions, going to more events, and that employer groups are smaller, usually consisting of managers/supervisors. Ms. Hendren stated that in SFY 12, NERC conducted 28 sessions and reached 1,300 individuals.

Ms. Hendren added that Mr. Maginot was on a radio talk show in Northern Nevada and that she provided an interview with the local newspaper. She added that NERC is also providing training material in Spanish and that Lila Vizcarra, Supervisory Compliance Investigator, who has been with NERC approximately 6 years, provided her first outreach presentation in Spanish this SFY.

Ms. Scott asked that in regards to the outreach presentations, if there are handouts and asked if it was possible to put the presentation in PDF format so it can be put on the web as individuals could be directed to the link. Ms. Hendren responded that she emails the presentations to her contact and provides brochures and fact sheets, but agreed that it was a **fantastic** (emphasis added) idea and would be in contact with the IT people, but that she has been in contact with them already to update the website, and they are not yet ready to do so.

E. Legislative Update to include: SFY 14/15 Budget, AB57, AB65, AB445, SB70, SB74, SB87, SB180, SB370, SB486, and SB506.

Ms. Hendren stated that for SFY14/15, the budget has been submitted but she has not seen it; that everything NERC asked for was approved, at least, as per her last budget hearing.

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Additional funds were requested to move the Northern Nevada office in October 2013; authority/funding for armed security, approximately \$50,00 per year, was requested and approved, however, the amount approved was short approximately \$800 over the next biennium and NERC will make up difference out of Operating Expenses; that in regards to Training, there is approximately \$14,000 for the next biennium and that NERC is sending staff to the EEOC Taps Training in July, approximately \$700 each, and that she will be providing training and will not have to pay; that she requested additional funds for transcription services, \$2400 per year, which would cover the workshops, public meetings, and final adoption of regulations, this amount was approved. She added that NERC will be receiving replacement equipment in regards to new computers, monitors, and 2 laptops, half will be in SFY 14 and the other in SFY 15. Ms. Hendren concluded that the only negative is In-State Travel was cut almost in half, from \$13,000 to \$6700, which is NERC's fault for not traveling so it was adjusted accordingly – if NERC was fully staffed, there would have been more traveling to meet with northern Nevada staff. She added that the budget is for approximately \$1.4 million and would email the Commissioners to let them know the final budget, once approved.

Ms. Hendren stated she included only the portions of the bills that pertain to NERC but that the full bills can be reviewed on the Nevada legislature website.

AB57 – Housekeeping bill that says NERC Administrator will provide biennial report to the Governor.

AB65 – Ms. Reynolds, DAG, provided information on this bill pertaining to Nevada Open Meeting Law NRS241. Ms. Reynolds stated that the portion pertaining to NERC is Section 7, where the body of the agenda must indicate a contact person designated by NERC who the public can contact to get supporting material and a list of locations where the material can be obtained – this bill is effective on July 1, 2013. She added that while the bill indicates that Clark County/Washoe County must also post supporting material on their websites, this is not applicable to NERC.

AB445 – In regards to public meetings, the Governor signed the bill making it a requirement to post the agenda on the official website – NERC posts on the DETR website already.

SB70 – Bill would add family caregiver as a new protected category under NERC's employment statute, 613 – bill did not pass.

SB74 – Public Records – audio records have always been available, but now they must be provided at no cost, upon request.

SB87 – Housekeeping bill that the Legislative Counsel Bureau (LCB) submitted to repeal 613.333 which states: "Discrimination for lawful use of any product outside of premises of employer which does not adversely affect job performance or safety of other employees." Ms. Hendren stated NERC is guessing that the LCB is referring to smoking cigarettes as when this came up in front of the legislature initially, it was the tobacco industry that brought it up – basically states that it's legal to smoke cigarettes off premises if it does not affect your job and you cannot be discriminated against for that – this bill was to be repealed but it was unsuccessful. She advised that NERC does not take these cases as tobacco usage is not a protected category; that someone could go to court if they

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feel they are being discriminated for tobacco usage; that it could also apply to marijuana use as it is legal in Nevada and possibly alcohol as it states lawful use of any product – she added that it is pretty vague.

SB180 – A similar bill was submitted by NERC that did not make it to the legislature. This bill was presented by Richard Segerblom asking for state court remedies to equal those in federal court under Title VII; bill vetoed by the Governor and his reasons why included in packet.

SB370 - Bill was in regards to Administrative regulations; bill died.

SB486 – Bill put in packet in error and should be **SB483** which pertains to compensation for state workers; bill did not go anywhere; **AB510** also did not go anywhere.

AB511 – Bill signed – the 2-1/2% pay cut state workers had is going away in SFY14; pay step increases will return in SFY15.

SB506 – Housekeeping bill submitted by the LCB to repeal statute in 613 which states it's ok to discriminate against Communist Party Members – bill passed and you can no longer discriminate against Communist Party Members.

Ms. Hendren addressed two other bills regarding rulemaking that were not noted above: AB408 – Administrator to do small business impact statement with regard to new regulations and what, if any, impact they will have on small businesses.

AB252 – Regarding rulemaking – all notices to LCB to post on their website (workshop/hearing); statement to LCB why regulation needed; however, they can reject it based upon statement alone.

Ms. Hendren concluded her legislative update.

6. Discussion regarding procedures for adopting administrative regulations.

Ms. Cafferata, in addressing Ms. Reynolds, DAG, commented that upon review of past minutes in regards to regulations, there were 2 types of regulations that were discussed: one was the definition and the other was adopting regulations for hearing motions that the Commission does not have in their regulations. Ms. Cafferata asked Ms. Reynolds to explain the process for adopting administrative regulations.

Ms. Reynolds referred to the minutes of January 2013 meeting that were approved, and referred the Commissioners to page 13, item 9, through page 15, where there is written discussion regarding the regulations that the Commissioners were interested in pursuing. Ms. Reynolds also referred to the copy of the PowerPoint presentation provided in the packet regarding Administrative Rulemaking, page 8, middle slide," Drafting Process," which after prior discussion, is the step the Commissioners are at.

Ms. Reynolds reminded the Commissioners that as of July 1, permanent regulations can be adopted. She stated there is a new law wherein an agency must adopt a regulation within 2 years of when first submitted to the LCB; that if the agency does not adopt the regulation during this time frame, justification must be submitted to the LCB regarding the failure to adopt within the 2 year time frame.

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Ms. Reynolds read each of the steps in the PowerPoint presentation (see copy in packet) and provided the following comments after each step:

Step One: Ms. Hendren is going to draft regulation language;

Step Two: The Commissioners are not asking the LCB to draft the regulation; rather,

Ms. Hendren will be drafting the regulation as already agreed upon;

Step Three: Ms. Hendren had previously stated she will be conducting a study and will provide a written statement regarding what, if any, impact the new regulations will have on small business;

Step Four: There are two different paths that the Commission can take in regards to a public workshop. One is to draft the regulation, submit it for approval to the LCB and then conduct the workshop, where public comment is received. Should there be any substantive changes due to public comment at the workshop, then the regulation must be resubmitted to LCB for approval before the regulations can be adopted. The second is to conduct a public workshop first, obtain comments from the public, then draft the regulation to submit to the LCB. A second public workshop would then need to be scheduled after the regulation is reviewed by LCB.

Step Five: Notice of Intent to Adopt a regulation must be posted. There are several posting requirements under the Open Meeting Law - 3 days' notice that a meeting is going to be held (the same as regular Commission meetings); Notice of Intent to Adopt Regulation is 30 days' notice; Notice for Workshop, depending on what is happening is 15days. The workshop would be conducted by either Ms. Hendren or Ms. Reynolds. Each proposed regulation would be addressed section by section; you would ask for public comments, and then discuss and consider the public comments. After the Commission adopts the regulation at a public meeting, the regulation would be forwarded to the LCB, and submitted to the Legislative Commission who would also have a public hearing and make the final decision to adopt or not.

Ms. Cafferata, in addressing Ms. Hendren, asked if it was her intent to start the process after July 1 and if she would be preparing both motions and the definition as a package?

Ms. Hendren advised that she will do so after July 1; that there is one regulation recommended for appeal; two to be amended; and creating one regarding motion practice before the Commission and one on NERC's interpretation of the new protected category.

Ms. Reynolds advised the Commissioners that the Attorney General's Office provides training to Boards/Commissioners on the Open Meeting Law, sometime in the fall, which is where the PowerPoint presentation came from. Some other topics included in the training are Administrative Hearings; Ethics in Public Government; Rulemaking; Public Records Requests. She advised that there is a book for Boards/Commissioners on the web.

Ms. Cafferata suggested that the Commissioners review the booklet and commented that the training provides a lot of information.

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7. Discussion regarding location and time of next meeting and agenda items.

Next meeting will be the workshop to be held tentatively in August. Future agenda items will be the regulations.

8. Public Comment

None.

9. Adjournment

Ms. Cafferata adjouned the meeting at 4p.m.

Respectfully Submitted

Tiffany Young Secretary/Commissioner

Attachment 1

(Submitted 6-18-2013)

Gender Justice - NEVADA -



Gender Justice Nevada champions justice, dignity, and respect for Nevada's diverse trans* and gender non-conforming persons and communities by offering innovative education, health, legal, outreach, and direct service programs.

708 S. 6th Street * Las Vegas, NV 89101 702.425.7288 * info@gjnv.org

18 June 2013

We oppose NERC's attempt to add any regulations to the NAC that would restrict the definition of "gender identity or expression" as it currently exists in Nevada statute. We particularly oppose the inclusion of language that would support checking someone's state-issued identification by persons attempting to ascertain someone's gender identity or to determine whether a claim of discrimination is valid.

We oppose this regulatory language for the following reasons:

- * Such additional language is unnecessary (there has been no clear and compelling reasoning that we are aware of regarding why adding regulations is being pursued at all)
- * Placing this additional burden on trans* and gender non-conforming persons is harmful (trans* and gender non conforming folks are commonly facing challenges to our "realness")
- * Sixteen states and the federal Office of Personnel Management do not require "proof" from someone asserting a trans* identity
- * The people of Nevada have spoken over and over through their elected officials that they do not want this language (three bills passed in 2011 and one bill passed in 2013 using the same definition of gender identity or expression clearly, in our opinion, if there were some pressing need for changing this definition, such change would have been accomplished in the 2013 session)

- * We are aware that the need for a similar clarification of a person's status under a specific protected category can emerge in claims of discrimination (particularly in allegations of religious discrimination), and it is our understanding that this commonly happens only in the course of the investigation when one side asserts a challenge to someone's claim to be a member of a protected group. If the pursuit of regulations is going to continue, we would wish to know why "gender identity or expression" is being singled out for such treatment?
- * Finally, if employers and others (such as NERC investigators and staff) are needing clarification about how to address the needs of trans* and gender non conforming persons, they would do better to adopt model policies similar to OPM policy and get "Trans101" training -- the burden of understanding how to properly identify who is a member of the protected class "gender identity or expression" rests with employers and NERC investigators and staff. This onerous burden should not be placed on vulnerable trans* and gender non conforming persons.

To our knowledge, no other category of persons within civil rights law in Nevada has such additional regulatory language attached. Singling out this category is unnecessary, harmful to vulnerable persons the law is designed to protect, and defies the will of the people of our state. We are strongly opposed to this attempt to limit access to civil rights.

Sincerely,

Jane Heenan, MS MFT Co-Director, Gender Justice Nevada

Attachment 2

(Submitted 1-24-2013)

Gender Justice - NEVADA -



Gender Justice Nevada champions justice, dignity, and respect for Nevada's diverse trans* and gender non-conforming persons and communities by offering innovative education, health, legal, outreach, and direct service programs.

708 S. 6th Street * Las Vegas, NV 89101 702.425.7288 * info@gjnv.org

28 January 2013

Why the definition of "Gender Identity or Expression" should remain as it is, without adding the clause "that is sincerely held" in the Nevada Administrative Code

Singling out "Gender Identity or Expression" for such restriction is unfair. There are no similar written restrictions on the definition of religion, for example. Indeed, we would likely all agree that having such written restrictions on religion would be offensive. Further, to add this language only further harms our state's transgender persons, who are arguably our state's most vulnerable citizens, suffering more widespread and egregious civil rights violations more often than members of any other definable group. As such, they deserve the widest possible protections. To restrict this definition would cause undue confusion and fear among persons in this already_disempowered group.

we would also argue that this language is not actually about transgender persons or about protecting transgender persons (which IS the explicit desire of the existing statutory definition). Rather, this additional language is about non-transgender persons who may make claims of discrimination under the existing language. As a result, the proposed "solution" of restricting the definition of gender identity or expression causes members of our transgender communities to bear the burden of these persons' illegal claims, which is clearly unfair. A much more fair solution is to have investigators trained sufficiently to identify cases where persons are not making legal claims and to exclude those claims from going forward, as is the case regarding claims in other protected categories.

To address statements made by sitting commissioners, we would strongly challenge Commissioner Nigam's statement that this change is "important to the transgender community." Indeed, any change to the existing definition is strongly opposed by all members of our transgender communities that we are in contact with (and as an organization with more than 40 years collective experience working, playing, and crying with members of our transgender communities, we believe we are in a better position than Commissioner Nigam to comment on what is important to our transgender communities).

In addition, there is no "free for all" to have to "throttle back" as Commissioner Scott describes. It is our clear and ongoing experience that transgender persons who are survivors of employment and public accommodations discrimination are fearful of filing claims, believing that they will only suffer further at the hands of state bureaucrats who will question their gender expression and minimize their claims of harm. The commission must understand how fearful members of our transgender communities are as a result of the regular harmful treatment they receive in our gender binary culture.

The assertion by Commissioner Scott that it is "easy" for persons to access name and gender marker changes on driver licenses is both untrue and is dismissive of class and race barriers which are present in our culture. While it is true that in 2010 we were successful in making changing gender markers on driver licenses easier, it remains problematic at best for most transgender persons to make such changes. Cost is the primary barrier, as the average cost for a "do-it-yourself" name/gender marker change is around \$600. Having an attorney assist in the process can double or triple the cost. Transgender persons suffer from extraordinary and pervasive economic discrimination, with transgender persons of color significantly greater barriers (please see accompanying document, "Injustice at Every Turn," a large national survey of transgender persons' experiences, published in 2011 by the National Center for Transgender Equality and the National Gay and Lesbian Task Force). Clearly, it is far from "easy" for most transgender persons to make document changes.

Finally, there is no precedent for restricting access in writing to civil rights protections in Nevada. The intent in 2011 of the legislature and governor was clear: transgender citizens of Nevada deserve equal protection under the law. Indeed, bipartisan votes in both houses and the governor's signature firmly support the existing definition. Such support was more recently reaffirmed in the governor's decision not to send NERC-proposed BDR on to legislature (while we are not privy to the exact language of this proposed BDR, it seems likely that it included "sincerely held belief" as part of its text).

Thank you for your time in consideration of our words. And, thank you for your service to persons in our state.