



Michael D. Silverman
Executive Director

June 9, 2014

CERTIFIED MAIL

Kevin A. Shwedo
Executive Director
Frank L. Valenta, Jr., Esq.
General Counsel
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016-0020

Re: Chase Culpepper

Dear Messrs. Shwedo and Valenta:

I write on behalf of Chase Culpepper, a 16-year-old high school student from Anderson, South Carolina who experienced discriminatory treatment at the Department of Motor Vehicles office there.

Chase wears androgynous or women's clothing and makeup on a daily basis, and has done so for some time. It is part of who he is. His clothing and makeup are outward manifestations of his inner self. They are essential components of his gender expression.

On March 3rd, Chase visited the DMV office in Anderson with his mother. He had already passed his driving test. He was excited to get his new license. While filling out paperwork before taking a photograph, DMV employees told Chase that he could not have his photograph taken while wearing makeup and that he did not look the way DMV employees thought that a boy should.

When pressed for a policy or rationale for the refusal to allow him to be photographed as he regularly appears, an employee told Chase that DMV rules prohibited license photos to be taken in “disguise.” Chase and his mother informed staffers that this was Chase’s ordinary daily appearance and not a disguise at all. Nevertheless, DMV staff insisted that Chase remove his makeup. Chase wanted his license, and he therefore complied, wiping his face and removing mascara from his eyelashes. Once he did so, DMV staff took his picture and Chase received his driver’s license.

Chase’s freedom to express his gender should not be restricted by DMV staff. He is entitled to be who he is and to express that without interference from government actors. Forcing Chase to remove his makeup prior to taking his driver’s license photo restricts his free speech rights in violation of state and federal constitutional protections.

Chase’s gender expression conveys a message about, among other things, the fluidity of his gender identity and what it means to express oneself as male or female. Courts have recognized this form of gender expression as protected expression. *Doe v. Yunits*, No. 001060A, 2000 WL 33162199 at *3 (Mass. Super. Oct. 11, 2000) (recognizing that wearing makeup and female clothing was “not merely a personal preference but a necessary symbol of her very identity” for a transgender girl). Chase’s message was accurately understood by DMV staff members, who were concerned that Chase did not appear to be a typical male. That he is not a typical male is the very message that Chase was conveying through his gender expression.¹

DMV staff mandated that Chase look more like a boy, deliberately seeking to suppress the feminine and androgynous aspects of Chase’s gender expression. Women are permitted to wear makeup in their driver’s license photos as a matter of course, yet Chase was targeted for suppression because he is a male expressing himself in a feminine manner.

In the end, Chase was told that he could not wear makeup simply because boys typically do not wear makeup. It was not because his makeup acted as any type of disguise of his identity. Sex stereotypes like this do not justify a government agency’s restriction of constitutionally protected expression.

Chase is eager to take his picture again, with makeup, and to put this incident behind him. We hope that you will assist us in ensuring that he is able to return to the Anderson DMV for a new photo.

¹ In general, symbolic expression such as Chase’s is protected speech if it is intended to convey a particularized message that is likely to be understood by others. *See Spence v. Washington*, 418 U.S. 405, 410-11 (1974) (finding that an upside-down flag with a peace symbol attached was protected speech because it was a purposeful message people could understand); *see also Chalifoux v. New Caney Independent School Dist.*, 976 F.Supp. 659 (S.D.Tex.1997) (students wearing rosary beads as a sign of their religious belief was likely to be understood by others and therefore protected).

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Silverman". The signature is written in a cursive style with a long horizontal flourish at the end.

Michael D. Silverman

Cc: Chase Culpepper (by email)
Theresa Culpepper (by email)