



Michael D. Silverman
Executive Director

June 30, 2014

**VIA FAX, EMAIL &
CERTIFIED MAIL**

Steven O. Dale
Acting Commissioner
Jill Dunn, Esq.
General Counsel
West Virginia Division of Motor Vehicles
5707 McCorkle Avenue SE
Charleston, West Virginia 25317

Re: Trudy Kitzmiller & Kristen Skinner

Dear Mr. Dale and Ms. Dunn:

I write on behalf of Trudy Kitzmiller and Kristen Skinner, transgender women who experienced discriminatory treatment at West Virginia Division of Motor Vehicles offices.

Trudy Kitzmiller

Trudy Kitzmiller is a 52-year-old transgender woman from Mount Storm. She was labelled male at birth, but has known that she is a woman from her earliest memories. In April 2014, as part of her gender transition, she obtained a West Virginia court-ordered name change. On May 10, she went to the Martinsburg DMV office to update her driver's license to reflect her new legal name and her appearance in her license photo. She came to the office prepared: She brought with her documents related to her name change and also documents from her medical providers certifying that she had been

undergoing medical treatment related to her gender transition since August 2013 and that she was living and dressing as female under their care.

Despite this, Trudy was treated in a discriminatory manner. She was called “it” by DMV staff who ordered her to take off her wig, makeup and jewelry before they would allow her to be photographed for her new license. Trudy protested but DMV staff would not allow her to be photographed as her true self. She was embarrassed and despondent when she left the DMV without a new driver’s license. She has been forced to retain her old driver’s license that does not reflect her legal name or appearance. This has caused her a great deal of difficulty on a day-to-day basis, including when applying for jobs, which require that she provide accurate identification.

Kristen Skinner

Kristen Skinner is a 45-year-old transgender woman from Ranson. She also was labelled male at birth but has known for a very long time that she is a woman. In January 2014, as part of her gender transition, she obtained a West Virginia court-ordered name change. The very next day, she went to the Charles Town DMV office to update her driver’s license to reflect her new legal name and her appearance in her license photo. Kristen similarly had been undergoing medical treatment as part of her gender transition.

Like Trudy, Kristen was told that she could not be photographed wearing the makeup that she wears on a daily basis. She was told that pursuant to DMV policy, men cannot be photographed for a driver’s license photo wearing makeup. She was ordered to remove her false eyelashes and her wig. But her eyelashes were her own and she was not wearing a wig. She too was called “it.” She ultimately removed her makeup and DMV staff took her license photo, albeit with an altered appearance that does not reflect how she looks on a daily basis.

Trudy & Kristen’s freedom to express who they are as transgender women may not be restricted in this way by the West Virginia Division of Motor Vehicles. Forcing them to remove their makeup and other items that facilitate a female gender expression before allowing them to take their driver’s license photos restricts their free speech rights in violation of state and federal constitutional protections.

Trudy & Kristen’s gender expression conveys a message about, among other things, their embrace of their true selves as women. 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). Trudy & Kristen’s message was accurately understood by DMV staff members, who were concerned that they would not appear to be typically male in their license photos. That they know themselves to be female and are content with themselves is the very message that Trudy & Kristen were conveying through their gender expression.¹²

¹ In general, symbolic expression such as this is protected speech if it is intended to convey a

Trudy and Kristen appeared at the DMV in makeup, clothing and accessories that they wear on a daily basis. Nevertheless, DMV staff mandated that Trudy and Kristen change their appearance to look more male, deliberately seeking to suppress the female aspects of their gender expression. Other women are permitted to wear makeup and items that facilitate female gender expression in their driver's license photos as a matter of course, yet Trudy and Kristen were targeted for suppression simply because they are transgender women.

Trudy and Kristen are eager to take their pictures again, with their everyday makeup, hair and jewelry, and are eager to put this incident behind them. We hope that you will assist us in ensuring that they are able to return to the DMV and obtain driver's licenses that accurately reflect who they are.

Very truly yours,



Michael D. Silverman

Cc: Trudy Kitzmiller (by email only)
Kristen Skinner (by email only)

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.Sup. 659 (S.D.Tex.1997) (students wearing rosary beads as a sign of their religious belief were likely to be understood by others and therefore protected).

² Barring Trudy and Kristen from taking a picture while wearing typically female makeup and accessories also runs afoul of West Virginia's Human Rights Act, which prohibits discrimination on the basis of sex. Specifically, it is unlawful to "[r]efuse, withhold from or deny to any individual because of his or her ... sex ... either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of the place of public accommodations." W. Va. Code § 5-11-9(6)(A). The Human Rights Act defines "place of public accommodations" to include "the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public." W. Va. Code § 5-11-3(j).