

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Bryan John Ellicott,

Plaintiff,

-against-

The New York City Department of Parks and Recreation, the Office of the Commissioner of the New York City Department of Parks and Recreation, Liam Kavanagh in his official capacity as Acting Commissioner of the New York City Department of Parks and Recreation, and the City of New York,

Defendants.

Index. No.

COMPLAINT

Bryan John Ellicott, by his attorneys Cleary Gottlieb Steen & Hamilton LLP and the Transgender Legal Defense & Education Fund, Inc., for his complaint against the Defendants, alleges upon knowledge with respect to himself and his own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This action concerns the ability of a transgender New Yorker to participate fully and equally in society and to enjoy public facilities on the same terms as all other New Yorkers.¹ Through its actions that singled out a transgender individual for exclusion from a public facility, a city agency disregarded the medically, legally, and socially recognized sex of a transgender

¹ Transgender persons live or seek to live in accordance with the sex of their brain – an immutable, intrinsic sense of being physically male or female – rather than the sex incorrectly ascribed to them at birth. This typically involves a process of coming to live openly in the world according to their affirmed sex and frequently includes physically aligning one's primary or secondary sex characteristics with the affirmed sex.

individual, as well as its own statutory obligations to promote equal opportunity and freedom from unlawful discrimination.

2. Equitable access to public facilities is crucial to all New Yorkers, including transgender New Yorkers. This is due to the stigma caused by denial of access to a particular facility, and because the wide-ranging consequences of such exclusions ultimately prevent affected individuals from fully and equally participating in society. Policies and practices that result in systematic exclusion of certain individuals from public facilities have been soundly rejected under the law.

3. Society classifies individuals by sex in three main ways: socially, legally, and medically. Social sex is determined by how the individual holds himself out in the world and can also be reflected by how others recognize that sex in social situations. Legal sex is reflected in identity documents and judicial determinations. Doctors determine medical sex using a host of factors, including hormone levels, secondary sex characteristics, chromosomes, gonads (ovaries or testes), internal reproductive organs, external genitalia and, importantly, brain sex, or one's innate sense of being male or female.² Where an individual has a combination of typically male and female characteristics, the only accurate way to know the person's true sex is to rely upon that individual's self-reported sex.

4. Medical authorities agree that transgender individuals should be socially and legally recognized as their affirmed sex.

5. The American Medical Association (the "AMA") affirms that "there is no basis for the denial to any human being of equal rights, privileges, and responsibilities commensurate

² This is sometimes referred to as "gender identity."

with his or her individual capabilities and ethical character because of an individual's sex, sexual orientation, gender, gender identity, or transgender status.”³

6. The American Psychological Association (the “APA”) “encourages legal and social recognition of transgender individuals consistent with their gender identity and expression,” including recognition of their gender identity by the state through “access to identity documents consistent with their gender identity and expression.”⁴

7. The National Association of Social Workers (“NASW”) “opposes all public and private discrimination on the basis of gender identity and of gender expression, whether actual or perceived, and regardless of assigned sex at birth, including denial of access to . . . appropriate treatment in gender segregated facilities,” and “supports the legal recognition of transgender individuals as members of the gender with which they identify, regardless of assigned sex at birth or subsequent surgical or other medical interventions.”⁵

8. The World Professional Association for Transgender Health, Inc. (“WPATH”), which is recognized by the AMA and the federal government as an authority in the field of transgender health issues, holds the position that “no person should have to undergo surgery or accept sterilization as a condition of identity recognition.”⁶

3 American Medical Association [AMA], AMA Policies on GLBT Issues, <https://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glbt-advisory-committee/ama-policy-regarding-sexual-orientation.page> [accessed May 30, 2014].

4 American Psychological Association [APA], Policy Statement: Transgender, Gender Identity, & Gender Expression Non-Discrimination [Aug. 2008], available at <http://www.apa.org/about/policy/transgender.aspx> [accessed May 30, 2014].

5 National Association of Social Workers [NASW], Social Work Speaks: NASW Policy Statements 2009-2012 346-47 [8th ed. 2009].

6 World Professional Association for Transgender Health [WPATH] Board of Directors, Identity Recognition Statement [June 16, 2010] available at http://www.wpath.org/uploaded_files/140/files/Identity%20Recognition%20Statement%206-10%20on%20letterhead.pdf [accessed May 30, 2014].

9. Many governmental authorities have adopted standards based on this broad medical consensus. Government-issued identification documents such as driver's licenses and identification cards,⁷ Social Security records,⁸ immigration documents,⁹ and U.S. passports¹⁰ recognize the affirmed sex of transgender New Yorkers, irrespective of whether they have undergone surgery.

10. The governments of New York City and the United States further recognize the affirmed sex of transgender individuals in policies regarding various single-sex facilities.

11. The Federal Office of Personnel Management affirms that the Department of Labor's Occupational Safety and Health Administration guidelines require government agencies to allow access to restrooms and locker room facilities consistent with the gender identity of transitioning employees, and prohibits these agencies from requiring employees to have undergone any particular medical procedure as a prerequisite to such access.¹¹

7 New York Department of Motor Vehicles, *Memorandum from Patricia B. Adduci, Comm'r to All Issuing Offices* [Apr. 29, 1987], available at <http://rnytg.org/wp-content/uploads/2012/10/DMVGenderChangeMemo.pdf> [accessed May 30, 2014].

8 U.S. Social Security Administration, *RM 10212.200 Changing Numident Data for Reasons other than Name Change* [Sept. 30, 2013], available at <https://secure.ssa.gov/poms.nsf/lnx/0110212200> [accessed May 30, 2014].

9 U.S. Citizenship & Immigration Services, Adjudicator's Field Manual [10] [22], *Document Issuance Involving Status and Identity for Transgender Individuals* [Apr. 10, 2012], available at <http://www.uscis.gov/iframe/ilink/docView/AFM/HTML/AFM/0-0-0-1/Chapter10-22.html> [accessed May 30, 2014].

10 U.S. Department of State Foreign Affairs, 7 Fam 1300 Appendix M Gender Change Summary, § 1310[d] [2012], available at <http://www.state.gov/documents/organization/143160.pdf> [accessed May 30, 2014] ("Sexual reassignment surgery is not a prerequisite for passport issuance based on gender change."). To correct the sex designation on a passport, a doctor must certify that the individual has had "appropriate clinical treatment," (*id.* § 1320 [b] [1] [g]), but "[o]ther medical records are not to be requested," (*id.* § 1310 [e]).

11 U.S. Office of Personnel Management, *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace* [2011] (citing 29 CFR 1910.141 [c] [1] [i] Standard Interpretations), available at <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/> [accessed May 30, 2014].

12. The New York City Department of Education provides that “[a] transgender student should not be required to use a locker room or restroom that conflicts with the student’s gender identity,” and that students are not required to obtain a court-ordered name change or gender change as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity.¹²

13. The New York City Department of Homeless Services provides that, for placement in single-sex intake shelters, intake staff must abide by the individual’s self-reported sex.¹³

14. The New York City Commission on Human Rights’ *Guidelines Regarding Gender Identity Discrimination*, which are incorporated in the New York City Equal Employment Opportunity Policy, also recognize that transgender individuals may access single-sex facilities according to their affirmed sex.¹⁴ Preventing an individual from doing so or asking for identification is evidence of discrimination under the New York City Human Rights Law.¹⁵

12 New York City Department of Education, Transgender Student Guidelines, <http://schools.nyc.gov/RulesPolicies/TransgenderStudentGuidelines/default.htm> [accessed May 30, 2014].

13 New York City Department of Homeless Services, Division of Adult Services, Transgender/Intersex Clients, Procedure No. 06-1-31 [2006], available at http://coalhome.3cdn.net/c7a840f68c28233a37_8qm6bngdv.pdf [accessed May 19, 2014] (“To the extent that DHS intake and assessment shelters ... are segregated by gender, a client’s gender is determined by his or her gender identity.”).

14 New York City Commission on Human Rights, Guidelines Regarding Gender Identity Discrimination, A Form of Discrimination Prohibited by The New York City Human Rights Law, 7 [2006], http://www.nyc.gov/html/cchr/downloads/pdf/publications/GenderDis_English.pdf [accessed May 19, 2014] (“Requiring individuals to provide identification as a means of identifying their gender before allowing them to use the restroom or other sex-segregated facility” suggests discriminatory conduct has occurred.); New York City Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies, 7 [2005], available at http://www.nyc.gov/html/kcpa/downloads/pdf/eoo_policy.pdf [accessed May 19, 2014].

15 *Id.* at 7. The Guidelines also recognize that transgender individuals should be permitted to comply with sex-specific dress codes in accordance with their affirmed sex (*id.* at 6).

15. It is against this background of widespread recognition of the importance of respecting a transgender individual's affirmed sex that Defendants unlawfully excluded an individual from a public facility simply because he is transgender.

PARTIES

16. Plaintiff Bryan John Ellicott is a 24 year-old man who was born in Staten Island and currently resides in Manhattan. Mr. Ellicott is also transgender. He knew from a young age that he was male despite the fact that he was assigned female at birth. He was given a traditionally female name at birth, which he changed to Bryan John Ellicott in February 2012. Mr. Ellicott chose the name Bryan in honor of his late father, Lieutenant Brian Ellicott, a Fire Department of New York City Emergency Medical Technician first responder to the 9/11 attacks. Mr. Ellicott has been openly male since February 2012, the time at which he also began hormone therapy. Mr. Ellicott has corrected his name and sex designation on various records, including his New York driver's license.

17. Defendant New York City Department of Parks and Recreation (or the "Parks Department") is an agency of the City of New York established pursuant to Chapter 21 of the Charter of the City of New York. Defendant is the chief agency responsible for the administration and operation of the City of New York's parks and public recreation facilities. The Parks Department operates the Joseph H. Lyons Pool (the "Lyons Pool"), located at Murray Hulbert Avenue in Staten Island, New York.

18. Defendant Office of the Commissioner is the head of the New York City Department of Parks and Recreation established pursuant to § 533 of Charter of the City of New York. Defendant is responsible for establishing and enforcing rules and regulations for the use,

government and protection of public parks and all property under the charge or control of the Department.

19. Defendant Acting Commissioner Liam Kavanaugh is the acting head of the New York City Department of Parks and Recreation. He is named in this action solely in his official capacity.

20. Defendant City of New York is a municipal corporation.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action under the New York Constitution article VI, § 7, and New York Judiciary Law § 140-b.

22. This Court has personal jurisdiction over Defendants pursuant to § 301 of the Civil Practice Law and Rules.

23. Venue in this Court is proper pursuant to §§ 509 and 503 of the Civil Practice Law and Rules in that Plaintiff resides in New York County.

24. All parties are located in the State of New York. Plaintiff seeks relief under the laws of the City of New York.

FACTUAL ALLEGATIONS

25. The New York City Department of Parks and Recreation operates and maintains numerous public recreational facilities for the enjoyment of residents of the City of New York.

26. Among these facilities is the Lyons Pool in Staten Island, which is open to the public and provides visitors and residents of the City of New York the use of a public swimming pool, including locker and restroom facilities.

27. Mr. Ellicott was born and raised in Staten Island and currently resides in Manhattan. He has deep roots and ties to the community and is active in its public affairs. He is

employed by the Office of Emergency Management of the City of New York. He worked for the Federal Emergency Management Agency immediately after Hurricane Sandy.

28. Mr. Ellicott is transgender. Although assigned female at birth, he has a long-standing, innate sense of being male. He has completed steps to be medically, socially and legally recognized as male. His doctor has certified that he is male. He has an appearance, including facial and body hair, traditionally considered male. In social situations, others recognize and interact with him as male, including using male pronouns to refer to him. The State of New York recognizes him as male on his driver's license. While Mr. Ellicott does not have a U.S. passport, he is eligible to obtain a passport identifying his sex as male.¹⁶ In short, Mr. Ellicott is a man.

29. Mr. Ellicott has been diagnosed with gender identity disorder, now referred to as gender dysphoria, the medical diagnosis for transgender individuals who experience clinically significant distress as a result of an incongruence between their brain sex and their bodies.¹⁷

30. Mr. Ellicott, for example, experiences dysphoria regarding his chest. As part of his treatment to address this dysphoria, Mr. Ellicott wears a compression garment known as a binder that flattens his chest and results in the appearance of a typically male chest. WPATH's *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* ("Standards of Care") recognize chest binding as a therapeutic treatment option for

¹⁶ Mr. Ellicott's physician is willing to certify that he has had "appropriate clinical treatment," which would enable him to obtain a male passport. See § 1320 [b] [1] [g], discussed *supra* at n 10.

¹⁷ Gender dysphoria is the current diagnostic term in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders [DSM 5] [5th ed. 2013]. It was previously called "gender identity disorder" in the 4th edition of the DSM. This condition is also known as transsexualism (World Health Organization, International Classification of Diseases, Ninth Revision, Clinical Modification [ICD-9-CM], [6th ed. 2011], available at ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/ICD9-CM/2011/Dtab12.zip [download .zip file then open document Dtab12.rtf from file]).

gender dysphoria.¹⁸ Chest binding gives Mr. Ellicott a traditionally masculine appearance and provides a measure of relief from the dysphoria. It also causes substantial physical discomfort, including restricted breathing. Mr. Ellicott would like to undergo a double mastectomy, but has not yet been financially able to access this medically necessary care.

31. The Standards of Care also recognize living according to one's affirmed sex as a therapeutic treatment option for gender dysphoria.¹⁹ This entails living openly as one's affirmed sex "consistently, on a day-to-day basis, and across *all* settings of life."²⁰

32. A crucial aspect of Mr. Ellicott's treatment plan for gender dysphoria is living openly as a man. Like any other man, this entails using men's restrooms and locker rooms. Using women's restrooms or locker rooms is contrary to his medically advised treatment plan, as it would exacerbate his gender dysphoria.

33. On Sunday, July 21, 2013, Mr. Ellicott went to the Lyons Pool. Mr. Ellicott wore typical male clothing, consisting of a pair of men's jeans and a black t-shirt, to the pool. Underneath his jeans and t-shirt, Mr. Ellicott wore a pair of men's swim trunks and his binder.

34. After waiting in line for admission to the regularly-scheduled afternoon open session, Mr. Ellicott used the men's locker room. While changing in the locker room, Mr. Ellicott removed only his jeans, and kept his swim trunks on at all times. He did not remove his t-shirt or binder. No patron or employee of the Lyons Pool objected to Mr. Ellicott's presence in the men's locker room at this time.

18 Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, Intl J of Transgenderism 165, at 171-72 [2011], available at http://www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf.

19 *Id.* at 170-173.

20 *Id.* at 203 (emphasis added).

35. Mr. Ellicott secured his belongings in lockers provided in the locker room, and entered the pool area. On information and belief, all patrons are required to lock their personal belongings in a locker before entering the pool area. Mr. Ellicott entered the pool area wearing his swim trunks and the black t-shirt he had worn to the pool.

36. The black t-shirt absorbed the sun's heat and made Mr. Ellicott feel uncomfortably warm. After approximately thirty minutes, he decided to change into a white t-shirt that he had brought with him to the pool. The Pool Rules specify that patrons who wish to wear t-shirts in the pool may only wear white t-shirts in the pool.

37. Mr. Ellicott returned to the men's locker room to change his shirt. He was not aware of anyone else being present in the locker room and believed he was alone. As he was changing his t-shirt, he was approached by a male employee of the Parks Department. The employee did not identify himself by name to Mr. Ellicott and his identity is unknown to Mr. Ellicott at this time. He is referred to here as "Employee One." Mr. Ellicott recognized Employee One as an employee of the Parks Department due to his uniform, which bore the Parks Department's logo.

38. Employee One told Mr. Ellicott that someone had complained about his presence in the men's locker room, and said something to the effect of "Hey, you need to leave," because "someone complained about someone being in the locker room who doesn't belong here." Employee One also told Mr. Ellicott that he was not allowed to use the men's locker room and that had to use the women's locker room or leave the pool. Mr. Ellicott asked to speak with Employee One's supervisor. Employee One's demeanor during this exchange appeared hostile to Mr. Ellicott.

39. Employee One refused Mr. Ellicott's request to speak with a supervisor, and instead returned with a second male employee who reiterated Employee One's statement that Mr. Ellicott could not use the men's locker room and that he either had to use the women's locker room or leave the pool. Mr. Ellicott again asked to speak with a supervisor. The second employee did not identify himself by name to Mr. Ellicott either, and his identity is unknown to Mr. Ellicott at this time. He is referred to here as "Employee Two."

40. Employees One and Two eventually returned with a third male employee who appeared to Mr. Ellicott to be a supervisor. The third employee wore a uniform different from the two previous employees and appeared to be older. The third employee did not identify himself by name and his identity is unknown to Mr. Ellicott at this time. He is referred to here as the "Supervisor."

41. Mr. Ellicott alerted the Supervisor to the hostile conduct of Employees One and Two. The Supervisor appeared uninterested in the matter, and told Mr. Ellicott something to the effect of, "if you don't like it, you can leave." The Supervisor further stated that "what they said goes," indicating his agreement with Employees One and Two that Mr. Ellicott was not allowed to use the men's locker room and had to either use the women's locker room or leave the pool.

42. At no time did the employees of the Parks Department cite any law, rule, or policy to justify their actions.

43. Mr. Ellicott's binder and men's swim trunks remained on at all times throughout his interactions with Employee One, Employee Two, and the Supervisor.

44. Mr. Ellicott did not want to, nor realistically could he, use facilities designated for women, and felt upset, embarrassed, and stigmatized by being singled out by Parks Department employees. He left the Lyons Pool.

45. Mr. Ellicott did not use the public pools in New York City again during the summer of 2013. He feared that he would suffer additional embarrassment, humiliation, and degradation if he attempted to use the men's locker rooms maintained by the Parks Department.

46. The experience also increased Mr. Ellicott's anxiety regarding the use of public restrooms, causing him to avoid using them out of fear he would be singled out and harassed. Often this has resulted in Mr. Ellicott waiting long periods of time without using a restroom when in public, which has caused him several urinary tract infections.

47. Mr. Ellicott's interaction with the employees of the Parks Department at the Lyons Pool also increased his anxiety regarding being perceived as transgender, which has led him to wear his compression garment for longer periods of time, a physically and emotionally painful experience. His experience at the pool has exacerbated his dislike of his breasts.

48. By ejecting Mr. Ellicott from the men's locker room, the employees of the Parks Department subjected him to unnecessary psychological distress, discomfort, and humiliation, and exacerbated the symptoms of his gender dysphoria.

FIRST CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW –
UNLAWFUL DISCRIMINATORY PRACTICE BASED ON GENDER

NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [1], 8-102 [4], 8-102 [9], 8-102 [17], 8-102 [23], 8-107 [4] [a], 8-502 [a]

49. Paragraphs 1 through 48 are incorporated by reference as if set forth fully herein.

50. The Human Rights Law prohibits any owner, manager, agent, or employee from refusing any of the accommodations, advantages, facilities, or privileges of a place of public accommodation to a person based on that person's actual or perceived sex, gender, gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity,

self-image, appearance, behavior, or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

51. Defendants are the owners and managers of a place of public accommodation, the Lyons Pool. The Lyons Pool is operated by the Parks Department and is open to the public. Defendants' facility at the Lyons Pool includes men's and women's locker rooms.

52. On information and belief, individuals self-select which locker room they use. Defendants have not adopted any written rules or regulations or posted any guidelines regarding who may use the men's or the women's locker rooms. Defendants do not routinely require individuals to produce any identification, undergo a physical examination, or provide any proof of sex to enter either locker room. Instead, Defendants rely on the sound logic that each individual is the best arbiter of which locker room is appropriate for them.

53. While everyone else was permitted to use the locker room that matches their self-determined sex, Defendants, through the actions of their employees, targeted Mr. Ellicott and ejected him from the men's locker room. This effectively denied Mr. Ellicott use of the Lyons Pool facilities. On information and belief, Defendants did so based on Mr. Ellicott's gender, gender identity, gendered appearance, sex stereotypes, and his transgender status.

54. Defendants, through the actions of their employees, made an incorrect assessment of which locker room Mr. Ellicott should use based on improper assumptions about his sex. Mr. Ellicott was not afforded any opportunity by Defendants to demonstrate that he is legally male, such as by presenting his New York driver's license, which identifies him as male. Defendants, through the actions of their employees, did not ask Mr. Ellicott if he was transgender. Defendants, through the actions of their employees, offered no possibility for Mr. Ellicott to continue to use the men's locker room. He was summarily ejected.

55. Mr. Ellicott's ejection from the locker room facility also prevented Mr. Ellicott from accessing the pool altogether. Patrons of the pool must use the locker rooms to secure their personal belongings before entering the pool area. As Mr. Ellicott, who has a typically male appearance, including facial hair and male clothing, could not safely or effectively use the women's locker room, there was nowhere for him to secure his personal belongings and he was forced to leave the pool.

56. On information and belief, the New York City Commission on Human Rights has not granted Defendants an exemption based on bona fide considerations of public policy.

57. Because Defendants refused Mr. Ellicott the privilege of a place of public accommodation on the basis of his gender, Defendants violated Plaintiff's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [4] [a]).

SECOND CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW –
UNLAWFUL DISCRIMINATORY DECLARATION OF REFUSAL OF A PUBLIC
ACCOMMODATION BASED ON GENDER

NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [1], 8-102 [4],
8-102 [9], 8-102 [17], 8-102 [23], 8-107 [4] [a], 8-502 [a]

58. Paragraphs 1 through 48 are incorporated by reference as if set forth fully herein.

59. The Human Rights Law prohibits any owner, manager, agent, or employee from directly or indirectly making any declaration to the effect that any of the accommodations, advantages, facilities, or privileges of a place of public accommodation shall be refused or withheld from a person, or that a person's patronage or custom is unwelcome, objectionable or not acceptable, desired or solicited, on account of that person's actual or perceived sex, gender, gender identity, self-image, appearance, behavior, or expression, whether or not that gender

identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

60. As stated in paragraph 51 above, Defendants are the owners and managers of a place of public accommodation, the Lyons Pool.

61. Defendants, through the actions of their employees, subjected Mr. Ellicott to hostile treatment, stated that Mr. Ellicott may not use the men's locker room and must either use the women's locker room or leave the pool, and rebuffed Mr. Ellicott's attempts to appeal to a supervisor about this hostile treatment. On information and belief, Defendants did so based on Mr. Ellicott's gender, gender identity, gendered appearance, sex stereotypes, and his transgender status.

62. Because Defendants, through the actions of their employees, singled out Mr. Ellicott for hostile treatment, unreasonably restricted his access to the Lyons Pool by conditioning it on his use of the locker room for the opposite sex, and told Mr. Ellicott to leave if he did not like the employees' conduct, the actions and statements of Defendants through their employees amount to a declaration that Mr. Ellicott's patronage at the Lyons Pool is unwelcome or objectionable on the basis of Mr. Ellicott's gender, gender identity, gendered appearance, sex stereotypes, and his transgender status.

63. On information and belief, the New York City Commission on Human Rights has not granted Defendants an exemption based on bona fide considerations of public policy.

64. Because Defendants declared that Mr. Ellicott's patronage was unwelcome or objectionable on the basis of his gender, Defendants violated Plaintiff's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [4] [a]).

THIRD CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW –
DISPARATE IMPACT BASED ON GENDER

NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [1], 8-102 [4], 8-102 [9], 8-102 [17], 8-102 [23], 8-107 [4] [a], 8-107 [17], 8-502 [a]

65. Paragraphs 1 through 48 are incorporated by reference as if set forth fully herein.

66. Defendants violated Mr. Ellicott's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [4] [a]).

67. Transgender individuals are protected under the New York City Human Rights Law under the category of gender, which includes "actual or perceived sex, [. . .] gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the legal sex assigned to that person at birth." (NY City Human Rights Law [Administrative Code of City of NY] § 8-102 [23]).

68. As stated in paragraph 51 above, Defendants are the owners and managers of a place of public accommodation, the Lyons Pool.

69. As stated in paragraphs 54 through 57 above, Defendants' ejection of Mr. Ellicott from the men's locker room denied Mr. Ellicott the privilege of using the facilities of the Lyons Pool and the privilege of accessing the Lyons Pool itself on the same terms as non-transgender people.

70. Defendants' actions imply a policy or practice of requiring that transgender individuals use the locker rooms according to the sex they were assigned at birth rather than their affirmed sex.

71. Transgender persons experience a disparate impact from Defendants' ad hoc locker room access policy and practice. Being required to use a single-sex locker room that is

designated for the sex one was assigned at birth rather than one's affirmed sex—in other words, the sex opposite of the sex that one lives as on a daily basis—is a burden that transgender persons alone bear as a result of Defendants' ad hoc locker room policy.

72. Transgender individuals are not required to undergo surgery to legally and medically affirm their sex. Moreover, the vast majority of transgender persons have not undergone genital reconstruction surgery and most transgender men have not had chest reconstruction surgery. Transgender people routinely take other steps to alleviate their gender dysphoria, such as hormone treatments and living openly as their affirmed sex regardless of surgical status. Requiring someone who is medically, legally, and socially male to use a facility for women is impractical and prevents transgender people from enjoying public accommodations on the same terms as non-transgender people. There is no justification for Defendants' adoption of a policy that requires locker room use to accord with sex assigned at birth when such a policy operates to the detriment of the entire population of transgender people.

73. Because Defendants' implicit locker room policy has a disparate impact on Mr. Ellicott, a transgender man, on the basis of his gender, Defendants have violated his rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [17]).

FOURTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW –
UNLAWFUL DISCRIMINATORY PRACTICE BASED ON DISABILITY

NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [1], 8-102 [4], 8-102 [9], 8-102 [16], 8-102 [17], 8-102 [18], 8-107 [4] [a], 8-107 [15], 8-502 [a]

74. Paragraphs 1 through 48 are incorporated by reference as if set forth fully herein.

75. As stated in paragraph 51 above, Defendants are the owners and managers of a place of public accommodation, the Lyons Pool.

76. The Human Rights Law prohibits any owner, manager, agent, or employee from refusing any of the accommodations, advantages, facilities, or privileges of a place of public accommodation on the basis of that person's actual or perceived disability.

77. Mr. Ellicott, who is transgender and has gender dysphoria, is disabled as that term is defined by the New York City Administrative Code (NY City Human Rights Law [Administrative Code of City of NY] § 8-102 [16]). Gender dysphoria is a physical, medical, mental and psychological impairment. Mr. Ellicott has a history and record of such impairment, and Mr. Ellicott is perceived to have such impairment.

78. Gender dysphoria is an impairment of the neurological system, the reproductive system, the genito-urinary system and the endocrine system. Gender dysphoria is a recognized mental or psychological impairment.

79. According to the AMA, gender dysphoria, which has both psychological and physical components, is "a serious medical condition recognized as such in both the Diagnostic and Statistical Manual of Mental Disorders (4th ed. Text Revision) (DSM-IV-TR) and the International Classification of Diseases (10th Revision); and is characterized in the DSM-IV-TR as a persistent discomfort with one's assigned sex and with one's primary and secondary sex characteristics, which causes intense emotional pain and suffering."²¹

80. Gender dysphoria is treated by transgender individuals living in accordance with their affirmed sex.

81. Mr. Ellicott was denied the use of the Lyons Pool on the same terms as non-transgender persons. For non-transgender persons seeking to use the locker room in order to use the pool, Defendants require only self-assertion of one's sex. Defendants do not require, for

21 AMA House of Delegates, *Removing Financial Barriers to Care for Transgender Patients*, Resolution 122, [Apr. 18, 2008], available at http://www.tgender.net/taw/ama_resolutions.pdf.

example, proof that one has a certain sex on a birth certificate or certain physical characteristics to access the appropriate locker room.

82. Because of his disability, Defendants, through their employees, ejected Mr. Ellicott from the men's locker room.

83. As stated in paragraphs 54 through 57 above, by ejecting Mr. Ellicott from the locker room, Defendants', through their employees, also prevented Mr. Ellicott from accessing the pool altogether.

84. Because Defendants refused Mr. Ellicott the privilege of a place of public accommodation on the basis of his disability, Defendants violated Plaintiff's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [4] [a]).

FIFTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW –
UNLAWFUL DISCRIMINATORY DECLARATION OF REFUSAL OF A PUBLIC
ACCOMMODATION BASED ON DISABILITY

NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [1], 8-102 [4], 8-102 [9], 8-102 [16], 8-102 [17], 8-102 [18], 8-107 [4] [a], 8-107 [15], 8-502 [a]

85. Paragraphs 1 through 48 are incorporated by reference as if set forth fully herein.

86. The Human Rights Law prohibits any owner, manager, agent, or employee from directly or indirectly making any declaration to the effect that any of the accommodations, advantages, facilities, or privileges of a place of public accommodation shall be refused or withheld from a person, or that a person's patronage or custom is unwelcome, objectionable or not acceptable, desired or solicited, on account of that person's actual or perceived disability.

87. As stated in paragraph 51 above, Defendants are the owners and managers of a place of public accommodation, the Lyons Pool.

88. As stated in paragraph 77 above, Mr. Ellicott, who is transgender and has gender dysphoria, is disabled as that term is defined by the New York City Administrative Code (NY City Human Rights Law [Administrative Code of City of NY] § 8-102 [16]).

89. Defendants, through the actions of their employees, subjected Mr. Ellicott to hostile treatment, stated that Mr. Ellicott may not use the men's locker room and must either use the women's locker room or leave the pool, and initially rebuffed Mr. Ellicott's attempts to appeal to a supervisor about this hostile treatment. On information and belief, Defendants did so based on Mr. Ellicott's disability.

90. Because Defendants, through the actions of their employees, singled out Mr. Ellicott for hostile treatment, unreasonably restricted his access to the Lyons Pool by conditioning it on his use of the locker room for the opposite sex, which would contra-indicate his medical treatment plan and exacerbate his dysphoria, the actions and statements of Defendants through their employees amount to a declaration that Mr. Ellicott's patronage at the Lyons Pool was unwelcome or objectionable on the basis of Mr. Ellicott's disability.

91. Because Defendants declared that Mr. Ellicott's patronage was unwelcome or objectionable on the basis of his disability, Defendants violated Plaintiff's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [4] [a]).

SIXTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW –
FAILURE TO MAKE A REASONABLE ACCOMMODATION

NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [1], 8-102 [9], 8-102 [16], 8-102 [18], 8-107 [4] [a], 8-107 [15], 8-502 [a]

92. Paragraphs 1 through 48 are incorporated by reference as if set forth fully herein.

93. The Human Rights Law requires any person or entity prohibited under § 8-107 from discriminating on the basis of disability in providing access to a place of public accommodation to make reasonable accommodation to enable a person with a disability to enjoy the rights or privileges of access to the place of public accommodation (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [15] [a]).

94. As stated in paragraph 51 above, Defendants are the owners and managers of a place of public accommodation, the Lyons Pool.

95. As stated in paragraphs 86 through 87 above, Defendants are prohibited under § 8-107(4)(a) of the Human Rights Law from refusing a person any of the accommodations, advantages, facilities, or privileges of a place of public accommodation on the basis of that person's actual or perceived disability.

96. Defendants are therefore required to make reasonable accommodation to enable a person with a disability to enjoy the rights or privileges of access to the Lyons Pool, a place of public accommodation.

97. As stated in paragraph 77 above, Mr. Ellicott is disabled as defined by the Human Rights Law because of his transgender status and gender dysphoria.

98. On information and belief, Defendants through their employees knew or should have known that Mr. Ellicott is a transgender man who has gender dysphoria.

99. Distinct from the unlawfulness of Defendants' policy and practice regarding locker room access is Defendants' separate obligation to ensure that Mr. Ellicott can access the facility regardless of his disability.

100. Defendants' refusal, through the acts of their employees, to engage in a good faith, interactive process when Mr. Ellicott sought to use the men's locker room was a refusal to

make reasonable accommodation for Mr. Ellicott access the Lyons Pool. When informed by Employee One that he was not permitted to use the men's locker room, Mr. Ellicott repeatedly asked to speak with a supervisor. When a purported supervisor eventually spoke with Mr. Ellicott, he, like the other Parks Department employees, did not engage in a good faith, interactive process regarding a reasonable accommodation of any kind.

101. Defendants also failed to provide Mr. Ellicott a reasonable accommodation by refusing to allow Mr. Ellicott to continue using the men's locker room. Although Mr. Ellicott was not assigned male at birth, he is legally, medically, and socially male as a result of his on-going treatment for gender dysphoria. While non-transgender people who are assigned female at birth would not have access to the men's locker room, Mr. Ellicott should be afforded such access on the basis that he is a transgender male and has been diagnosed with gender dysphoria.

102. Defendants, through the acts of their employees, refused to make reasonable accommodations for Mr. Ellicott's disability by denying him use of the men's locker room and insisting that Mr. Ellicott use locker facilities designated exclusively for women.

103. Because Defendants, through the acts of their employees, failed to provide a reasonable accommodation of Mr. Ellicott's disability, Defendants violated Plaintiff's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [15] [a]).

SEVENTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW –
DISPARATE IMPACT BASED ON DISABILITY

NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [1], 8-102 [4], 8-102 [9], 8-102 [16], 8-102 [17], 8-102 [18], 8-107 [4] [a], 8-107 [15], 8-107 [17], 8-502 [a]

104. Plaintiff repeats and realleges paragraphs 1 through 48 as if set forth in their entirety herein.

105. As stated in paragraphs 84 and 91 above, Defendants violated Mr. Ellicott's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] §§ 8-107 [4] [a] and 8-107 [15]).

106. Transgender individuals who have gender dysphoria are protected in places of public accommodation under the New York City Human Rights Law under the category of disability, which includes "actual or perceived" disability (NY City Human Rights Law [Administrative Code of City of NY] §§ 8-102 [16], 8-107 [4] [a]).

107. Defendants' refusal to allow Mr. Ellicott, who is transgender and has gender dysphoria, to access the men's locker room has a disparate impact on similarly disabled transgender individuals whose physical sex characteristics do not match their affirmed sex. Defendants' implicit locker room access policy requires transgender persons to either use a locker room that is designated for the sex opposite their affirmed sex or to forego using the pool altogether. There is no justification for Defendants' decision to place this disparate burden on transgender individuals simply because of their disability.

108. Because Defendants' conduct, through their employees, has a disparate impact on the protected group of individuals who have gender dysphoria, Defendants violated Plaintiff's rights under the New York City Human Rights Law (NY City Human Rights Law [Administrative Code of City of NY] § 8-107 [17]).

PRAYER FOR RELIEF

WHEREFORE, Mr. Ellicott demands relief against the Defendants, the Department of Parks and Recreation, Liam Kavanagh in his official capacity as Acting

Commissioner of the New York City Department of Parks and Recreation, and the City of New York, as follows:

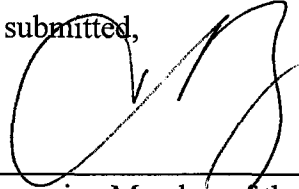
1. Entering a declaratory judgment that the Defendants' actions, through their employees, constitute discrimination on the basis of gender and disability in violation of the New York City Human Rights Law;
2. Enjoining the Defendants from future violations of the Human Rights Law that deny transgender individuals access to gender-appropriate facilities consistent with their gender identities in places of public accommodation maintained by the Defendants;
3. Awarding Mr. Ellicott compensatory damages for the discrimination that he has suffered;
4. Awarding Mr. Ellicott the costs and disbursements of this action, including reasonable attorneys' fees; and
5. Granting to Mr. Ellicott such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: New York, New York
June 2, 2014

Respectfully submitted,


By: _____
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