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On Trial in Texas: The Transitioned Status of Trans People

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Abstract

Today Phyllis Frye (America's first out trans judge) and I met up with Nikki Araguz at the 13th District Court of Appeals for the hearing on how Texas will view the transitioned status of trans folk. For the uninitiated, here's how we got here and why this case will likely affect YOU. Court began at [...]

Article



Figure 1. Me & Judge Frye

Today Phyllis Frye (America's first out trans judge) and I met up with Nikki Araguz at the 13th District Court of Appeals for the hearing on how Texas will view the transitioned status of trans folk. For the uninitiated, here's how we got here and why this case will likely affect YOU.

Court began at 2:00 in the afternoon. The court was made up of a 3 judges and since this is an appeal of the case Judge Randy Clapp (R) ruled on, no new evidence could be added. The court was made up of Chief Justice Valdez (D) and Justices Rodriguez (D) and Longoria (D). The panel consisted of 2 women and 1 man. The ex-wife had brought in a ringer to argue for them (presumably) since her last lawyer was recently barred from practicing law due to ethics violations. The ex brought in Lawrence P. Wilson of Christian College who actually quoted the Christian Bible (chapter & verse) in court today.

Things went about like I thought it would.

The Justices grilled each side fairly well. Marriage was mentioned a few times, but the majority of this proceeding focused on whether Texas will recognize the transitioned status of trans people.

Here's a basic recap of what the ex-wife's lawyer had to say:

- God created man and woman; it says so in the Bible. Matthew 19:12 isn't real (yeah, I added that last bit, but he did assert that god made only man and woman).
- For as long as there have been humans, we've never had difficulty in knowing what is a man and what is a woman.
- Yes, intersex people are real and they have no bearing on anything I'm saying.
- These new-fangled questions of sex and sex changing have never come up before in America and I'm saying this because I'm completely ignorant of Peipho v. Peipho, 88 Ill. 438 (1878) and I don't know anything about the 1879 Lawrence & Lelia Payne marriage (yeah, I added that last little bit because he actually did make the assertion that these trans issues are new to America)
- You can't turn a man into a woman anymore that one could turn a table into a chair (Yup. He really said that.).
- "Sex changes" aren't real because we can't legislatively point to the exact moment when a man becomes a woman.
- It ain't natural.
- Also, the chapter of Genesis in the Bible.
- DOMA applies... or maybe not. Yeah, it does, but not really... Just in a small way... Or not. Basically whatever Scalia said is what I think.

Here's a basic recap of what the good guys had to say:

- Our expert witness - the witness the other side raised no issue with - is on record saying that Nikki is female
- The other side offered no expert witness testimony
- Back in 1999, none of the justices in the Littleton v. Prange case agreed with each other, except that they all agreed that the Texas Legislature needed issue guidance on the issue of "sex changes."
- In 2009, the Texas Legislature passed a law (Texas Family Code § 2.005(b)(8)) which states that if you can show proof of a "sex change" you can be issued a valid marriage license.
- Texas understands what a change of sex means because back in 1989, the Health & Safety Code Ann. §§ 192.011 describes the process of changing one's sex on a Texas birth certificate.
- Full faith and credit (the 14th Amendment) applies because California recognizes Nikki as female on her original birth certificate.
- If you're gonna quote Scalia, then I'm going to quote Kennedy.

Here's a basic recap of the questions the Justices posed:

- So, we can pick and choose whether or not we hold other state's birth certificates valid?
- So, the question is, are we going to rely upon a scientific understanding of sex and gender or are we going to rely upon a Biblical standard? Biblical you say? Riiiiight.
- It sounds as if you're contesting the expert opinion about Nikki's sex. You've not done that before today. Do you have expert testimony to offer? No? Okay. Right, we know you can quote sharia law the Bible. Thanks.

- What is the difference between sex and gender?
- Are you suggesting that courts and not medical experts should decide who is and is not a woman?
- You're asking us to decide if Nikki Araguz is a woman. If we rule that she is not, do you have any idea how many marriages that would affect here in Texas? No? Okay. It would be a lot.

We don't know when the Justices will issue their opinion. I believe that we will prevail and I think the bad guys will appeal to the full 5-panel court and I think they'll lose again. They'll then appeal to the Texas Supreme court which is made up of anti-gay activists. We'll lose in that court and then we'll appeal to the US Supreme Court. If the US Supreme Court hears it, we have a shot. If they won't, Texas trans people will lose our legal transitioned status because the Texas Supreme Court ruling will become the law of the land and set a very dangerous precedent that will undoubtedly be used against trans folk in other states. If it goes to the Supreme Court and we lose, all trans and intersex people lose. If we win at the Supreme Court, we all win and win big time.

I've been fighting a cold for the last few days and by the time court was over, the rooms around me were swimming and all I wanted to do was lay down. Nikki married her new husband on the steps of the court building after the case was heard, but I was so shaky that Phyllis and I went ahead and left, so I didn't get to see Nikki exercise her constitutional right to marry the man she loves. After around an hour, my head stopped swimming.

I'm glad to be home and in bed, but before I went to sleep, I wanted to post a quick update since I know a lot of you are watching this case closely.

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