

# PUBLICATION

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## Transgender Litigant Challenges Exclusion of "Gender Identity Disorder" in Americans with Disabilities Act

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**The Americans with Disabilities Act, 42 U.S.C. § 12191, et seq. (ADA), expressly excludes from its protections individuals whose gender identity disorder is not the result of a physical impairment. The so-called "GID exclusion" is found in § 12211(b)(1) of the ADA, which provides, in no uncertain terms, that "transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders" do not fall under the Act's definition of "disability."**

Does this exclusion violate the Equal Protection Clause of the U.S. Constitution on behalf of transgender individuals? A federal court in the Eastern District of Pennsylvania may soon decide the answer to this question.

The issue arises in the 2014 case, *Blatt v. Cabela's Retail, Inc.*, No. 5:14-cv-04822. The plaintiff in this case is Kate Lynn Blatt, a transgender female and former employee of Cabela's Sporting Goods. At the time of her birth, Ms. Blatt was designated as a male and was given the name "James" by her parents. In 2005, she was formally diagnosed with Gender Dysphoria and began taking steps to conform to her female identity, including by changing her name, dressing in feminine attire, growing long hair, and engaging in hormone therapy to alter her physical appearance.

Ms. Blatt's former employer, Cabela's, allegedly imposed a number of obstacles to her transition. According to her lawsuit, Ms. Blatt was prohibited from wearing a "Kate Lynn" name tag and from using the women's restroom until she could provide proof that her name and gender had been legally changed. Then, when she provided the requisite proof, she was issued three nametags with an incorrect name before receiving one with her legal name, "Kate Lynn." She was also forced to use the single-sex family restroom at the front of the store, rather than the women's employee restroom, because she had not taken any time off from work and therefore she could not have undergone sex reassignment surgery. Ms. Blatt further alleges that she was subjected to harassment and invidious discrimination by her coworkers, who commonly referred to her as "he/she," "ladyboy," "sinner," and "freak."

Following her termination on March 1, 2007, Ms. Blatt filed charges of discrimination with the Pennsylvania Human Relations Commission and the Equal Employment Opportunity Commission ("EEOC"). On May 19, 2014, the EEOC issued a Notice of Right to Sue to Ms. Blatt. Accordingly, Ms. Blatt filed suit against Cabela's in the U.S. District Court for the Eastern District of Pennsylvania, asserting claims of sexual discrimination, sexual harassment, and retaliation under state law and Title VII of the Civil Rights Act. Ms. Blatt also asserted a claim under the ADA, alleging that she was denied reasonable accommodations and otherwise discriminated against on the basis of her gender identity disorder.

Cabela's moved to dismiss the ADA claim, referencing the GID exclusion in the ADA. However, in her opposition to the company's motion, which was filed on January 20, 2015, Ms. Blatt asserted a novel claim: that the Act's exclusion of gender identity disorder from the definition of "disability" violates the Constitution's Equal Protection Clause. Relying on the legislative history of the Act and the GID exclusion, Ms. Blatt contends that Congress did not have the requisite compelling or legitimate interest in denying ADA-coverage to

transgender individuals. She also argues that Congress' justifications for the GID exclusion are neither narrowly to serve a compelling governmental interest, nor substantially related to an important governmental interest.

This is the first transgender discrimination case to challenge the ADA's constitutionality. We will be watching it closely to determine how the Pennsylvania court rules. If this court and other courts agree with Ms. Blatt's interpretation of the ADA, employers may be required to accommodate gender identity disorders.