

1 **Kathleen E. Brody – 026331**
2 **Molly Brizgys – 029216**
3 **ACLU FOUNDATION OF ARIZONA**
4 3707 North 7th Street, Suite 235
5 Phoenix, Arizona 85014
6 Telephone: (602) 650-1854
7 Email: kbrody@acluaz.org
8 Email: mbrizgys@acluaz.org

9 **Joshua A. Block****
10 **Leslie Cooper****
11 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**
12 125 Broad Street, Floor 18
13 New York, New York 10004
14 Telephone: (212) 549-2650
15 E-Mail: jblock@aclu.org
16 E-Mail: lcooper@aclu.org
17 ****Admitted Pro hac vice**

18 **James Burr Shields - 011711**
19 **Heather A. Macre - 026625**
20 **Natalie B. Virden - 031609**
21 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**
22 2390 East Camelback Road, Suite 400
23 Phoenix, Arizona 85016
24 Telephone: (602) 248-8203
25 E-Mail: burr@aikenschenk.com
26 E-Mail: ham@aikenschenk.com
27 E-Mail: nbv@aikenschenk.com

28 *Attorneys for Plaintiff Russell B. Toomey*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman**, in his official capacity as chair of the Arizona Board Of Regents; **Larry Penley**, in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna**, in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour**, in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson**, in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson**, in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler**, in his official capacity as Member of the Arizona Board of Regents; **Fred Duval**, in his official capacity as Member of the Arizona Board of Regents; **Gilbert Davidson**, in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

Case No. 4:19-cv-00035 LCK

**PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION**

INTRODUCTION

1
2 Plaintiff moves the Court for an order certifying this case as a class action under
3 Fed. R. Civ. P. 23(b)(2) and appointing Plaintiff's counsel as class counsel under Rule
4 23(g). The State of Arizona provides health care coverage to its employees through a self-
5 funded healthcare plan controlled by the Arizona Department of Administration.
6 (Complaint, Exhibit A, Doc. 1-2). The Plan categorically excludes "gender reassignment
7 surgery," regardless of whether the surgery qualifies as medically necessary. (Complaint,
8 Exhibit A at pg. 56). Plaintiff asserts that this categorical exclusion discriminates on the
9 basis of sex in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et*
10 *seq.* and the Equal Protection Clause of the Fourteenth Amendment. (Complaint at pg. 5,
11 Doc. 1). Like Dr. Toomey, other transgender individuals enrolled in the State's Plan do not
12 have the opportunity to demonstrate that their transition related care is medically necessary.
13 In support of this Motion, Plaintiff submits his own declaration about his medical claim,
14 as well as information about his connections to the transgender community in Arizona that
15 make him uniquely well-situated to represent the interests of the classes.
16
17

BACKGROUND

Transgender individuals and gender dysphoria

18
19
20 Gender identity is a well-established medical concept, referring to one's sense of
21 oneself as belonging to a particular gender. Typically, people who are designated female
22 at birth based on their external anatomy identify as girls or women, and people who are
23 designated male at birth identify as boys or men. For transgender individuals, however, the
24 sense of one's gender identity differs from the sex assigned to them at birth. Transgender
25 men are men who were assigned "female" at birth, but have a male gender identity.
26 Transgender women are women who were assigned "male" at birth, but have a female
27
28

1 gender identity. Although the precise origins of each person’s gender identity is not fully
2 understood, experts agree that it likely results from a combination of biological factors as
3 well as social, cultural, and behavioral factors.

4 Being transgender is not a mental disorder. Men and women who are transgender
5 have no impairment in judgment, stability, reliability, or general social or vocational
6 capabilities solely because of their transgender status. Transgender men and women may
7 require treatment for “gender dysphoria,” the diagnostic term for the clinically significant
8 emotional distress experienced as a result of the incongruence of one’s gender with their
9 assigned sex and the physiological developments associated with that sex. The criteria for
10 diagnosing gender dysphoria are set forth in the Diagnostic and Statistical Manual of
11 Mental Disorders (DSM-V) (302.85).

12 The widely accepted standards of care for treating gender dysphoria are published
13 by the World Professional Association for Transgender Health (“WPATH”).¹ Under the
14 WPATH standards, medically necessary treatment for gender dysphoria may require
15 medical steps to affirm one’s gender identity and transition from living as one gender to
16 another. This treatment, often referred to as transition-related care, may include hormone
17 therapy, surgery (sometimes called “sex reassignment surgery” or “gender confirmation
18 surgery”), and other medical services that align individuals’ bodies with their gender
19 identities. Under the WPATH standards, the exact medical treatment varies based on the
20 individualized needs of the person. Under each patient’s treatment plan, the goal is to
21 enable the individual to live all aspects of one’s life consistent with one’s gender identity,
22 thereby eliminating the distress associated with the incongruence.
23
24

25 ¹ Eli Coleman Et. Al., *Standards of Care for the Health of Transsexual, Transgender, and*
26 *Gender-nonconforming People* (2012), The World Professional Association for
27 Transgender Health, available at
[https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care
28 V7%20Full%20Book_English.pdf](https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care%20V7%20Full%20Book_English.pdf).

1 In the past, public and private insurance companies excluded coverage for
2 transition-related care based on the assumption that such treatments were cosmetic or
3 experimental. Today, however, transition-related surgical care is routinely covered by
4 private insurance programs. The American Medical Association, the American
5 Psychological Association, the American Psychiatric Association, the American College
6 of Obstetricians and Gynecologists, and other major medical organizations have issued
7 policy statements and guidelines supporting healthcare coverage for transition-related care
8 as medically necessary under contemporary standards of care. (*See* Exhibits 1 to 4). No
9 major medical organization has taken the position that transition-related care is not
10 medically necessary or advocated in favor of a categorical ban on insurance coverage for
11 transition-related procedures.
12

13 **The Self-Funded Health Plan’s “Gender Reassignment” Exclusion**

14 Dr. Toomey is a man who is transgender, which means that he has a male gender
15 identity, but the sex assigned to him at birth was female. (Declaration of Russell Toomey,
16 pg. 3). Dr. Toomey transitioned to live consistently with his male identity in 2003. (*Id.*)
17 Since 2003, Dr. Toomey has received testosterone as a medically necessary treatment for
18 gender dysphoria. (*Id.*). He also received medically necessary chest reconstruction surgery
19 in 2004. (*Id.*). In accordance with the WPATH Standards of Care, Dr. Toomey’s treating
20 physicians have recommended that he receive a hysterectomy as a medically necessary
21 treatment for gender dysphoria. (*Id.* at 4).
22

23 Dr. Toomey’s healthcare coverage is provided and paid for by the State of Arizona
24 through the Plan. (Complaint, Exhibit A, pg. 1-3). Individuals enrolled in the Plan must
25 choose to receive benefits through a Network Provider. (Complaint, Exhibit A pg. 101).
26 The Plan generally provides coverage for medically necessary care, which the Plan defines
27 as “services, supplies and prescriptions, meeting all of the following criteria”: (1) ordered
28

1 by a physician; (2) not more extensive than required to meet the basic health needs; (3)
2 consistent with the diagnosis of the condition for which they are being utilized; (4)
3 consistent in type, frequency and duration of treatment with scientifically based guidelines
4 by the medical-scientific community in the United States of America; (5) required for
5 purposes other than the comfort and convenience of the patient or provider; (6) rendered
6 in the least intensive setting that is appropriate for their delivery; and (7) have demonstrated
7 medical value. (Complaint, Exhibit A, pg.100). In the event that the Plan denies coverage
8 for a treatment based on purported lack of medical necessity, the Plan provides a right to
9 appeal the decision to an independent reviewer at the third-party claims administrator and,
10 if necessary, to further appeal to an external independent review organization. If an
11 independent reviewer concludes that the treatment is medically necessary, that decision is
12 binding, and the Plan must immediately authorize coverage for the treatment. (Complaint,
13 Exhibit A pg. 69-72).

14
15 The Plan does not apply these generally applicable standards and procedures to
16 surgical care for gender dysphoria. Instead, the Plan categorically denies all coverage for
17 “[g]ender reassignment surgery” regardless of whether the surgery qualifies as medically
18 necessary. (Complaint Exhibit A pg. 56). Transgender individuals enrolled in the Plan
19 have no meaningful opportunity to demonstrate that their transition-related care is
20 medically necessary as it is specifically excepted from the terms of the Plan. Likewise,
21 those same individuals also lack a meaningful opportunity to appeal any adverse
22 determination to an independent reviewer as it isn’t clear that the Plan’s independent
23 review organization can overrule an exception to the Plan, particularly as the independent
24 review may come from Arizona’s Department of Insurance, which promulgates the Plan.²
25

26 ² Blue Cross and Blue Shield of Arizona, *Member Appeal and Grievance Process*,
27 https://www.azblue.com/~/_media/azblue/files/about/standardappealpacket.pdf (last visited
28 April 4, 2019).

1 As a result of the Plan’s categorical exclusion for “gender reassignment surgery,”
2 Dr. Toomey was denied preauthorization for a hysterectomy on August 10, 2018.
3 (Complaint, Exhibit G.). The denial was based solely on the Plan’s exclusion for “gender
4 reassignment surgery.”

5 **Claims for Relief**

6 Dr. Toomey challenges the facial validity of the Plan’s “gender reassignment
7 surgery” exclusion, which denies transgender individuals an equal opportunity to
8 demonstrate that their transition-related surgical care is medically necessary. As alleged in
9 the Complaint, Dr. Toomey contends that the “gender reassignment surgery” exclusion
10 facially violates Title VII of the Civil Rights Act of 1964 and the Equal Protection Clause
11 of the Fourteenth Amendment.

12 Dr. Toomey seeks class-wide injunctive and declaratory relief on behalf of two
13 classes. The first class is defined as:

14
15 Employees of the Arizona Board of Regents enrolled in the self-funded Plan
16 controlled by the Arizona Department of Administration who have or will
17 have medical claims for transition-related surgical care.

18 Dr. Toomey asserts a Title VII claim against the State of Arizona and the Arizona Board
19 of Regents and an equal protection claim against officers and members of the Arizona
20 Board of Regents in their official capacities on behalf of this class.

21 The second class is defined as:

22 Individuals (including Arizona State employees and their dependents)
23 enrolled in the self-funded Plan controlled by the Arizona Department of
24 Administration who have medical claims or will have claims for transition-
25 related surgical care.

26 Dr. Toomey asserts an equal protection claim against Gilbert Davidson and Paul
27 Shannon in their official capacity on behalf of this class.

ARGUMENT

1
2 This is the paradigmatic case for class certification, as it challenges the Plan’s
3 blanket exclusion for transition related surgery that results in unlawful discrimination
4 against Dr. Toomey and all the class members he seeks to represent. The Plan’s “gender
5 reassignment exclusion” applies across the board to all Plan members seeking this kind of
6 medical care and removing the exclusion would provide relief to all class members,
7 regardless of their individual circumstances.

8 9 **I. The Proposed Class Meets All the Rule 23(a) Requirements.**

10 **A. Numerosity**

11 “A proposed class satisfies the numerosity requirement if members are so numerous
12 that joinder would be impracticable. There is no fixed threshold, but courts in this circuit
13 generally have held that classes of 40 or more satisfy the numerosity requirement.”
14 *Valenzuela v. Ducey*, No. CV-16-03072-PHX-DGC, 2017 WL 6033737, at *4 (D. Ariz.
15 Dec. 6, 2017) (internal quotation marks and citations omitted). “Where ‘the exact size of
16 the class is unknown, but general knowledge and common sense indicate that it is large,
17 the numerosity requirement is satisfied.’” 1 Alba Cone & Herbert B. Newberg, *Newberg*
18 *on Class Actions* § 3.3 (4th ed. 2002); *see Valenzuela v. Ducey*, No. CV-16-03072-PHX-
19 DGC, 2017 WL 6033737, at *5 (D. Ariz. Dec. 6, 2017); *see also Orantes-Hernandez v.*
20 *Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982).

21
22 Plaintiff does not know the precise number of transgender individuals who are
23 employed by the Arizona Board of Regents or who are enrolled in Arizona’s self-funded
24 health plan. But, the Plaintiff does not need not state the exact number of potential class
25 members, nor is a specific number of class members required for numerosity. *Arnold v.*
26 *United Artists Theater Circuit Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994). Dr. Toomey is
27 personally aware of at least six employees who are currently ineligible for gender
28

1 reassignment surgery because of the exclusion. (Declaration of Russell Toomey, pg.4).
2 Demographic data indicates that the total number of class-members could be over 1,000.
3 According to a 2016 study from the Williams Institute, approximately 0.62% of Arizonans
4 identify as transgender.³ As of 2016, the Board of Regents employed 35,612 individuals
5 working at Arizona’s public universities.⁴ According to the Arizona Department of
6 Administration, approximately 136,000 individuals receive healthcare through the State’s
7 self-funded plan.⁵ If those groups of individuals identify as transgender at the same rate as
8 the rest of the Arizona population, then approximately 220 transgender individuals work
9 for the Board of Regents and 843 transgender individuals receive healthcare through the
10 State’s self-funded Plan.

11
12 Moreover, class certification is particularly appropriate in this case because the class
13 includes both current and future members. *See Ali v. Ashcroft*, 213 F.R.D. 390, 408 (W.D.
14 Wash.), *aff’d*, 346 F.3d 873 (9th Cir. 2003), *opinion withdrawn on denial of reh’g sub*
15 *nom. Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005), *as amended on reh’g* (Oct. 20, 2005)
16 (citations omitted); *Pederson v. La. State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000)
17 (“the fact that the class includes unknown, unnamed future members also weighs in favor
18 of certification”); *Henderson v. Thomas*, 289 F.R.D. 506, 510 (M.D. Ala. 2012) (“[T]he
19

20
21 ³ Andrew R. Flores Et. Al., *How Many Adults Identify as Transgender in the United States*
22 (2016), The Williams Institute, *available at*

23 <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

24 ⁴ Arizona Board of Regents, University System Quick Facts,
25 <https://www.azregents.edu/universtiy-system-quick-facts> (last visited April 4, 2019).

26 ⁵ Arizona Department of Administration Benefits, *Health Insurance Trust Fund Annual*
27 *2017 Report* (2017), *available at*
28 http://www.benefitoptions.az.gov/sites/default/files/media/LEGI_HITF_2017_Annual_Report.pdf.

1 fluid nature of a plaintiff class—as in the prison-litigation context—counsels in favor of
2 certification of all present and future members.”) (citing *Kilgo v. Bowman Transp., Inc.*,
3 789 F.2d 859, 878 (11th Cir. 1986).

4 **B. Commonality**

5 The proposed class also satisfies the requirement of commonality. “In a civil rights
6 suit, ‘commonality is satisfied where the lawsuit challenges a system-wide practice or
7 policy that affects all of the putative class members.’” *Ortega-Melendres v. Arpaio*, 836 F.
8 Supp. 2d 959, 989 (D. Ariz. 2011) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th
9 Cir. 2001)), *aff’d*, 695 F.3d 990 (9th Cir. 2012).

10 Dr. Toomey’s challenge easily meets that test. He brings a facial challenge, which
11 does not depend on whether each class member’s medical claim is ultimately proven to be
12 medically necessary. Instead, Dr. Toomey merely seeks declaratory and injunctive relief
13 to provide that all class members have the opportunity to have their claims for transition-
14 related surgery evaluated for medical necessity under the same standards and procedures
15 that the Plan applies to other medical treatments. The denial of that equal opportunity is
16 an injury in fact that can be resolved on a class-wide basis. As the Supreme Court has
17 explained: “When the government erects a barrier that makes it more difficult for members
18 of one group to obtain a benefit than it is for members of another group,” the “injury in
19 fact” is “the denial of equal treatment resulting from the imposition of the barrier, not the
20 ultimate inability to obtain the benefit.” *See Ne. Fla. Chapter of Associated Gen.
21 Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993). *See Valenzuela
22 v. Ducey*, No. CV-16-03072-PHX-DGC, 2017 WL 6033737, at *5 (D. Ariz. Dec. 6, 2017)
23 (granting class certification “the relevant injury is not the denial of driver’s licenses, but
24 the fact that the State imposes requirements on class members that it does not impose on
25 other[s]”); *Wit v. United Behavioral Health*, 317 F.R.D. 106, 127 (N.D. Cal. 2016)
26
27
28

1 (granting class certification in challenge to insurance company’s mental health coverage
2 guidelines because “Plaintiffs do not ask the Court to make determinations as to whether
3 class members were *actually* entitled to benefits. Instead, Plaintiffs seek only an order that
4 [the insurance company] develop guidelines that are consistent with generally accepted
5 standards and reprocess claims for coverage that were denied under the allegedly faulty
6 guidelines.”).⁶

7 C. Typicality

8 Under Rule 23(a)(3) the representative party must have claims or defenses that are
9 “typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality is
10 satisfied “when each class member’s claim arises from the same course of events, and each
11 class member makes similar legal arguments to prove the defendants’ liability.” *Rodriguez*
12 *v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (citations omitted). This requirement is
13 “permissive and requires only that the representative’s claims are reasonably co-extensive
14 with those of the absent class members; they need not be substantially identical.” *Hanlon*
15 *v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Reasonably coextensive claims
16 with absent class members will satisfy the typicality requirement, but the class must be
17 limited to “those fairly encompassed by the named plaintiff’s claims.” *Wal-Mart Stores,*
18 *Inc. v. Dukes*, 564 U.S. 338, 348, 131 S. Ct. 2541, 2550, 180 L. Ed. 2d 374 (2011). In this
19 case Dr. Toomey is challenging the blanket exclusion for all “gender reassignment
20
21

22
23 ⁶ In analogous cases, courts have routinely held that prisoners may bring class actions
24 challenging unlawful class-wide policies regarding inadequate medical treatment. *See,*
25 *e.g., Gray v. Cnty. of Riverside*, No. EDCV 13-00444-VAP (OPx), 2014 U.S. Dist. LEXIS
26 150884, at *109 (C.D. Cal. Sept. 2, 2014) (commonality satisfied where class challenged
27 systemic policies —both written and unwritten—that governed the provision of medical
28 and mental health care in County jails; *see also Brown v. Plata*, 131 S. Ct. 1910 (2011)
(affirming class-wide injunctive relief to remedy inadequate medical and mental health
care in all California prisons).

1 surgery,” and merely seeks the opportunity to demonstrate that transition related surgical
2 care is medically necessary. It is not relevant what kind of treatment each class member is
3 seeking, nor whether each individual’s surgical care is ultimately deemed medically
4 necessary, because it is the chance to demonstrate that need that is being categorically
5 denied to class members under the Plan’s discriminatory policy. For this reason, Dr.
6 Toomey’s claim is not only typical of the class claims, but is exactly the same as each class
7 member’s claim for relief.

8 **D. Adequacy of Representation**

9 **1. The class representative’s interests are not antagonistic to the**
10 **interests of the class**

11 Dr. Toomey is a transgender male who is a tenured professor at the University of
12 Arizona in the department of Family Studies and Human Development. (Declaration of Dr.
13 Russell Toomey pg. 3). Dr. Toomey’s academic research focuses on the discrimination
14 LGBTQ youth face in their families, schools, and communities and seeks to identify ways
15 to mitigate the association between LGBTQ discrimination and poor health outcomes.
16 (*Id.*). Dr. Toomey is a member of the Transgender Studies Research Cluster at the
17 University of Arizona and serves as a faculty fellow at the University of Arizona’s LGBTQ
18 Resource Center. (*Id.*). Dr. Toomey is also deeply connected to the wider transgender
19 community in Arizona. He is on the steering committee of Camp Born this Way, an
20 Arizona camp for transgender youth and their families. (*Id.* at 3-4). He has served on the
21 Board of the Southern Arizona Gender Alliance (SAGA) which provides support,
22 education, resources, and advocacy for Southern Arizona’s community of transgender and
23 gender non-conforming individuals. (*Id.* at 4). Given his academic expertise on these issues
24 as well as a deep personal connection to many of the foremost transgender community
25 groups in Arizona, Dr. Toomey is well situated to represent the interests of the class and to
26 communicate with them about issues in the case.
27

1 Dr. Toomey's interests are aligned with all members of the class. Because the
2 complaint does not turn on each individual medical treatment but instead turns on the
3 opportunity for each class member to demonstrate that their transition-related care is
4 medically necessary or to appeal any adverse determination to an independent reviewer,
5 the class members' interests are commensurate with each other.

6 **2. Counsel are well qualified to represent the class**

7 Plaintiff's counsel are experienced class action and civil rights practitioners. The
8 litigation team includes (1) Kathleen Brody, legal director of the ACLU of Arizona, who
9 represents classes in at least four other matters, (2) Molly Brizgys of the ACLU of Arizona,
10 who represents a class in one matter, (3) Joshua Block of the ACLU who has represented
11 several classes challenging discrimination against LGBT people and has represented other
12 transgender individuals in discrimination suits regarding access to transition-related health
13 care, and (4) James Burr Shields, Heather Macre, and Natalie Virden of Aiken Schenk
14 Hawkins & Ricciardi P.C. who have extensive employment discrimination litigation and
15 healthcare law experience. (*See* Declarations of Brody, Block and Shields).
16

17 **II. Dr. Toomey's Claims Should Be Certified Under Rule 23(b)(2).**

18 Dr. Toomey brings this action on behalf of himself and a class of similarly situated
19 individuals pursuant to Fed. R. Civ. P. 23(b)(2), which authorizes class actions when "the
20 party opposing the class has acted or refused to act on grounds that apply generally to the
21 class, so that final injunctive relief or corresponding declaratory relief is appropriate
22 respecting the class as a whole."
23

24 The key to the (b)(2) class is the indivisible nature of the injunctive or
25 declaratory remedy warranted—the notion that the conduct is such that it can
26 be enjoined or declared unlawful only as to all of the class members or as to
27 none of them. In other words, Rule 23(b)(2) applies only when a single
28 injunction or declaratory judgment would provide relief to each member of
the class.

1 *Dukes*, 564 U.S. at 360-61 (quotation marks and citations omitted). “Civil rights cases
2 against parties charged with unlawful, class-based discrimination are prime examples” of
3 cases suitable for certification under Rule 23(b)(2). *Amchem Products, Inc. v. Windsor*,
4 521 U.S. 591, 614 (1997).

5 Dr. Toomey’s facial challenge under Title VII and the Equal Protection Clause falls
6 squarely within the scope of Rule 23(b)(2). Through the “gender reassignment surgery”
7 exclusion, Defendants have “acted or refused to act on grounds that apply generally to the
8 class, so that final injunctive relief or corresponding declaratory relief is appropriate
9 respecting the class as a whole.” Rule 23(b)(2). As discussed above, class certification is
10 appropriate because Dr. Toomey challenges the facial validity of the Plan’s “gender
11 reassignment surgery” exclusion, which denies transgender individuals an equal
12 opportunity to demonstrate that their transition-related surgical care is medically necessary.
13 The denial of that equal opportunity is an injury in fact that can be resolved on a class-wide
14 basis. *Valenzuela v. Ducey*, No. CV-16-03072-PHX-DGC, 2017 WL 6033737, at *5 (D.
15 Ariz. Dec. 6, 2017); *see also Parsons v. Ryan*, 754 F. 3d 657, 688 (9th Cir. 2014)(classes
16 that were proposed were a paradigmatic example of (b)(2) classes because they primarily
17 ‘seek uniform injunctive [and] declaratory relief from policies or practices that are
18 generally applicable to the class[es] as a whole.’”).

20 **III. Conclusion**

21 Plaintiff has satisfied all prerequisites to and requirements of Rule 23 and, therefore,
22 respectfully requests that the Court certify the proposed classes, approve the named
23 Plaintiff as a class representative, and appoint Plaintiff’s counsel to represent the class.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 5th day of April, 2019.

ACLU FOUNDATION OF ARIZONA

By /s/ Molly Brizgys
Kathleen E. Brody
Molly Brizgys

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Joshua A. Block
Leslie Cooper

AIKEN SCHENK HAWKINS & RICCIARDI P.C.
James Burr Shields
Heather A. Macre
Natalie B. Virden

Attorneys for Plaintiff Russell B. Toomey

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019 I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court’s electronic filing system or by mail as indicated on the Notice of Electronic Filing.

/s/ Molly Brizgys
Molly Brizgys

EXHIBIT 1

Health Insurance

Removing Financial Barriers to Care for Transgender Patients H-185.950

Topic: Health Insurance **Policy Subtopic:** Benefits and Coverage

Meeting Type: Annual **Year Last Modified:** 2016

Action: Modified **Type:** Health Policies

Council & Committees: NA



Our AMA supports public and private health **insurance** coverage for treatment of gender dysphoria as recommended by the patient's physician.

Policy Timeline

Res. 122 A-08 Modified: Res. 05, A-16

EXHIBIT 2



The American College of Obstetricians and Gynecologists

Women's Health Care Physicians

COMMITTEE OPINION

Number 512 • December 2011

(Reaffirmed 2019)

Committee on Health Care for Underserved Women

This information should not be construed as dictating an exclusive course of treatment or procedure to be followed.

Health Care for Transgender Individuals

ABSTRACT: Transgender individuals face harassment, discrimination, and rejection within our society. Lack of awareness, knowledge, and sensitivity in health care communities eventually leads to inadequate access to, underutilization of, and disparities within the health care system for this population. Although the care for these patients is often managed by a specialty team, obstetrician–gynecologists should be prepared to assist or refer transgender individuals with routine treatment and screening as well as hormonal and surgical therapies. The American College of Obstetricians and Gynecologists opposes discrimination on the basis of gender identity and urges public and private health insurance plans to cover the treatment of gender identity disorder.

The Spectrum of Transgender Identity

Transgender is a broad term used for people whose gender identity or gender expression differs from their assigned sex at birth (Box 1) (1). However, there is no universally accepted definition of the word “transgender” because of the lack of agreement regarding what groups of people are considered “transgender.” In addition, definitions often vary by geographic region and by individual (2). The American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision, considers transgender individuals to be individuals with a disturbance in sexual or gender identity. Any combination of sexual and gender identity is possible for transgender individuals (Box 2). The diagnosis of gender identity disorder is only established for individuals with clinically significant distress and functional impairment caused by the persistent discomfort with one’s assigned sex and primary and secondary sex characteristics. If untreated, gender identity disorder can result in psychologic dysfunction, depression, suicidal ideation, and even death (3).

Prevalence rates of transgender populations are not clearly established; however, studies suggest that transgender individuals constitute a small but substantial population (4). Additional research is needed among this population as outlined by the Institute of Medicine Report, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2).

The social and economic marginalization of transgender individuals is widespread. Harassment, discrim-

ination, and rejection occur frequently within an individual’s own family and affect educational, employment, and housing opportunities.

Transgender individuals, particularly young transgender individuals, are disproportionately represented in the homeless population (5). Once homeless, individuals may be denied access to shelters because of their gender or are placed in inappropriate housing. Subsequently, many homeless transgender individuals turn to survival sex (the exchange of sex for food, clothing, shelter, or other basic needs), which increases the risk of exposure to sexually transmitted infections and becoming victims of violence (6). In one small study, 35% of male-to-female transgender individuals tested positive for human immunodeficiency virus (HIV), 20% were homeless, and 37% reported physical abuse (7).

Barriers to Health Care

Within the medical community, transgender individuals face significant barriers to health care. This includes the failure of most health insurance plans to cover the cost of mental health services, cross-sex hormone therapy, or gender affirmation surgery. This barrier exists despite evidence that such treatments are safe and effective and that cross-gender behavior and gender identity issues are not an issue of choice for the individual and cannot be reversed with psychiatric treatment (8). With medical and psychiatric care that affirms transgender identity, the transgender individual can lead an enhanced, functional life (9).

Box 1. Transgender Definitions

Transsexual—an individual who strongly identifies with the other sex and seeks hormones or gender-affirmation surgery or both to feminize or masculinize the body; may live full-time in the crossgender role.*

Crossdresser—an individual who dresses in the clothing of the opposite sex for reasons that include a need to express femininity or masculinity, artistic expression, performance, or erotic pleasure, but do not identify as that gender. The term “transvestite” was previously used to describe a crossdresser, but it is now considered pejorative and should not be used.†

Bigendered—individuals who identify as both or alternatively male and female, as no gender, or as a gender outside the male or female binary.†

Intersex—individuals with a set of congenital variations of the reproductive system that are not considered typical for either male or female. This includes newborns with ambiguous genitalia, a condition that affects 1 in 2,000 newborns in the United States each year.†

Female-to-male—refers to someone who was identified as female at birth but who identifies and portrays his gender as male. This term is often used after the individual has taken some steps to express his gender as male, or after medically transitioning through hormones or surgery. Also known as FTM or transman.†

Male-to-female—refers to someone who was identified as male at birth but who identifies and portrays her gender as female. This term is often used after the individual has taken some steps to express her gender as female, or after medically transitioning through hormones or surgery. Also known as MTF or transwoman.†

*The health of lesbian, gay, bisexual, and transgender people: building a foundation for better understanding. Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, Board on the Health of Select Populations, Institute of Medicine of the National Academies. Washington, DC: National Academies Press; 2011. Available at: http://www.nap.edu/openbook.php?record_id=13128&page=R1. Retrieved August 8, 2011.

† Fenway Health. Glossary of gender and transgender terms. Boston (MA): Fenway Health; 2010. Available at: http://www.fenwayhealth.org/site/DocServer/Handout_7-C_Glossary_of_Gender_and_Transgender_Terms__fi.pdf. Retrieved July 22, 2011.

‡ Dreger AD. “Ambiguous sex”--or ambivalent medicine? Ethical issues in the treatment of intersexuality. *Hastings Cent Rep* 1998; 28:24–35.

Box 2. Sexual Identity and Gender Identity Definitions

Sex—designation of a person at birth as male or female based on anatomy and biology.*

Gender identity—a person’s innate identification as a man, woman, or something else that may or may not correspond to the person’s external body or assigned sex at birth.*

Gender expression—how individuals present themselves socially, including clothing, hairstyle, jewelry, and physical characteristics, including speech and mannerisms. This may not be the same gender in all settings.*

Sexual orientation—a person’s physical, romantic, emotional, and/or spiritual attraction to individuals of the same (lesbian or gay), different (heterosexual), or both (bisexual) biologic sexes. Sexual orientation does not define the real-life sexual practices and behaviors of an individual.*

Sexual behavior—the sexual encounters and behaviors of the individual. This is likely to be the most important factor in assessing the risk of sexually transmitted infections. Sexual behavior differs from sexual orientation; for example, not all individuals who engage in same-sex behaviors view themselves as gay, lesbian, or bisexual.

Legal sex—sex as stated on legal identifications, forms, and documents. Transgender individuals may adopt a second name other than their legal name with which they may prefer to be addressed. Transgender persons should be asked for their preferred name, even if it differs from their legal name and sex. State regulations vary and it may be difficult or impossible for a transgender individual to meet that state’s requirements to change their legal sex.†

*Fenway Health. Glossary of gender and transgender terms. Boston (MA): Fenway Health; 2010. Available at: http://www.fenwayhealth.org/site/DocServer/Handout_7-C_Glossary_of_Gender_and_Transgender_Terms__fi.pdf. Retrieved July 22, 2011.

† This is a significant issue for transgender individuals. Some states have adopted progressive laws that do not require gender-affirmation surgery or an original birth certificate; instead, these laws allow individuals to change their legal sex with a letter from their health care providers stating that the individuals live their lives as this gender. See the National Center for Transgender Equality (www.transequality.org) and the Transgender Law and Policy Institute (www.transgenderlaw.org) for more information, including descriptions of state laws.

The consequences of inadequate treatment are staggering. Fifty-four percent of transgender youth have attempted suicide and 21% resort to self-mutilation. More than 50% of persons identified as transgender have used injected hormones that were obtained illegally or used outside of conventional medical settings. Additionally, such individuals frequently resort to the illegal and dangerous use of self-administered silicone injections to

spur masculine or feminine physiologic changes (5). The American College of Obstetricians and Gynecologists, therefore, urges public and private health insurance plans to cover the treatment of gender identity disorder.

Caring for Transgender Individuals

Obstetrician–gynecologists should be prepared to assist or refer transgender individuals for routine treatment

and screening as well as hormonal and surgical therapies. Basic preventive services, like sexually transmitted infection testing and cancer screening, can be provided without specific expertise in transgender care. Hormonal and surgical therapies for transgender patients may be requested, but should be managed in consultation with health care providers with expertise in specialized care and treatment of transgender patients (see Resources). Physical and emotional issues for transgender individuals and the effects of aging, as in all other individuals, affect the health status of this population and should be addressed. Health care providers who are morally opposed to providing care to this population should refer them elsewhere for care. For more information, a resource guide on health care for transgender individuals is available at www.acog.org/departments/dept_notice.cfm?recno=18&bulletin=5825.

Creating a Welcoming Environment

Health care providers' discomfort when treating transgender individuals may alienate patients and result in lower quality or inappropriate care as well as deter them from seeking future medical care (10). Excellent resources exist to facilitate the provision of culturally competent care for transgender patients (10). Adding a "transgender" option to check boxes on patient visit records can help to better capture information about transgender patients, and could be a sign of acceptance to that person (10). Questions should be framed in ways that do not make assumptions about gender identity, sexual orientation, or behavior. It is more appropriate for clinicians to ask their patients which terms they prefer (1). Language should be inclusive, allowing the patient to decide when and what to disclose. The adoption and posting of a nondiscrimination policy can also signal health care providers and patients alike that all persons will be treated with dignity and respect. Assurance of confidentiality can allow for a more open discussion, and confidentiality must be ensured if a patient is being referred to a different health care provider. Training staff to increase their knowledge and sensitivity toward transgender patients will also help facilitate a positive experience for the patient (10). It is important to prepare now to treat a future transgender patient. Additional guidelines for creating a welcoming office environment for transgender patients have been developed by the Gay and Lesbian Medical Association and can be found at http://www.glma.org/_data/n_0001/resources/live/GLMA%20guidelines%202006%20FINAL.pdf.

Gender Transition: World Professional Association for Transgender Health Guidelines

The World Professional Association for Transgender Health is a multidisciplinary professional society representing the specialties of medicine, psychology, social

sciences, and law. Their published clinical guidelines about the psychiatric, psychologic, medical, and surgical management of gender identity disorders are widely used by specialists in transgender health care (11), but are not universally accepted by all members of the transgender health community because critics consider them to be overly restrictive and inflexible.

The World Professional Association for Transgender Health guidelines describe the transition from one gender to another in three stages: 1) living in the gender role consistent with gender identity; 2) the use of cross-sex hormone therapy after living in the new gender role for at least 3 months; 3) gender-affirmation surgery after living in the new gender role and using hormonal therapy for at least 12 months. Additional clinical guidelines have been published by the Endocrine Society (12).

Female-to-Male Transgender Individuals

Hormones

Methyltestosterone injections every 2 weeks are usually sufficient to suppress menses and induce masculine secondary sex characteristics (13). Before receiving androgen therapy, patients should be screened for medical contraindications and have periodic laboratory testing, including hemoglobin and hematocrit to evaluate for polycythemia, liver function tests, and serum testosterone level assessments (goal is a mid normal male range of 500 microgram/dL), while receiving the treatment.

Surgery

Hysterectomy, with or without salpingo-oophorectomy, is commonly part of the surgical process. An obstetrician-gynecologist who has no specialized expertise in transgender care may be asked to perform this surgery, and also may be consulted for routine reasons such as dysfunctional bleeding or pelvic pain. Reconstructive surgery should be performed by a urologist, gynecologist, plastic surgeon, or general surgeon who has specialized competence and training in this field.

Screening

Age-appropriate screening for breast cancer and cervical cancer should be continued unless mastectomy or removal of the cervix has occurred. For patients using androgen therapy who have not had a complete hysterectomy, there may be an increased risk of endometrial cancer and ovarian cancer (13).

Male-to-Female Transgender Individuals

Hormones

Estrogen therapy results in gynecomastia, reduced hair growth, redistribution of fat, and reduced testicular volume. All patients considering therapy should be screened for medical contraindications. After surgery, doses of estradiol, 2–4 mg/d, or conjugated equine estrogen, 2.5 mg/d, are often sufficient to keep total testosterone levels to normal female levels of less than 25 ng/dL. Nonoral therapy

also can be offered. It is recommended that male-to-female transgender patients receiving estrogen therapy have an annual prolactin level assessment and visual field examination to screen for prolactinoma (13).

Surgery

Surgery usually involves penile and testicular excision and the creation of a neovagina (14). Reported complications of surgery include vaginal and urethral stenosis, fistula formation, problems with remnants of erectile tissue, and pain. Vaginal dilation of the neovagina is required to maintain patency. Other surgical procedures that may be performed include breast implants and nongenital surgery, such as facial feminization surgery.

Screening

Age-appropriate screening for breast and prostate cancer is appropriate for male-to-female transgender patients. Opinion varies regarding the need for Pap testing in this population. In patients who have a neocervix created from the glans penis, routine cytologic examination of the neocervix may be indicated (15). The glans are more prone to cancerous changes than the skin of the penile shaft, and intraepithelial neoplasia of the glans is more likely to progress to invasive carcinoma than is intraepithelial neoplasia of other penile skin (14).

Conclusion

Obstetrician–gynecologists should be prepared to assist or refer transgender individuals. Physicians are urged to eliminate barriers to access to care for this population through their own individual efforts. An important step is to identify the sexual orientation and gender identity status of all patients as a routine part of clinical encounters and recognize that many transgender individuals may not identify themselves. The American College of Obstetricians and Gynecologists urges health care providers to foster nondiscriminatory practices and policies to increase identification and to facilitate quality health care for transgender individuals, both in assisting with the transition if desired as well as providing long-term preventive health care.

Resources

Select clinics with expertise in treating transgender individuals:

Fenway Community Health
www.fenwayhealth.org

University of Minnesota, Center for Sexual Health
www.phs.umn.edu/clinic/home.html

Callen-Lorde Community Health Center
www.callen-lorde.org

Tom Waddell Health Center
www.sfdph.org/dph/comupg/oservices/medSvs/hlthCtrs/TransgenderHlthCtr.asp

References

1. Fenway Health. Glossary of gender and transgender terms. Boston (MA): Fenway Health; 2010. Available at: http://www.fenwayhealth.org/site/DocServer/Handout_7-C_Glossary_of_Gender_and_Transgender_Terms__fi.pdf. Retrieved July 22, 2011.
2. The health of lesbian, gay, bisexual, and transgender people: building a foundation for better understanding. Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, Board on the Health of Select Populations, Institute of Medicine of the National Academies. Washington, DC: National Academies Press; 2011. Available at: http://www.nap.edu/openbook.php?record_id=13128&page=R1. Retrieved August 8, 2011.
3. American Psychiatric Association. Gender identity disorder. In: Diagnostic and statistical manual of mental disorders. 4th ed. text revision. Washington, DC: APA; 2000. p. 576–82.
4. Olyslager F, Conway L. On the calculation of the prevalence of transsexualism. Paper presented at the WPATH 20th International Symposium, Chicago, Illinois, September 5–8, 2007. Available at: <http://ai.eecs.umich.edu/people/conway/TS/Prevalence/Reports/Prevalence%20of%20Transsexualism.pdf>. Retrieved July 12, 2011.
5. Ray N. Lesbian, gay, bisexual and transgender youth: an epidemic of homelessness. New York (NY): National Gay and Lesbian Task Force Policy Institute; National Coalition for the Homeless; 2006. Available at: <http://www.the-taskforce.org/downloads/HomelessYouth.pdf>. Retrieved July 22, 2011.
6. Crossing to safety: transgender health and homelessness. Health Care for the Homeless Clinicians' Network. Healing Hands 2002;6(4):1–2. Available at: <http://www.nhchc.org/Network/HealingHands/2002/June2002HealingHands.pdf>. Retrieved July 22, 2011.
7. San Francisco Department of Public Health. The Transgender Community Health Project: descriptive results. San Francisco (CA): SFDPH; 1999. Available at: <http://hivinsite.ucsf.edu/InSite?page=cftg-02-02>. Retrieved July 22, 2011.
8. National Coalition for LGBT Health. An overview of U.S. trans health priorities: a report by the Eliminating Disparities Working Group. Washington, DC: National Coalition for LGBT Health; 2004. Available at: <http://transequality.org/PDFs/HealthPriorities.pdf>. Retrieved July 22, 2011.
9. American Medical Association. Patient-physician relationship: respect for law and human rights. In: Code of medical ethics of the American Medical Association: current opinions with annotations. 2010–2011 ed. Chicago (IL): AMA; 2010. p. 349–51.
10. Gay and Lesbian Medical Association. Guidelines for care of lesbian, gay, bisexual, and transgender patients. Washington, DC: GLMA; 2006. Available at: http://www.glma.org/_data/n_0001/resources/live/GLMA%20guidelines%202006%20FINAL.pdf. Retrieved July 22, 2011.
11. World Professional Association for Transgender Health. The Harry Benjamin International Gender Dysphoria Association's standards of care for gender identity dis-

- orders. 6th version. Minneapolis (MN): WPATH; 2001. Available at: <http://www.wpath.org/documents2/socv6.pdf>. Retrieved July 22, 2011.
12. Hembree WC, Cohen-Kettenis P, Delemarre-vande Waal HA, Gooren LJ, Meyer WJ 3rd, Spack NP, et al. Endocrine treatment of transsexual persons: an Endocrine Society clinical practice guideline. *J Clin Endocrinol Metab* 2009;94:3132–54.
 13. Moore E, Wisniewski A, Dobs A. Endocrine treatment of transsexual people: a review of treatment regimens, outcomes, and adverse effects. *J Clin Endocrinol Metab* 2003;88:3467–73.
 14. Lawrence AA. Vaginal neoplasia in a male-to-female transsexual: case report, review of the literature, and recommendations for cytological screening. *Int J Transgender* 2001;5(1). Available at: http://www.wpath.org/journal/www.iiav.nl/ezines/web/IJT/97-03/numbers/symposion/ijtvo05no01_01.htm. Retrieved July 22, 2011.
 15. Feldman JL, Goldberg J. Transgender primary medical care: suggested guidelines for clinicians in British Columbia. Vancouver (BC): Transgender Health Program; 2006. Available at: <http://transhealth.vch.ca/resources/library/tcpdocs/guidelines-primcare.pdf>. Retrieved July 22, 2011.
-
- Copyright December 2011 by the American College of Obstetricians and Gynecologists, 409 12th Street, SW, PO Box 96920, Washington, DC 20090-6920. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, posted on the Internet, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission from the publisher. Requests for authorization to make photocopies should be directed to: Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, (978) 750-8400.
- ISSN 1074-861X
- Health care for transgender individuals. Committee Opinion No. 512. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2011;118:1454–8.

EXHIBIT 3

APA Official Actions

Position Statement on Access to Care for Transgender and Gender Diverse Individuals

Approved by the Board of Trustees, July 2018
Approved by the Assembly, May 2018

“Policy documents are approved by the APA Assembly and Board of Trustees. . . . These are . . . position statements that define APA official policy on specific subjects. . . .” – *APA Operations Manual*

Issue:

Significant and long-standing medical and psychiatric literature exists that demonstrates clear benefits of medical and surgical interventions to assist gender diverse individuals seeking transition. However, private and public insurers often do not offer, or may specifically exclude, coverage for medically necessary treatments for gender transition. Access to medical care (both medical and surgical) positively impacts the mental health of transgender and gender diverse individuals.

The APA’s vision statement includes the phrase: “Its vision is a society that has available, accessible, quality psychiatric diagnosis and treatment,” yet currently, transgender and gender diverse individuals frequently lack available and accessible gender-affirming treatment. In addition, APA’s values include the following points:

- best standards of clinical practice
- patient-focused treatment decisions
- scientifically-established principles of treatment
- advocacy for patients

Transgender and gender diverse individuals currently lack access to the best standards of clinical practice, do not have the opportunity to pursue patient-focused gender-affirming treatment decisions, and do not receive scientifically-established treatment. They could benefit significantly from APA’s advocacy.

Position:

Therefore, the American Psychiatric Association:

1. **Recognizes that appropriately evaluated transgender and gender diverse individuals can benefit greatly from medical and surgical gender-affirming treatments.**
2. **Advocates for removal of barriers to care and supports both public and private health insurance coverage for gender transition treatment.**
3. **Opposes categorical exclusions of coverage for such medically necessary treatment when prescribed by a physician.**
4. **Supports evidence-based coverage of all gender-affirming procedures which would help the**

mental well-being of gender diverse individuals

Authors:

Authors: Jack Drescher, M.D., Ellen Haller, M.D., APA Caucus of Lesbian, Gay and Bisexual Psychiatrists.
Revised 2017 Eric Yarbrough, M.D., APA Caucus of LGBTQ Psychiatrists and the Council on Minority
Mental Health and Health Disparities

EXHIBIT 4



AMERICAN PSYCHOLOGICAL ASSOCIATION

Transgender, Gender Identity, & Gender Expression Non-Discrimination

Adopted by the American Psychological Association Council of Representatives August, 2008.

Whereas transgender and gender variant people frequently experience prejudice and discrimination and psychologists can, through their professional actions, address these problems at both an individual and a societal level;

Whereas the American Psychological Association opposes prejudice and discrimination based on demographic characteristics including gender identity, as reflected in policies including the Hate Crimes Resolution (Paige, 2005), the Resolution on Prejudice Stereotypes and Discrimination (Paige, 2007), APA Bylaws (Article III, Section 2), the Ethical Principles of Psychologists and Code of Conduct (APA 2002, 3.01 and Principle E);

Whereas transgender and other gender variant people benefit from treatment with therapists with specialized knowledge of their issues (Lurie, 2005; Rachlin, 2002), and that the Ethical Principles of Psychologists and Code of Conduct state that when scientific or professional knowledge ...is essential for the effective implementation of their services or research, psychologists have or obtain the training....necessary to ensure the competence of their services..." (APA 2002, 2.01b);

Whereas discrimination and prejudice against people based on their actual or perceived gender identity or expression detrimentally affects psychological, physical, social, and economic well-being (Bockting et al., 2005; Coan et al., 2005; Clements-Nolle, 2006; Kenagy, 2005; Kenagy & Bostwick, 2005; Nemoto et al., 2005; Resolution on Prejudice Stereotypes and Discrimination, Paige, 2007; Riser et al., 2005; Rodriguez-Madera & Toro-Alfonso, 2005; Sperber et al., 2005; Xavier et al., 2005);

Whereas transgender people may be denied basic non-gender transition related health care (Bockting et al., 2005; Coan et al., 2005; Clements-Nolle, 2006; GLBT Health Access Project, 2000; Kenagy, 2005; Kenagy & Bostwick, 2005; Nemoto et al., 2005; Riser et al., 2005; Rodriguez-Madera & Toro-Alfonso, 2005; Sperber et al., 2005; Xavier et al., 2005);

Whereas gender variant and transgender people may be denied appropriate gender transition related medical and mental health care despite evidence that appropriately evaluated individuals benefit from gender transition treatments (De Cuypere et al., 2005; Kuiper & Cohen-Kettenis, 1988; Lundstrom, et al., 1984; Newfield, et al., 2006; Pfafflin & Junge, 1998; Rehman et al., 1999; Ross & Need, 1989; Smith et al., 2005);

Whereas gender variant and transgender people may be denied basic civil rights and protections (Minter, 2003; Spade, 2003) including: the right to civil marriage which confers a social status and important legal benefits, rights, and privileges (Paige, 2005); the right to obtain appropriate identity documents that are consistent with a post-transition identity; and the right to fair and safe and harassment-free institutional environments such as care facilities, treatment centers, shelters, housing, schools, prisons and juvenile justice programs;

Whereas transgender and gender variant people experience a disproportionate rate of homelessness (Kammerer et al., 2001), unemployment (APA, 2007) and job discrimination (Herbst et al., 2007), disproportionately report income below the poverty line (APA, 2007) and experience other financial disadvantages (Lev, 2004);

Whereas transgender and gender variant people may be at increased risk in institutional environments and facilities for harassment, physical and sexual assault (Edney, 2004; Minter, 2003; Peterson et al., 1996; Witten & Eyler, 2007) and inadequate medical care including denial of gender transition treatments such as hormone therapy (Edney, 2004; Peterson et al., 1996; Bockting et al., 2005; Coan et al., 2005; Clements-Nolle, 2006; Kenagy, 2005; Kenagy & Bostwick, 2005; Nemoto et al., 2005; Newfield et al., 2006; Riser et al., 2005; Rodriguez-Madera & Toro-Alfonso, 2005; Sperber et al., 2005; Xavier et al., 2005);

Whereas many gender variant and transgender children and youth face harassment and violence in school environments, foster care, residential treatment centers, homeless centers and juvenile justice programs (D'Augelli, Grossman, & Starks, 2006; Gay Lesbian and Straight Education Network, 2003; Grossman, D'Augelli, & Slater, 2006);

Whereas psychologists are in a position to influence policies and practices in institutional settings, particularly regarding the implementation of the Standards of Care published by the World Professional Association of Transgender Health (WPATH, formerly known as the Harry Benjamin International Gender Dysphoria Association) which recommend the continuation of gender transition treatments and especially hormone therapy during incarceration (Meyer et al., 2001);

Whereas psychological research has the potential to inform treatment, service provision, civil rights and approaches to promoting the well-being of transgender and gender variant people;

Whereas APA has a history of successful collaboration with other organizations to meet the needs of particular populations, and organizations outside of APA have useful resources for addressing the needs of transgender and gender variant people;

Therefore be it resolved that APA opposes all public and private discrimination on the basis of actual or perceived gender identity and expression and urges the repeal of discriminatory laws and policies;

Therefore be it further resolved that APA supports the passage of laws and policies protecting the rights, legal benefits, and privileges of people of all gender identities and expressions;

Therefore be it further resolved that APA supports full access to employment, housing, and education regardless of gender identity and expression;

Therefore be it further resolved that APA calls upon psychologists in their professional roles to provide appropriate, nondiscriminatory treatment to transgender and gender variant individuals and encourages psychologists to take a leadership role in working against discrimination towards transgender and gender variant individuals;

Therefore be it further resolved that APA encourages legal and social recognition of transgender individuals consistent with their gender identity and expression, including access to identity documents consistent with their gender identity and expression which do not involuntarily disclose their status as transgender for transgender people who permanently socially transition to another gender role;

Therefore be it further resolved that APA supports access to civil marriage and all its attendant benefits, rights, privileges and responsibilities, regardless of gender identity or expression;

Therefore be it further resolved that APA supports efforts to provide fair and safe environments for gender variant and transgender people in institutional settings such as supportive living environments, long-term care facilities, nursing homes, treatment facilities, and shelters, as well as custodial settings such as prisons and jails;

Therefore be it further resolved that APA supports efforts to provide safe and secure educational environments, at all levels of education, as well as foster care environments and juvenile justice programs, that promote an understanding and acceptance of self and in which all youths, including youth of all gender identities and expressions, may be free from discrimination, harassment, violence, and abuse;

Therefore be it further resolved that APA supports the provision of adequate and necessary mental and medical health care treatment for transgender and gender variant individuals;

Therefore be it further resolved that APA recognizes the efficacy, benefit and medical necessity of gender transition treatments for appropriately evaluated individuals and calls upon public and private insurers to cover these medically necessary treatments;

Therefore be it further resolved that APA supports access to appropriate treatment in institutional settings for people of all gender identities and expressions; including access to appropriate health care services including gender transition therapies;

Therefore be it further resolved that APA supports the creation of educational resources for all psychologists in working with individuals who are gender variant and transgender;

Therefore be it further resolved that APA supports the funding of basic and applied research concerning gender expression and gender identity;

Therefore be it further resolved that APA supports the creation of scientific and educational resources that inform public discussion about gender identity and gender expression to promote public policy development, and societal and familial attitudes and behaviors that affirm the dignity and rights of all individuals regardless of gender identity or gender expression;

Therefore be it further resolved that APA supports cooperation with other organizations in efforts to accomplish these ends.

References

- American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, 57, 1060-1073.
- American Psychological Association. (2006). *Bylaws of the American Psychological Association*. Retrieved December 18, 2006, from <http://www.apa.org/governance/bylaws/homepage.html> (/about/governance/bylaws) .
- American Psychological Association. (2007). *Report of the APA task force on socioeconomic status*. Washington, DC: Author.
- Bockting, W. O., & Fung, L. C. T. (2005). Genital reconstruction and gender identity disorders. In D. Sarwer, T. Pruzinsky, T. Cash, J. Persing, R. Goldwyn, & L. Whitaker (Eds.), *Psychological aspects of reconstructive and cosmetic plastic surgery: Clinical, empirical, and ethical perspectives* (pp. 207-229). Philadelphia: Lippincott, Williams, & Wilkins.
- Bockting, W. O., Huang, C., Ding, H., Robinson, B., & Rosser, B. R. S.(2005). Are transgender persons at higher risk for HIV than other sexual minorities? A comparison of HIV prevalence and risks. *International Journal of Transgenderism*, 3(2/3), 123-131.
- Clements-Nolle, K. (2006). Attempted suicide among transgender persons: The influence of gender-based discrimination and victimization. *Journal of Homosexuality*, 51(3), 53-69.
- Coan, D. L., Schraner, W., & Packer, T.(2005). The role of male sex partners in HIV infection among male-to-female transgendered individuals. *International Journal of Transgenderism*, 3(2/3), 21-30.
- D'Augelli, A. R., Grossman, A. H., & Starks, M. T. (2006). Childhood gender atypicality, victimization, and PTSD among lesbian, gay, and bisexual youth. *Journal of Interpersonal Violence*, 21(11), 1462-1482.
- De Cuypere G, TSjoen, G., Beerten, R., Selvaggi, G., De Sutter, P., Hoebeke, P., Monstrey, S., Vansteenwegen A., & Rubens, R. (2005). Sexual and physical health after sex reassignment surgery. *Archives of Sexual Behavior*, 34(6), 679-690.
- Edney, R. (2004). To keep me safe from harm? Transgender prisoners and the experience of imprisonment. *Deakin Law Review*, 9(2), 327-338.
- Gay, Lesbian and Straight Education Network. (2004). 2003 National School Climate Survey: *The school related experiences of our nation's lesbian, gay, bisexual and transgender youth*. New York: GLSEN.
- GLBT Health Access Project. (2000). *Access to healthcare for transgendered persons in greater Boston*. Boston: J. S. I. Research and Training Institute Inc.
- Grossman, A. H., D'Augelli, A. R., & Slater, N. P. (2006). Male-to-female transgender youth: Gender expression milestones, gender atypicality, victimization, and parents' responses. *Journal of GLBT Family Studies*, 2(1), 71-92.

- Herbst, J. H., Jacobs, E. D., Finlayson, T. J., McKleroy, V. S., Neumann, M. S., & Crepaz, N.; The HIV/AIDS Prevention Research Synthesis Team. (2008). Estimating HIV prevalence and risk behaviors of transgender persons in the United States: A systematic review. *AIDS and Behavior*, 12, 1-17.
- Kammerer, N., Mason, T., Connors, M., & Durkee, R. (2001). Transgender health and social service needs in the context of HIV risk. In W. Bockting & S. Kirk (Eds.), *Transgender and HIV: Risks prevention and care* (39-57). Binghamton, NY: Haworth.
- Kenagy, G. P.(2005). The health and social service needs of transgender people in Philadelphia. *International Journal of Transgenderism*, 3(2/3), 49-56.
- Kenagy, G. P., & Bostwick, W. B.(2005). Health and social service needs of transgender people in Chicago. *International Journal of Transgenderism*, 3(2/3), 57-66.
- Kuiper, B., & Cohen-Kettenis, P. (1988). Sex reassignment surgery: a study of 141 Dutch transsexuals. *Archives of Sexual Behavior*, 17(5), 439-457.
- Lev, A. I. (2004). *Transgender emergence: Therapeutic guidelines for working with gender-variant people and their families*. Binghamton, NY: Haworth Press.
- Lundstrom, B., Pauly, I., & Walinder, J. (1984). Outcome of sex reassignment surgery. *Acta Psychiatrica Scandinavia*, 70, 289-94.
- Lurie, S.(2005). Identifying training needs of health-care providers related to treatment and care of transgendered patients: A qualitative needs assessment conducted in New England. *International Journal of Transgenderism*, 3(2/3), 93-112.
- Meyer III, W., Bockting, W., Cohen-Kettenis, P., Coleman, E., DiCeglie, D., Devor, H., et al. (2001). The standards of care for gender identity disorders, sixth version. *International Journal of Transgenderism*, 5(1). Retrieved January 15, 2007, from http://www.symposion.com/ijt/soc_2001/index.htm (http://www.symposion.com/ijt/soc_2001/index.htm) .
- Minter, S. (2003). *Representing transsexual clients: Selected legal issues*. Retrieved May 25, 2006, from: <http://www.transgenderlaw.org/resources/translaw.htm> (<http://www.transgenderlaw.org/resources/translaw.htm>)
- Nemoto, T., Operario, D., & Keatley, J. (2005). Health and social services for male-to-female transgender persons of color in San Francisco. *International Journal of Transgenderism*, 3(2/3), 5-20.
- Newfield, E., Hart, S., Dibble, S., & Kohler, L. (2006). Female-to-male transgender quality of life. *Quality of Life Research*, 15(9), 1447-1457.
- Paige, R. U. (2005). Proceedings of the American Psychological Association for the legislative year 2004: Minutes of the annual meeting of the Council of Representatives, February 20-22, 2004, Washington, DC, and July 28 and 30, 2004, Honolulu, Hawaii, and minutes of the February, April, June, August, October, and December 2004 meetings of the Board of Directors. *American Psychologist*, 60(5), Jul-Aug 2005, 436-511.

Paige, R. U. (2007). Proceedings of the American Psychological Association for the legislative year 2006: Minutes of the Annual Meeting of the Council of Representatives, February 17-19, 2006, Washington, DC; and August 17 and 21, 2006, New Orleans, LA; and minutes of the February, June, August, and December 2006 meetings of the Board of Directors. *American Psychologist*, 62(5), Jul-Aug 2007, 400-490.

Petersen, M., Stephens, J., Dickey, R., & Lewis, W. (1996). Transsexuals within the prison system: An international survey of correctional services policies. *Behavioral Sciences and the Law*, 14, 219, 221-222.

Pfafflin, F., & Junge, A. (1998). *Sex reassignment thirty years of international follow-up studies SRS: A comprehensive review, 1961-1991*. Dusseldorf, Germany: Symposium Publishing.

Rachlin, K. (2002). Transgendered individuals' experiences of psychotherapy. *International Journal of Transgenderism*, 6(1), available at <http://www.symposion.com/ijt/> (<http://www.symposion.com/ijt/>).

Rehman, J., Lazer, S., Benet, A. E., Schaefer, L. C., & Melman, A. (1999). The reported sex and surgery satisfaction of 28 postoperative male-to-female transsexual patients. *Archives of Sexual Behavior*, 28(1): 71-89.

Risser, J. M. H., Shelton, A., McCurdy, S., Atkinson, J., Padgett, P., Useche, B., et al. (2005). Sex, drugs, violence, and HIV status among male-to-female transgender persons in Houston, Texas. *International Journal of Transgenderism*, 3(2/3), 67-74.

Rodriguez-Madera, S., & Toro-Alfonso, J. (2005). Gender as an obstacle in HIV/AIDS prevention: Considerations for the development of HIV/AIDS prevention efforts for male-to-female transgenders. *International Journal of Transgenderism*, 3(2/3), 113-122.

Ross, M. W., & Need, J. A. (1989). Effects of adequacy of gender reassignment surgery on psychological adjustment: A follow-up of fourteen male-to-female patients. *Archives of Sexual Behavior*, 18(2), 145-153.

Smith Yolanda L S; Van Goozen Stephanie H M; Kuiper Abraham J; Cohen-Kettenis Peggy T. (2005). Sex reassignment: outcomes and predictors of treatment for adolescent and adult transsexuals. *Psychological Medicine*; 35(1):89-99.

Spade, D. (2003). Resisting medicine, re/modeling gender. *Berkeley Women's Law Journal*, 18(15), 15-37.

Sperber, J., Landers, S., & Lawrence, S. (2005). Access to health care for transgendered persons: Results of a needs assessment in Boston. *International Journal of Transgenderism*, 3(2/3), 75-92.

Smith Y. L. S., Van Goozen, S. H. M., Kuiper, A. J., & Cohen-Kettenis, P. T. (2005). Sex reassignment: Outcomes and predictors of treatment for adolescent and adult transsexuals. *Psychological Medicine*, 35, 89-99.

Van Kestern, P. J. M., Asscheman, H., Megens, J. A. J., & Gooren, L. J. G. (1997). Mortality and morbidity in transsexual subjects treated with cross-sex hormones, *Clinical Endocrinology*, 47, 337-342.

Witten, T. M., & Eyler, A. E. (2007). Transgender aging and the care of the elderly transgendered patient. In R. Ettner, S. Monstrey, & A. E. Eyler (Eds.), *Principles of Transgender Medicine and Surgery* (pp.343-372). New York: Haworth Press.

Xavier, J. M., Bobbin, M., Singer, B., & Budd, E.(2005). A needs assessment of transgendered people of color living in Washington, DC. *International Journal of Transgenderism*, 3(2/3), 31-48.

Please cite this policy statement as:

Anton, Barry S. (2009). Proceedings of the American Psychological Association for the legislative year 2008: Minutes of the annual meeting of the Council of Representatives, February 22-24, 2008, Washington, DC, and August 13 and 17, 2008, Boston, MA, and minutes of the February, June, August, and December 2008 meetings of the Board of Directors. *American Psychologist* 64, 372-453. doi:10.1037/a0015932

Find this article at:

<https://www.apa.org/about/policy/transgender>

1 **ACLU FOUNDATION OF ARIZONA**
2 **3707 North 7th Street, Suite 235**
3 **Phoenix, Arizona 85014**
4 **Telephone: (602) 650-1854**
5 **Facsimile: (602) 650-1376**
6 **Email: kbrody@acluaz.org**
7 **Email: mbrizgys@acluaz.org**

8 **Kathleen E. Brody – 026331**
9 **Molly Brizgys – 029216**

10 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**
11 **125 Broad Street, Floor 18**
12 **New York, New York 10004**
13 **Telephone: (212) 549-2650**
14 **Facsimile: (212) 549-2627**
15 **E-Mail: jblock@aclu.org**
16 **E-Mail: lcooper@aclu.org**

17 **Joshua A. Block**
18 **(*pro hac vice* motion to follow)**
19 **Leslie Cooper**
20 **(*pro hac vice* motion to follow)**

21 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**
22 **2390 East Camelback Road, Suite 400**
23 **Phoenix, Arizona 85016**
24 **Telephone: (602) 248-8203**
25 **Facsimile: (602) 248-8840**
26 **E-Mail: burr@aikenschenk.com**
27 **E-Mail: ham@aikenschenk.com**
28 **E-Mail: nbv@aikenschenk.com**

James Burr Shields - 011711
Heather A. Macre - 026625
Natalie B. Virden - 031609

Attorneys for Plaintiff Russell B. Toomey

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona;
Ron Shoopman, in his official capacity as chair of the Arizona Board Of Regents;
Larry Penley, in his official capacity as Member of the Arizona Board of Regents;
Ram Krishna, in his official capacity as Secretary of the Arizona Board of Regents;
Bill Ridenour, in his official capacity as Treasurer of the Arizona Board of Regents;
Lyndel Manson, in her official capacity as Member of the Arizona Board of Regents;
Karrin Taylor Robson, in her official capacity as Member of the Arizona Board of Regents;
Jay Heiler, in his official capacity as Member of the Arizona Board of Regents;
Fred Duval, in his official capacity as Member of the Arizona Board of Regents;
Gilbert Davidson, in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon,** in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

Case No CV 19-00035-TUC-RM

DECLARATION OF RUSSELL TOOMEY IN SUPPORT OF PLAINTIFF’S MOTION FOR CLASS CERTIFICATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Russell Toomey, declare and state as follows:

1. I submit this declaration in support of Plaintiff’s Motion for Class Certification.

2. The following information is within my own personal knowledge. If called as a witness, I would and could competently testify to the facts stated herein.

3. I am man who is transgender. This means I have a male gender identity, but the sex assigned to me at birth was female.

4. I transitioned to live consistently with my male identity in 2003. Since 2003 I have received testosterone as a medically necessary treatment for gender dysphoria. I also received medically necessary chest reconstructive surgery in 2004.

5. I am a tenured professor at the University of Arizona in the department of Family Studies and Human Development. I have a master’s degree in Human Development and Family Studies from Kent State and a PhD in Family Studies and Human Development from the University of Arizona.

6. My academic research focuses on discrimination that LGBTQ youth face in their families, schools and communities and identifying ways to mitigate the association between LGBTQ discrimination and poor health outcomes.

7. I am also a member of the Transgender Studies Research Cluster on the University of Arizona campus. This is a group of faculty members whose research focuses on transgender populations, identities and meanings.

8. I serve as a faculty fellow at the University of Arizona’s LGBTQ Student Resource Center, where I interact with LGBTQA+ students on a weekly basis as well as host transgender caucuses.

9. I am also actively involved in the broader transgender community in Arizona.

1 10. I am on the steering committee for Camp Born This Way, which is a camp
2 for Arizona transgender youth and their families. The volunteers are all transgender
3 identified and/or parents of transgender youth.

4 11. I am a former Board member of the Southern Arizona Gender Alliance
5 (“SAGA”). SAGA is a 21-year old group that provides weekly support groups and events
6 throughout the year. SAGA has a private Facebook group of 905 people, who are all
7 transgender-identified people, their partners, or parents of transgender youth. I was a co-
8 facilitator for SAGA’s re-envisioning community forum in November 2018.

9 12. In 2018, my treating physician, Dr. Tiffany Woods Karsten, recommended I
10 receive a hysterectomy as a medically necessary treatment for gender dysphoria.

11 13. As a professor at the University of Arizona, I am provided health coverage
12 through the State of Arizona.

13 14. When she recommended I receive a hysterectomy, Dr. Tiffany Woods
14 Karsten requested precertification of the surgery from my insurance provider so I would
15 not have to pay out of pocket.

16 15. I was informed by my insurance provider, Blue Cross/Blue Shield, that the
17 surgery was denied because of a benefit exclusion for gender reassignment surgery.

18 16. I know of at least six other transgender employees at the University of
19 Arizona or Arizona State University who are ineligible for gender reassignment surgery
20 because of the exclusion. To my knowledge, these employees have not made a claim with
21 their insurance because they know it will be denied.

22 17. In my personal experience with many members of the transgender
23 community, including transgender youth and transgender adults, I have learned that
24 individuals do not want to identify publicly as transgender because of fear of stigma or
25 violence.

26 18. I have studied this phenomenon in my academic research. I contributed to a
27 Williams Institute report on the prevalence of several forms of stigma and discrimination
28

1 against LGBTQ adults and youth in Arizona. Many transgender individuals also identify
2 as LGBTQ.

3 19. In fact, many people did not necessarily know that I was transgender prior to
4 filing this lawsuit but I had to publicly “come out” again as a result of my public association
5 with this case.

6 20. I have discussed the requirements of being the class representative with my
7 attorneys and I understand the responsibilities and duties of a class representative.

8 I declare under penalty of perjury under the laws of the United States that the
9 foregoing is true and correct.

10 DATED this 3 day of April, 2019.

11
12 *Russell Toomey*
13 Russell Toomey

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Kathleen E. Brody – 026331**
2 **Molly Brizgys – 029216**
3 **ACLU FOUNDATION OF ARIZONA**
4 3707 North 7th Street, Suite 235
5 Phoenix, Arizona 85014
6 Telephone: (602) 650-1854
7 Email: kbrody@acluaz.org
8 Email: mbrizgys@acluaz.org

9 **Joshua A. Block****
10 **Leslie Cooper****
11 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**
12 125 Broad Street, Floor 18
13 New York, New York 10004
14 Telephone: (212) 549-2650
15 E-Mail: jblock@aclu.org
16 E-Mail: lcooper@aclu.org
17 ****Admitted Pro hac vice**

18 **James Burr Shields - 011711**
19 **Heather A. Macre - 026625**
20 **Natalie B. Virden - 031609**
21 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**
22 2390 East Camelback Road, Suite 400
23 Phoenix, Arizona 85016
24 Telephone: (602) 248-8203
25 E-Mail: burr@aikenschenk.com
26 E-Mail: ham@aikenschenk.com
27 E-Mail: nbv@aikenschenk.com

28 *Attorneys for Plaintiff Russell B. Toomey*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State Of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman,** in his official capacity as chair of the Arizona Board Of Regents; **Larry Penley,** in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna,** in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour,** in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson,** in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson,** in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler,** in his official capacity as Member of the Arizona Board of Regents; **Fred Duval,** in his official capacity as Member of the Arizona Board of Regents; **Gilbert Davidson,** in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon,** in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants

Case No. 4:19-cv-00035 LCK

**DECLARATION OF
JAMES BURR SHIELDS IN
SUPPORT OF PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

DECLARATION OF JAMES BURR SHIELDS

1
2 1. I represent Plaintiff Russell Toomey and the proposed Class in the above-
3 captioned matter.

4 2. I am a shareholder at the law firm of Aiken Schenk Hawkins & Ricciardi,
5 P.C.

6 3. My principal areas of practice are labor and employment law and civil
7 litigation. I was licensed to practice law in the State of Arizona in 1987. My law degree
8 is from the University of Arizona.

9 4. I have extensive experience representing employees in discrimination
10 matters, including lawsuits in both State and Federal Court.

11 5. Heather A. Macre is a shareholder at the law firm of Aiken Schenk
12 Hawkins & Ricciardi, P.C.

13 6. Ms. Macre's primary areas of practice are civil litigation and healthcare
14 law, including health insurance-related issues. Ms. Macre was licensed to practice law in
15 the State of Arizona in 2008 and in the State of Florida in 2006. Her law degree is from
16 the University of Florida.

17 7. Ms. Macre has worked on multiple civil rights cases and has partnered with
18 the ACLU on some of those matters. In addition, Ms. Macre has been involved in the
19 legal issues brought forth in the current matter since May 2017.

20 8. Natalie B. Virden is an associate attorney at the law firm of Aiken Schenk
21 Hawkins & Ricciardi, P.C.

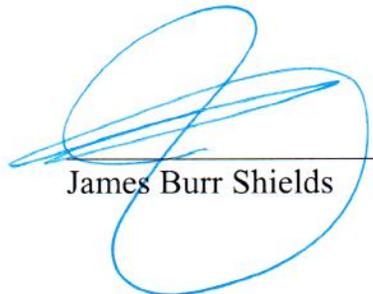
22 9. Ms. Virden's primary area of practice is labor and employment law. Ms.
23 Virden was licensed to practice law in the State of Arizona in 2014 and received her law
24 degree from the University of Iowa.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. Ms. Virden was class counsel for a collective and class action lawsuit brought under the Fair Labor Standards Act in 2014. *See Foschi v. Pennella, et al.* (2:14-cv-01253-NVW).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4/1/19



James Burr Shields

1 **Kathleen E. Brody – 026331**
2 **Molly Brizgys – 029216**
3 **ACLU FOUNDATION OF ARIZONA**
4 3707 North 7th Street, Suite 235
5 Phoenix, Arizona 85014
6 Telephone: (602) 650-1854
7 Email: kbrody@acluaz.org
8 Email: mbrizgys@acluaz.org

9 **Joshua A. Block****
10 **Leslie Cooper****
11 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**
12 125 Broad Street, Floor 18
13 New York, New York 10004
14 Telephone: (212) 549-2650
15 E-Mail: jblock@aclu.org
16 E-Mail: lcooper@aclu.org
17 ****Admitted Pro hac vice**

18 **James Burr Shields - 011711**
19 **Heather A. Macre - 026625**
20 **Natalie B. Virden - 031609**
21 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**
22 2390 East Camelback Road, Suite 400
23 Phoenix, Arizona 85016
24 Telephone: (602) 248-8203
25 E-Mail: burr@aikenschenk.com
26 E-Mail: ham@aikenschenk.com
27 E-Mail: nbv@aikenschenk.com

28 *Attorneys for Plaintiff Russell B. Toomey*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State Of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman**, in his official capacity as chair of the Arizona Board Of Regents; **Larry Penley**, in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna**, in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour**, in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson**, in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson**, in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler**, in his official capacity as Member of the Arizona Board of Regents; **Fred Duval**, in his official capacity as Member of the Arizona Board of Regents; **Gilbert Davidson**, in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

Case No. 4:19-cv-00035 LCK

**DECLARATION OF
KATHLEEN E. BRODY IN
SUPPORT OF PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

1 I, **KATHLEEN E. BRODY**, declare:

2 1. This declaration is submitted in support of Plaintiffs' Motion for Class
3 Certification. The facts set forth herein are within my personal knowledge or knowledge
4 gained from review of the pertinent documents. If called upon, I could and would testify
5 competently thereto.

6 2. I am the Legal Director of the American Civil Liberties Union Foundation
7 of Arizona ("ACLU of Arizona"), which is a nonprofit organization with 501(c)(3) tax-
8 exempt status.

9 3. In addition to myself, ACLU of Arizona staff attorney Molly Brizgys and
10 paralegal Gloria Torres are working on this case.

11 4. I am a member in good standing of the Arizona State Bar, the California
12 State Bar (inactive), the U.S. District Court for the District of Arizona, and the U.S. Court
13 of Appeals for the Ninth Circuit. I received my Juris Doctor degree, summa cum laude,
14 from the University of Arizona James E. Rogers College of Law in 2007. From 2007 to
15 2008, I was a law clerk for Justice Andrew D. Hurwitz of the Arizona Supreme Court.
16 From 2008 to 2016, I was an attorney at Osborn Maledon, P.A., in Phoenix, Arizona, and
17 a member of that firm from 2013 to 2016. I joined the ACLU of Arizona in August 2016.

18 5. I am a member of the Federal Bar Association, the National Association of
19 Criminal Defense Lawyers, and the Arizona Attorneys for Criminal Justice ("AACJ"). I
20 am currently on AACJ's board and serve as the co-chair of its legislative and policy
21 committee. I was AACJ's board president in 2015. From 2011 to 2017, I served on the
22 Arizona State Bar's Committee on the Rules of Professional Conduct (also known as the
23 Ethics Committee).

24 6. As a lawyer in private practice, I was involved in the defense of at least one
25 shareholder class action.
26
27
28

1 **Kathleen E. Brody – 026331**
2 **Molly Brizgys – 029216**
3 **ACLU FOUNDATION OF ARIZONA**
4 3707 North 7th Street, Suite 235
5 Phoenix, Arizona 85014
6 Telephone: (602) 650-1854
7 Email: kbrody@acluaz.org
8 Email: mbrizgys@acluaz.org

9 **Joshua A. Block****
10 **Leslie Cooper****
11 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**
12 125 Broad Street, Floor 18
13 New York, New York 10004
14 Telephone: (212) 549-2650
15 E-Mail: jblock@aclu.org
16 E-Mail: lcooper@aclu.org
17 ****Admitted Pro hac vice**

18 **James Burr Shields - 011711**
19 **Heather A. Macre - 026625**
20 **Natalie B. Virden - 031609**
21 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**
22 2390 East Camelback Road, Suite 400
23 Phoenix, Arizona 85016
24 Telephone: (602) 248-8203
25 E-Mail: burr@aikenschenk.com
26 E-Mail: ham@aikenschenk.com
27 E-Mail: nbv@aikenschenk.com
28

Attorneys for Plaintiff Russell B. Toomey

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State Of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman,** in his official capacity as chair of the Arizona Board Of Regents; **Larry Penley,** in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna,** in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour,** in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson,** in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson,** in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler,** in his official capacity as Member of the Arizona Board of Regents; **Fred Duval,** in his official capacity as Member of the Arizona Board of Regents; **Gilbert Davidson,** in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon,** in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

Case No. 4:19-cv-00035 LCK

**DECLARATION OF
JOSHUA A. BLOCK IN
SUPPORT OF PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

DECLARATION OF JOSHUA A. BLOCK

1
2 1. I represent Plaintiff Russell Toomey and the proposed Class in the above-
3 captioned matter.

4
5 2. I am a Senior Staff Attorney at the American Civil Liberties Union’s LGBT
6 Project.

7 3. I received my J.D. from Yale Law School in 2005, and I clerked for the Hon.
8 Robert D. Sack on the U.S. Court of Appeals for the Second Circuit. I then worked as a litigation
9 associate at a commercial law firm before joining the ACLU in 2010.

10 4. At the ACLU LGBT Project, I have worked extensively on litigation protecting
11 the rights of transgender people. Among other things, I represent the plaintiff in *G.G. v.*
12 *Gloucester County School Bd.*, 822 F.3d 709 (4th Cir. 2016), which is the first federal court of
13 appeals decision recognizing the right of transgender individuals to use restrooms consistent with
14 their gender identity. I also represent the plaintiffs in *Stone v. Trump*, No. GLR-17-2459 (D. Md.
15 2017), a legal challenge to President Trump’s orders banning transgender people from serving in
16 the military.

17 5. I have particular expertise in protecting access to health care for transgender
18 people, including access to transition-related care for gender dysphoria. I have represented the
19 plaintiffs in challenging health insurance policies that excluding transition-related care in
20 *Robinson v. Dignity Health*, No. 3:16-cv-03035-YGR (N.D Cal.); *Enstad v Peace Health*, No.
21 2:17-cv-01496-RSM (W.D. Wash); and *Bruce v. State of South Dakota*, No. 17-5080 (D.S.D.)

22 6. I also have experience as class counsel in *Collins v. United States*, No. 10-778C
23 (Ct. Cl.), a class action challenging the military’s policy of cutting in half the separation pay
24 provided to service members discharged pursuant to “Don’t Ask, Don’t Tell,” and *Harris v.*
25 *Rainey*, No. 5:13-cv-00077 (W.D. Va.), a class action challenging Virginia’s ban on marriage for
26 same sex couples.
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 2019.

/s/ Joshua A. Block
Joshua A. Block

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; et al.,

Defendants.

Case No. 4:19-cv-00035 LCK

[PROPOSED]

ORDER CERTIFYING CLASS ACTION

The Court, having considered Plaintiff's Motion for Class Certification (Doc. ___) pursuant to Fed. R. Civ. P. 23, orders as follows:

The Court certifies this action as a class action with respect to all Plaintiffs' claims for relief on behalf of the following classes and subclasses:

IT IS FURTHER ORDERED that the following counsel be appointed as Class Counsel pursuant to Fed. R. Civ. P. 23(g).

1 Kathleen E. Brody – 026331
2 Molly Brizgys – 029216
3 ACLU FOUNDATION OF ARIZONA
4 3707 North 7th Street, Suite 235
5 Phoenix, Arizona 85014
6 Telephone: (602) 650-1854
7 Facsimile: (602) 650-1376
8 Email: kbrody@acluaz.org
9 Email: mbrizgys@acluaz.org

10 Joshua A. Block
11 Leslie Cooper
12 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
13 125 Broad Street, Floor 18
14 New York, New York 10004
15 Telephone: (212) 549-2650
16 Facsimile: (212) 549-2627
17 E-Mail: jblock@aclu.org
18 E-Mail: lcooper@aclu.org

19 James Burr Shields - 011711
20 Heather A. Macre - 026625
21 Natalie B. Virden - 031609
22 AIKEN SCHENK HAWKINS & RICCIARDI P.C.
23 2390 East Camelback Road, Suite 400
24 Phoenix, Arizona 85016
25 Telephone: (602) 248-8203
26 Facsimile: (602) 248-8840
27 E-Mail: jbs@aikenschenk.com
28 E-Mail: ham@aikenschenk.com
E-Mail: nbv@aikenschenk.com

Dated this ____ day of _____, 2019.

Hon. Lynnette C. Kimmins
United States Magistrate Judge