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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-TUC-RM (LAB)

RESPONSE TO DEFENDANTS
ARIZONA BOARD OF REGENTS,
RON SHOOPMAN, LARRY
PENLEY, RAM KRISHNA, BILL
RIDENOUR, LYNDEL MANSON,
KARRIN TAYLOR ROBSON, JAY
HEILER, AND
FRED DUVAL’S OBJECTION
TO REPORT AND
RECOMMENDATION (DOC. 51)

1 Plaintiff, Dr. Russell Toomey, respectfully submits this Response to Defendants
2 Arizona Board of Regents, Ron Shoopman, Larry Penley, Ram Krishna, Bill Ridenour,
3 Lyndel Manson, Karrin Taylor Robson, Jay Heiler, and Fred DuVal's (collectively,
4 "Answering Defendants") Objection to the Magistrate Judge's Report &
5 Recommendation. (Doc. 51).
6

7 Answering Defendants did not join State Defendants' Motion to Dismiss (Doc. 24)
8 but they nevertheless object to the Magistrate Judge's Report and Recommendation to the
9 extent that it does not make any recommendation of dismissal with respect to the
10 Answering Defendants' claims. That is not procedurally proper. If the Court grants the
11 State Defendants' Motion to Dismiss, and the Answering Defendants wish to benefit
12 from that decision, the Answering Defendants can then file their own motion for
13 judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), which is the proper vehicle
14 for seeking dismissal after a party files an answer. Plaintiff would then have the
15 opportunity to respond to the motion at the appropriate time.
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20 DATED this 16th day of July, 2019.

21 **ACLU FOUNDATION OF ARIZONA**

22 By /s/ Kathleen E. Brody

23 Kathleen E. Brody

24 Molly Brizgys

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CERTIFICATE OF SERVICE

I hereby certify that on 16th day of July, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and a copy was electronically transmitted to the following:

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9 *Ram Krishna; Bill Ridenour; Lyndel Manson; Karrin*
10 *Taylor Robson; Jay Heiler; and Fred Duval*

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/s/ Joanne Granville _____