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**Joshua A. Block \***

**Leslie Cooper\***

**(\*admitted pro hac vice)**

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

12 **Russell B. Toomey,**

13 Plaintiff,

14 v.

15 **State of Arizona; Arizona Board of Regents,**  
16 **d/b/a University of Arizona,** a governmental body  
17 of the State of Arizona; **Ron Shoopman,** In his  
18 official capacity as Chair of the Arizona Board of  
19 Regents; **Larry Penley,** in his official capacity as  
20 member of the Arizona Board of Regents; **Ram**  
21 **Krishna,** in his official capacity as Secretary of the  
22 Arizona Board of Regents; **Bill Ridenour,** in his  
23 official capacity as treasurer of the Arizona Board  
24 of Regents; **Lyndel Manson,** in her official  
25 capacity as member of the Arizona Board of  
26 Regents; **Karrin Taylor Robson,** in her official  
27 capacity as member of the Arizona Board of  
28 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; **Andy Tobin,** in his  
official capacity as 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.

CV 19-0035-TUC-RM (LAB)

**NOTICE OF FILING**  
**AMENED COMPLAINT**

1 **WILLKIE FARR & GALLAGHER LLP**  
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8 **Wesley R. Powell\***  
9 **Matthew S. Friemuth\***  
10 **(\**pro hac vice* motion to follow)**

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1 Pursuant to LRCiv 15.1(b), Plaintiff hereby gives notice of filing his Amended  
2 Complaint attached as Exhibit 1. Undersigned counsel certifies that the amended pleading  
3 is filed with consent of the opposing parties.

4 DATED this 2nd day of March, 2020.

5 ACLU FOUNDATION OF ARIZONA

6  
7 By /s/Christine K. Wee  
Christine K. Wee

8  
9 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
10 Joshua A. Block\*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2020, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all parties.

/s/ Christine K. Wee  
Christine K. Wee

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Joshua A. Block \*

Leslie Cooper\*

(\*admitted pro hac vice)

**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; **Andy Tobin,** in his official capacity as 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.

CV 19-0035-TUC-RM (LAB)

**AMENDED COMPLAINT**

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**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. \_\_\_\_\_

**COMPLAINT**

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8 **Wesley R. Powell\***  
9 **Matthew S. Friemuth\***  
10 **(\*pro hac vice motion to follow)**

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1 Plaintiff Russell B. Toomey, [Ph.D.](#), on behalf of himself and all others similarly  
2 situated, brings this action against Defendants State of Arizona, Arizona Board of Regents,  
3 d/b/a University of Arizona, Ron Shoopman, Larry Penley, Ram Krishna, Bill Ridenour,  
4 Lyndel Manson, Karrin Taylor Robson, Jay Heiler, Fred DuVal, ~~Gilbert Davidson~~ [Andy](#)  
5 [Tobin](#), and Paul Shannon, for violations of Title VII of the Civil Rights Act of 1964 and  
6 the Equal Protection Clause of the Fourteenth Amendment.  
7

## 8 INTRODUCTION

9 1. The State of Arizona provides healthcare coverage to State employees  
10 through a self-funded health plan controlled by the Arizona Department of Administration  
11 (“the Plan”). (Exhibit A.)

12 2. The Plan generally provides coverage for medically necessary care, but  
13 singles out transgender employees for unequal treatment by categorically denying all  
14 coverage for “[g]ender reassignment surgery” regardless of whether the surgery qualifies  
15 as medically necessary treatment. As a result, transgender individuals enrolled in the Plan  
16 have no opportunity to demonstrate that their transition-related care is medically necessary,  
17 and they have no opportunity to appeal any adverse determination to an independent  
18 reviewer.

19 3. In the past, some public and private insurance companies excluded coverage  
20 for treatment of gender dysphoria (~~or~~ [also called](#) “transition-related [care](#)” or “[gender-](#)  
21 [affirming](#) care”), including surgical treatments, based on the erroneous assumption that  
22 such treatments were cosmetic or experimental. Today, however, every major medical  
23 organization to address the issue has recognized that such exclusions have no basis in  
24 medical science and that transition-related care is effective, safe and medically necessary  
25 for treatment of gender dysphoria.  
26

27 4. Plaintiff Russell [B.](#) Toomey, Ph.D., is a man who is transgender. He is  
28 employed as an Associate Professor at the University of Arizona. As a result of the Plan’s  
discriminatory exclusion, Dr. Toomey has been blocked from receiving a medically-

1 necessary hysterectomy prescribed by his physician in accordance with the widely accepted  
2 standards of care for treating gender dysphoria. The Plan provides coverage for the same  
3 hysterectomies when prescribed as medically necessary treatment for other medical  
4 conditions. But, the Plan categorically excludes coverage for hysterectomies when they are  
5 medically necessary for purposes of “[g]ender reassignment.”

6 5. If the discriminatory exclusion were removed, Dr. Toomey would have an  
7 opportunity to prove that his surgery is medically necessary under the Plan’s generally  
8 applicable standards for establishing medical necessity.

9 6. If the discriminatory exclusion were removed, Dr. Toomey would also have  
10 the right to appeal any adverse determination to an independent reviewer within the third-  
11 party claims administrator and, if necessary, to an independent review organization.

12 7. On its face, the Plan discriminates against Dr. Toomey and other transgender  
13 employees “because of . . . sex” in violation of Title VII of the Civil Rights Act of 1964  
14 and deprives Dr. Toomey and other transgender employees of equal treatment under the  
15 Equal Protection Clause of the Fourteenth Amendment.

16 8. Dr. Toomey brings this [Amended](#) Complaint on behalf of himself and a  
17 proposed class of similarly situated individuals for declaratory and injunctive relief  
18 requiring Defendants to remove the Plan’s categorical exclusion of coverage for “[g]ender  
19 reassignment surgery” and evaluate whether transgender individuals’ surgical care for  
20 gender dysphoria is “medically necessary” in accordance with the Plan’s generally  
21 applicable standards and procedures.

22  
23  
24 **JURISDICTION AND VENUE**

25 9. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
26 § 2000e *et seq.* (“Title VII”), the Constitution of the United States, and 42 U.S.C. § 1983.



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1 criteria for diagnosing gender dysphoria are set forth in the Diagnostic and Statistical  
2 Manual of Mental Disorders (DSM-V) (302.85).

3 28. The widely accepted standards of care for treating gender dysphoria are  
4 published by the World Professional Association for Transgender Health (“WPATH”).  
5 Under the WPATH standards, medically necessary treatment for gender dysphoria may  
6 require medical steps to affirm one’s gender identity and transition from living as one  
7 gender to another. This treatment, often referred to as transition-related care or gender-  
8 affirming care, may include hormone therapy, surgery (sometimes called “sex  
9 reassignment surgery” or “gender confirmation surgery”), and other medical services that  
10 align individuals’ bodies with their gender identities.

11 29. Under the WPATH standards, the exact medical treatment varies based on  
12 the individualized needs of the person. Under each patient’s treatment plan, the goal is to  
13 enable the individual to live all aspects of one’s/their life consistent with one’s/their gender  
14 identity, thereby eliminating the distress associated with the incongruence.

15 30. In the past, public and private insurance companies excluded coverage for  
16 transition-related care based on the assumption that such treatments were cosmetic or  
17 experimental. Today, however, transition-related surgical care is routinely covered by  
18 private insurance programs. The American Medical Association, the American  
19 Psychological Association, the American Psychiatric Association, the American College  
20 of Obstetricians and Gynecologists, and every other major medical organization have  
21 issued policy statements and guidelines supporting healthcare coverage for transition-  
22 related care as medically necessary under contemporary standards of care. No major  
23 medical organization has taken the position that transition-related care is not medically  
24 necessary or advocated in favor of a categorical ban on insurance coverage for transition-  
25 related procedures.  
26

1 31. Medicare began covering transition-related surgery in 2014 after an  
2 independent medical board in the U.S. Department of Health & Human Services rescinded  
3 an old Medicare policy that had excluded surgery from Medicare coverage. The decision  
4 explained that the Medicare surgery exclusion was based on a medical review conducted  
5 in 1981 and failed to take into account subsequent developments in surgical techniques and  
6 medical research. Medicare now provides coverage for transition-related surgical care for  
7 gender dysphoria on a case-by-case basis based on individualized medical need.

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

9 32. Dr. Toomey’s healthcare coverage is provided and paid for by the State of  
10 Arizona through the Plan.

11 33. Individuals enrolled in the Plan must choose to receive benefits through a  
12 Network Provider. In 2018, the four Network Providers were Aetna, Blue Cross Blue  
13 Shield of Arizona, Cigna, and UnitedHealthcare. Dr. Toomey’s Network Provider is Blue  
14 Cross Blue Shield of Arizona.

15 34. The Plan generally provides coverage for medically necessary care, which  
16 the Plan defines as “services, supplies and prescriptions, meeting all of the following  
17 criteria”: (1) ordered by a physician; (2) not more extensive than required to meet the basic  
18 health needs; (3) consistent with the diagnosis of the condition for which they are being  
19 utilized; (4) consistent in type, frequency and duration of treatment with scientifically  
20 based guidelines by the medical-scientific community in the United States of America; (5)  
21 required for purposes other than the comfort and convenience of the patient or provider;  
22 (6) rendered in the least intensive setting that is appropriate for their delivery; and (7) have  
23 demonstrated medical value.  
24

25 35. In the event that the Plan denies coverage for a treatment based on purported  
26 lack of medical necessity, the Plan provides a right to appeal the decision to an independent  
27

1 reviewer at the third-party claims administrator and, if necessary, to further appeal to an  
2 external independent review organization. If an independent reviewer concludes that the  
3 treatment is medically necessary, that decision is binding, and the Plan must immediately  
4 authorize coverage for the treatment.

5 36. The Plan does not apply these generally applicable standards and procedures  
6 to surgical care for gender dysphoria. Instead, the Plan categorically denies all coverage  
7 for “[g]ender reassignment surgery” regardless of whether the surgery qualifies as  
8 medically necessary. Transgender individuals enrolled in the Plan have no opportunity to  
9 demonstrate that their transition-related care is medically necessary or to appeal any  
10 adverse determination to an independent reviewer.

11 37. All four of the health insurance companies who serve as Network Providers  
12 for the Plan have adopted internal policies and standards for determining when transition-  
13 related surgery for gender dysphoria is medically necessary and, thus, covered. (Exhibits  
14 C—F.) But, as a result of the Plan’s “gender reassignment” exclusion, the Network  
15 Providers do not apply those internal policies and standards when administering the Plan  
16 to Arizona State employees and, instead, automatically deny coverage of transition-related  
17 surgery.  
18

19 **Dr. Toomey’s medically necessary treatment for gender dysphoria**

20 38. Dr. Toomey is a man who is transgender, which means that he has a male  
21 gender identity, but the sex assigned to him at birth was female. Dr. Toomey transitioned  
22 to live consistently with his male identity in 2003. Since 2003, Dr. Toomey has received  
23 testosterone as a medically necessary treatment for gender dysphoria. He also received  
24 medically necessary chest reconstruction surgery in 2004.  
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1           39. In accordance with the WPATH Standards of Care, Dr. Toomey’s treating  
2 physicians have recommended that he receive a hysterectomy as a medically necessary  
3 treatment for gender dysphoria.

4           40. The Plan provides coverage for the same surgery when prescribed as  
5 medically necessary treatment for other medical conditions, but not when the surgery is  
6 performed as part of transition-related care.

7           41. Dr. Toomey has satisfied all of the criteria for a medically necessary  
8 hysterectomy under the WPATH Standards of Care.<sup>1</sup>

9           42. All four of the Network Providers for the Plan have adopted internal policies  
10 and guidelines that authorize hysterectomies as medically necessary treatments for gender  
11 dysphoria based on the same criteria used by the WPATH Standards of Care.

12           43. As a result of the Plan’s categorical exclusion for “gender reassignment  
13 surgery,” Dr. Toomey’s Network Provider—Blue Cross Blue Shield of Arizona—denied  
14 preauthorization for Dr. Toomey’s hysterectomy on August 10, 2018. (Exhibit G-7.)

15           44. In denying preauthorization, Blue Cross Blue Shield of Arizona did not apply  
16 its own internal guidelines for determining whether the hysterectomy is a medically  
17 necessary treatment for gender dysphoria. The denial was based solely on the Plan’s  
18 exclusion for “gender reassignment surgery.”

19           45. The denial letter from Blue Cross Blue Shield of Arizona stated:  
20 [W]e cannot approve this request because the laparoscopic total  
21 hysterectomy with removal of tubes and ovaries surgery, for your diagnosis  
22

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23 <sup>1</sup> Those criteria are: (a) Two referral letters from qualified mental health professionals; (b)  
24 Persistent, well documented gender dysphoria; (c) Capacity to make a fully informed  
25 decision and to consent for treatment; (d) Age of majority in a given country; (e) If  
26 significant medical or mental health concerns are present, they must be well controlled;  
27 and (f) Twelve continuous months of hormone therapy as appropriate to the patient’s  
gender goals (unless the patient has a medical contraindication or is otherwise unable or  
unwilling to take hormones).

1 of transsexualism and gender identity disorder is considered a gender  
2 reassignment surgery, which is a benefit exclusion. This finding is based on  
3 your benefit plan booklet on pages 56 & 57 under the heading of “Exclusions  
and General Limitations” which states:

4 10.1 Exclusions and General Limitations

5 “In addition to any services and supplies specifically excluded in any other  
6 Article of the Plan Description, any services and supplies which are not  
7 described as covered are excluded. In addition, the following are specifically  
8 excluded Services and Supplies:

- 9 • Gender reassignment surgery.”

10 If you choose to get the laparoscopic total hysterectomy with removal of  
11 tubes and ovaries surgery, BCBSAZ will not cover the costs of this service.

12 (Ex. G at 1.)

13 **CLASS ALLEGATIONS**

14 46. Dr. Toomey brings this action on behalf of himself and a class of similarly  
15 situated individuals pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.  
16 Through the “gender reassignment surgery” exclusion, Defendants have “acted or refused  
17 to act on grounds that apply generally to the class, so that final injunctive relief or  
18 corresponding declaratory relief is appropriate respecting the class as a whole.” Rule  
19 23(b)(2).

20 47. Class certification is appropriate because Dr. Toomey challenges the facial  
21 validity of the Plan’s “gender reassignment surgery” exclusion, which denies transgender  
22 individuals an equal opportunity to demonstrate that their transition-related surgical care is  
23 medically necessary. The denial of that equal opportunity is an injury in fact that can be  
24 resolved on a class-wide basis.

25 48. Dr. Toomey seeks a declaratory judgment and injunction requiring  
26 Defendants to remove the Plan’s categorical exclusion of coverage for “[g]ender  
27

1 reassignment surgery” and evaluate whether transgender individuals’ surgical care for  
2 gender dysphoria is “medically necessary” in accordance with the Plan’s generally  
3 applicable standards and procedures.

4 49. Dr. Toomey proposes two classes based on the claims against each  
5 Defendant.

6 50. With respect to (a) the Title VII claim against the State of Arizona and the  
7 Arizona Board of Regents and (b) the equal protection claim against Defendants Ron  
8 Shoopman, Ram Krishna, Bill Ridenour, Larry Penley, Lyndel Manson, Karrin Taylor  
9 Robson, Jay Heiler, and Fred DuVal in their official capacities: the proposed class consists  
10 of all current and future employees of the Arizona Board of Regents, who are or will be  
11 enrolled in the self-funded Plan controlled by the Arizona Department of Administration,  
12 and who have or will have medical claims for transition-related surgical care.

13 51. With respect to the equal protection claim against Defendants Gilbert  
14 Davidson Andy Tobin and Paul Shannon in their official capacities: the proposed class  
15 consists of all current and future individuals (including Arizona State employees and their  
16 dependents) who are or will be enrolled in the self-funded Plan controlled by the Arizona  
17 Department of Administration, and who have or will have medical claims for transition-  
18 related surgical care.

19 52. Each of the proposed classes is so numerous that joinder of all members is  
20 impracticable.

21 53. For each of the proposed classes, there are questions of law or fact common  
22 to the class. Because Dr. Toomey brings a facial challenge, the class claims do not depend  
23 on whether a particular individual’s transition-related surgery is ultimately proven to be  
24 medically necessary. Dr. Toomey merely seeks declaratory relief and an injunction  
25 providing all class members the opportunity to have their claims for transition-related  
26

1 surgery evaluated for medical necessity under the same standards and procedures that the  
2 Plan applies to other medical treatments.

3 54. For each of the proposed classes, the claims or defenses of the representative  
4 parties are typical of the claims or defenses of the class.

5 55. For each of the proposed classes, Dr. Toomey will fairly and adequately  
6 protect the interests of the class.

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**COUNT I  
VIOLATION OF TITLE VII  
(Against State of Arizona and Arizona Board of Regents)**

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5        57-56. Title VII of the Civil Rights Act of 1964 provides that employers may not  
6 “discriminate against any individual with respect to his compensation, terms, conditions,  
7 or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-  
8 2(a)(1).

9        58-57. The State of Arizona and the Arizona Board of Regents are employers as that  
10 term is defined in Title VII, 42 U.S.C. § 2000e-(a) and (b).

11        59-58. An employer-sponsored health plan is part of the “compensation, terms,  
12 conditions, or privileges of employment.” 42 U.S.C. § 2000e-2(a)(1).

13        60-59. Discrimination on the basis of transgender status or gender nonconformity is  
14 discrimination on the basis of “sex” under Title VII.

15        61-60. The employer-sponsored health plan provided by the State of Arizona and  
16 the Arizona Board of Regents facially discriminates based on transgender status and gender  
17 nonconformity by categorically excluding coverage for all medically necessary “gender  
18 reassignment surger[ies].”

19        62-61. Because medical transition from one sex to another inherently transgresses  
20 gender stereotypes, denying medically necessary coverage based on whether surgery is  
21 performed for purposes of “gender reassignment” constitutes impermissible discrimination  
22 based on gender nonconformity.

23        63-62. Because the need to undergo gender transition is a defining aspect of  
24 transgender status, discrimination based on gender transition is discrimination against  
25 transgender individuals as a class.  
26

27        64-63. By categorically excluding all coverage for “[g]ender reassignment surgery,”

1 the Plan deprives Dr. Toomey and other transgender employees of an equal opportunity to  
2 prove that their transition-related surgery is medically necessary under the same standards  
3 and procedures that apply to other medical conditions.

4 ~~65-64~~.By providing a facially discriminatory employer-sponsored health plan, the  
5 State of Arizona and the Arizona Board of Regents have unlawfully discriminated—and  
6 continue to unlawfully discriminate—against Dr. Toomey and members of the proposed  
7 class “with respect to [their] compensation, terms, conditions, or privileges of employment,  
8 because of . . . sex.” 42 U.S.C. § 2000e-2(a)(1).

9  
10 **COUNT II**  
11 **VIOLATION OF THE EQUAL PROTECTION CLAUSE**  
12 **(Against Defendants Shoopman, Krishna, Ridenour, Penley, Manson, Robson,**  
13 **Heiler, DuVal ~~Davidson, Tobin~~ and Shannon in their official capacities)**

14 ~~67-65~~.At all relevant times, Defendants Shoopman, Krishna, Ridenour, Penley,  
15 Manson, Robson, Heiler, DuVal, ~~Davidson~~Tobin and Shannon have acted under color of  
16 State law.

17 ~~68-66~~.Pursuant to 42 U.S.C. § 1983, Defendants Shoopman, Krishna, Ridenour,  
18 Penley, Manson, Robson, Heiler, DuVal, ~~Davidson~~Tobin and Shannon, in their official  
19 capacities, are liable for declaratory and injunctive relief for violations of the Equal  
20 Protection Clause.

21 ~~69-67~~.In their official capacity as officers and members of the Arizona Board of  
22 Regents, Defendants Shoopman, Krishna, Ridenour, Penley, Manson, Robson, Heiler, and  
23 DuVal are responsible for the terms and conditions of employment at the University of  
24 Arizona.

25 ~~70-68~~.In his official capacity as ~~Interim~~ Director of the Arizona Department of  
26 Administration, Defendant ~~Gilbert Davidson~~Andy Tobin is responsible for “determin[ing]

1 the type, structure, and components of the insurance plans made available by the  
2 Department [of Administration].” Ariz. Admin. Code R2-6-103.

3 71.69. In his official capacity as Acting Assistant Director of Benefit Services  
4 Division of the Arizona Department of Administration, Defendant Paul Shannon ~~Shannon~~  
5 has direct oversight and responsibility for administering the benefits insurance programs  
6 for State employees, including employees of the Arizona Board of Regents.

7 72.70. The Equal Protection Clause of the Fourteenth Amendment provides: “No  
8 State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

9 73.71. Arizona State employees are protected by the Equal Protection Clause.

10 74.72. The employer-sponsored health plan provided by the State of Arizona and  
11 the Arizona Board of Regents facially discriminates based on transgender status and gender  
12 nonconformity by categorically excluding coverage for all medically necessary “gender  
13 reassignment surgery.”

14 75.73. Because medical transition from one sex to another inherently transgresses  
15 gender stereotypes, denying medically necessary coverage for based on whether surgery is  
16 performed for purposes of “gender reassignment” constitutes impermissible discrimination  
17 based on gender nonconformity.

18 76.74. Because the need to undergo gender transition is a defining aspect of  
19 transgender status, discrimination based on gender transition is discrimination against  
20 transgender individuals as a class.

21 77.75. By categorically excluding all coverage for “[g]ender reassignment surgery,”  
22 the Plan deprives Dr. Toomey and other transgender employees of an equal opportunity to  
23 prove that their transition-related surgical is medically necessary under the same standards  
24 and procedures that apply to other medical conditions.  
25  
26

1           78.76. By providing a facially discriminatory employer-sponsored health plan, the  
2 State of Arizona and the Arizona Board of Regents, by and through Defendants Shoopman,  
3 Krishna, Ridenour, Penley, Manson, Robson, Heiler, DuVal, DavidsonTobin and Shannon,  
4 acting in their respective official capacities, have unlawfully discriminated—and continue  
5 to unlawfully discriminate—against Dr. Toomey and members of the proposed class on the  
6 basis of gender, which is subject to heightened scrutiny under the Equal Protection Clause.

7           79.77. By providing a facially discriminatory employer-sponsored health plan, the  
8 State of Arizona and the Arizona Board of Regents, by and through Defendants Shoopman,  
9 Krishna, Ridenour, Penley, Manson, Robson, Heiler, DuVal, DavidsonTobin and Shannon,  
10 acting in their respective official capacities, have unlawfully discriminated—and continue  
11 to unlawfully discriminate—against Dr. Toomey and members of the proposed class on the  
12 basis of transgender status, which is independently subject to heightened scrutiny under the  
13 Equal Protection Clause.

- 14
- 15           a. Men and women who are transgender, as a class, have historically  
16           been subject to discrimination.
  - 17           b. Men and women who are transgender, as a class, have a defining  
18           characteristic that bears no relation to an ability to perform or  
19           contribute to society.
  - 20           c. Men and women who are transgender, as a class, exhibit immutable  
21           or distinguishing characteristics that define them as a discrete group.
  - 22           d. Men and women who are transgender, as a class, are a minority with  
23           relatively little political power.

24           80.78. The Plan’s discriminatory exclusion is not narrowly tailored to serve a  
25 compelling governmental interest.



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D. Such other relief as the Court deems just and proper.

DATED this 2nd day of March, 2020.

ACLU FOUNDATION OF ARIZONA

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**CERTIFICATE OF SERVICE**

