

1 Paul F. Eckstein (#001822)
 2 Austin C. Yost (#034602)
PERKINS COIE LLP
 3 2901 North Central Avenue, Suite 2000
 4 Phoenix, Arizona 85012-2788
 5 Telephone: 602.351.8000
 6 Facsimile: 602.648.7000
 PEckstein@perkinscoie.com
 7 AYost@perkinscoie.com
 DocketPHX@perkinscoie.com

8 *Attorneys for Defendants Arizona Board of Regents,*
 9 *Ron Shoopman, Larry Penley, Ram Krishna,*
 10 *Bill Ridenour, Lyndel Manson, Karrin Taylor Robson,*
Jay Heiler, and Fred DuVal

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE DISTRICT OF ARIZONA

13 **Russell B. Toomey,**

14 Plaintiff,

15 v.

16
 17 **State of Arizona; Arizona Board of**
 18 **Regents, d/b/a University of Arizona,** a
 governmental body of the State of Arizona;
 19 **Ron Shoopman,** in his official capacity as
 Chair of the Arizona Board of Regents;
 20 **Larry Penley,** in his official capacity as
 Member of the Arizona Board of Regents;
 21 **Ram Krishna,** in his official capacity as
 Secretary of the Arizona Board of Regents;
 22 **Bill Ridenour,** in his official capacity as
 Treasurer of the Arizona Board of Regents;
 23 **Lyndel Manson,** in her official capacity as
 Member of the Arizona Board of Regents;
 24 **Karrin Taylor Robson,** in her official
 25 capacity as Member of the Arizona Board of
 26 Regents; **Jay Heiler,** in his official capacity
 27 as Member of the Arizona Board of
 28 Regents; **Fred DuVal,** in his official

Case No. CV 19-00035-TUC-RM (LCK)

**DEFENDANTS ARIZONA BOARD
 OF REGENTS, RON SHOOPMAN,
 LARRY PENLEY, RAM KRISHNA,
 BILL RIDENOUR, LYNDEL
 MANSON, KARRIN TAYLOR
 ROBSON, JAY HEILER, AND
 FRED DUVAL'S RESPONSE
 TO REPORT AND
 RECOMMENDATION (DOC. 134)**

1 capacity as Member of the Arizona Board of
2 Regents; **Andy Tobin**, in his official
3 capacity as Director of the Arizona
4 Department of Administration; **Paul**
5 **Shannon**, in his official capacity as Acting
6 Assistant Director of the Benefits Services
7 Division of the Arizona Department of
8 Administration,

9 Defendants.

10 Under 28 U.S.C. § 636(b)(1), Defendants Arizona Board of Regents (“the Board”),
11 Ron Shoopman, Larry Penley, Ram Krishna, Bill Ridenour, Lyndel Manson, Karrin Taylor
12 Robson, Jay Heiler, and Fred DuVal (collectively, “University Defendants”) respond to the
13 Magistrate Judge’s Report and Recommendation as follows. (Doc. 134).

14 The University Defendants reiterate the position that they set out in their Response
15 to Dr. Toomey’s Motion for Preliminary Injunction. (Doc. 122). The University Defendants
16 do not object to Dr. Toomey’s requested preliminary injunction against the State of Arizona,
17 Andy Tobin, and Paul Shannon (collectively, “State Defendants”). In addition, the Board
18 does not object to a preliminary injunction against it so long as: (1) the injunction entered
19 against the Board is no greater than the injunction entered against the State Defendants and
20 (2) the injunction is not entered against the individually named Regents.

21 To be clear, the Board strongly objects to a preliminary injunction entered against it
22 but not the State Defendants. Arizona law requires the Board to “accept the benefit level,
23 plan design, insurance providers, premium level and other terms and conditions determined
24 by” the Arizona Department of Administration (“ADOA”). A.R.S. § 38-656(E); *see also*
25 A.R.S. § 38-656(B) (providing that, when the Board participates in the health insurance
26 plan that is controlled by ADOA, ADOA’s health insurance plan “shall be the only health
27 . . . insurance coverage offered to” the Board’s employees). The Board thus has no
28 reasonable authority to independently offer the health insurance coverage that Dr. Toomey

1 requests in his Complaint and Motion for Preliminary Injunction. The Board must instead
2 offer only the health insurance coverage that ADOA permits it to offer.

3 For these reasons, the Board does not object to Dr. Toomey’s requested preliminary
4 injunction against it so long as the injunction is entered contemporaneously against the State
5 Defendants and not against the individually named Regents because the State Defendants
6 are the only Defendants with authority to remove the “[g]ender reassignment surgery”
7 exclusion from the health insurance plan that is controlled by ADOA.
8

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10 Dated: December 14, 2020

PERKINS COIE LLP

11
12 By: *s/ Paul F. Eckstein*

13 Paul F. Eckstein
14 Austin C. Yost
15 2901 North Central Avenue, Suite 2000
16 Phoenix, Arizona 85012-2788

17 *Attorneys for Defendants Arizona Board of*
18 *Regents, Ron Shoopman, Larry Penley, Ram*
19 *Krishna, Bill Ridenour, Lyndel Manson, Karrin*
20 *Taylor Robson, Jay Heiler, and Fred DuVal*
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Certificate of Service

I certify that, on December 14, 2020, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants.

A copy was also e-mailed this December 14, 2020 to:

<p>Wesley R. Powell Matthew S. Friemuth Nicholas Reddick Kristen Killian Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019 wpowell@willkie.com mfriemuth@willkie.com nreddick@willkie.com kkillian@willkie.com</p>	<p>Timothy J. Berg Amy Abdo Ryan Curtis Shannon Cohan Fennemore Craig, P.C. 2394 East Camelback Road, Suite 600 Phoenix, AZ 85016 tberg@fclaw.com amy@fclaw.com rcurtis@fclaw.com scohan@fclaw.com</p> <p><i>Attorneys for Defendants State of Arizona, Andy Tobin, and Paul Shannon</i></p>
<p>Joshua A. Block Leslie Cooper American Civil Liberties Union Foundation 125 Broad Street, Floor 18 New York, NY 10004 jblock@aclu.org lcooper@aclu.org</p>	
<p>Christine K. Wee Victoria Lopez ACLU Foundation of Arizona 3707 North 7th Street, Suite 235 Phoenix, AZ 85014 cwee@acluaz.org vlopez@acluaz.org</p> <p><i>Attorneys for Plaintiff Russell Toomey</i></p>	

s/ Clair Wendt