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UNITED STATES DISTRICT COURT
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.

No. CV 19-0035-TUC- (LAB)

PLAINTIFF’S MOTION TO COMPEL

1 Plaintiff, Dr. Russell B. Toomey, on behalf of himself and the certified Classes
2 (“Plaintiff”), hereby submits through the undersigned counsel the following
3 Memorandum of Law in support of his Motion For Entry of An Order Compelling The
4 Production Of Documents (the “Motion”) from the State Of Arizona, Andy Tobin, and
5 Paul Shannon (collectively, the “State Defendants”) in response to Plaintiff’s First
6 Request for Production of Documents and Tangible Things, dated December 8, 2020
7 (“Request for Production”, “Request” or “RFP”). This Motion and exhibits hereto is
8 accompanied by the Transmittal Declaration of Christine K. Wee (“Wee Decl.”), and
9 Plaintiff’s LRCiv 7.2(j)-(k) and 37.1 Statement (“Plaintiff’s LRCiv Statement”).

10 **PRELIMINARY STATEMENT**

11 Plaintiff’s Request for Production seeks documents and information concerning
12 the State Defendants’ reasons for excluding medically necessary gender-affirming
13 surgeries from coverage under the Plan. State Defendants have withheld certain
14 documents responsive to Plaintiff’s requests on grounds that these documents are
15 protected from disclosure by the “deliberative process privilege.” Yet State Defendants
16 have also steadfastly refused to provide almost any information that would allow Plaintiff,
17 or this Court, to evaluate such privilege claims, including through the submission of a
18 sworn declaration from the government, or through specific information explaining why
19 the withheld documents are in any fashion “predecisional” and “deliberative.”
20

21 Even if State Defendants had properly asserted the privilege, however, the
22 deliberative-process privilege is only a qualified privilege, and it is easily overcome in
23 this case. *F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984). Courts
24 in the Ninth Circuit and across the country have consistently held that the deliberative
25 process cannot stand in the way of disclosure in civil rights cases when the legitimacy of
26 the government’s motive and decision-making process are directly at issue. Here, State
27 Defendants have repeatedly argued that they had legitimate, nondiscriminatory, and non-
28 pretextual reasons for excluding medically necessary gender-affirming care from the

1 Plan, and they cannot now shield from discovery the very documents that might speak to
2 this defense (or lack thereof). Further, Plaintiff seeks to vindicate constitutional and civil
3 rights under the Equal Protection Clause of the Fourteenth Amendment and Title VII of
4 the Civil Rights Act of 1964, on its own behalf and for the Classes, which include Arizona
5 State employees. The public’s interest in disclosure is therefore at its zenith.

6 **BACKGROUND**

7 **A. The Factual Disputes At Issue In This Case**

8 Plaintiff alleges that the State Defendants’ categorical exclusion of medically
9 necessary gender-affirming surgery from the health plan for state employees violates Title
10 VII and the Equal Protection Clause. In their Joint Status Report dated October 23, 2020,
11 the Parties agreed that one of the disputed factual questions in this case is “Whether the
12 decision to exclude gender reassignment surgery in the Health Care Plan was actually
13 motivated by a legitimate governmental interest.” (Dkt. No. 128, at 11.) Although
14 Plaintiff argues that the Plan’s exclusion is facially discriminatory and violative of Title
15 VII and the Equal Protection Clause (Dkt. No. 86, at 12-15), Magistrate Judge Bowman’s
16 Report & Recommendation regarding Plaintiff’s Motion for a Preliminary Injunction also
17 concluded that Plaintiff must prove discriminatory intent by the State Defendants to
18 succeed on his claims. (Dkt. No., at 6, 9.) Although the district court rejected this portion
19 of the Report and Recommendation (Dkt. No. 162, at 11), it is unsettled what standard
20 the Court will ultimately apply to Plaintiff’s claims, and therefore what discovery it may
21 need.

22 **B. State Defendants’ Assertion Of Deliberative Process Privilege**

23 On December 8, 2020, Plaintiff served his Request for Production on State
24 Defendants. (Wee Decl., Ex. 2.) Plaintiff’s Request for Production contained nine
25 Requests, of which Request Nos. 1, 3, 5, and 9 specifically sought documents and
26 information concerning the Plan’s exclusion, and the decision-making process leading to
27 that policy.

1 On December 22, 2020, State Defendants served on Plaintiff their first privilege
2 log (“First Privilege Log”). (Wee Decl. Ex. 3.) Notably, none of the entries on the State
3 Defendants’ First Privilege Log indicated any assertion of the deliberative process
4 privilege. On January 5, 2021, Plaintiff’s counsel requested by email additional details
5 about several of the entries on State Defendants’ First Privilege Log. (Wee Decl. Ex. 4.)

6 On January 21, 2021, State Defendants served on Plaintiff a letter responding to
7 Plaintiff’s January 5, 2021 email (Wee Decl. Ex. 5), as well as their responses and
8 objections to Plaintiff’s Request for Production. (Wee Decl. Ex. 6.) In that letter, State
9 Defendants informed Plaintiff that six documents from their First Privilege Log—Entry
10 Nos. 6, 7, 50, 67, 70, and 71—that had originally been withheld on the basis of the
11 attorney-client privilege, were now being withheld pursuant to the deliberative process
12 privilege. (Wee Decl. Ex. 5 at 2.) State Defendants failed to provide an explanation for
13 this change. State Defendants likewise responded and objected to Plaintiffs’ Request
14 Nos. 1-6, and 9 on the basis that, among other things, each of these RFPs “seeks
15 documents and communications protected by the. . . deliberative process privilege, and
16 other applicable privileges.” (Wee Decl. Ex. 6 at 3, 5-9, 11.) State Defendants failed to
17 accompany their assertion of the deliberative process privilege with any sworn declaration
18 from the agency head of the ADOA, Mr. Paul Shannon (or from the Arizona Governor’s
19 office), setting out their review of the documents, the need for their continued
20 confidentiality, or any other pertinent information that would have allowed Plaintiff to
21 evaluate their privilege claim.

22 **C. Parties Meet And Confer On Multiple Occasions**

23 On February 3, 2021, Plaintiff sent State Defendants a letter setting out
24 deficiencies in State Defendants’ responses and objections, State Defendants’ document
25 productions to-date, and addressing, among other things, State Defendants’ deliberative
26 process privilege claim. (Wee Decl. Ex. 7.) In that letter, Plaintiff specifically raised that
27 State Defendants had not provided sufficient information to allow them to assess the
28

1 validity of their deliberative process privilege claim, including whether the withheld
2 documents were “predecisional” and “deliberative.” (*Id.* at 7.) Plaintiff noted that State
3 Defendants’ had not followed the required procedure of submitting a sworn declaration
4 from the government. (*Id.* at 7-8.) Plaintiff also noted that, in all events, the privilege
5 would be overcome here where the State Defendants’ “decision-making process is the
6 central issue.” (*Id.* at 8.) Plaintiff closed that letter by agreeing to discuss these issues
7 further at their previously scheduled meet and confer. (*Id.* at 9.)

8 On February 10, 2021, and then again on March 3, 2021, the Parties met and
9 conferred by telephone on several topics, including the deliberative process privilege.
10 (Wee Decl. Ex. 1, Declaration of Jordan C. Wall (“Wall Decl.”) ¶¶ 9, 11.) At both
11 meetings, Plaintiff reiterated their objections to State Defendants’ assertion of the
12 deliberative process privilege. (*Id.*) At their first conference, State Defendants agreed to
13 serve an updated privilege log providing additional details in support of their privilege
14 claim, and to evaluate whether there were any documents erroneously withheld on the
15 basis of the deliberative process privilege. (*Id.* ¶ 9.) On February 25, 2021, State
16 Defendants served on Plaintiff an updated privilege log (“Revised Privilege Log”, Wee
17 Decl. Ex. 8.) State Defendants’ Revised Privilege Log revised the number of documents
18 withheld on the basis of deliberative process privilege to 35. At the parties’ March 3,
19 2021 conference, Plaintiff reiterated its objections to the State Defendants’ continued
20 assertion of the deliberative process privilege. (Wall Decl. ¶ 11.)

21 On March 10, 2021, State Defendants provided a further revised privilege log
22 (“Second Revised Privilege Log”, Wee Decl. Ex. 9, and together with the First Privilege
23 Log and Revised Privilege Log, the “Privilege Logs”).¹ State Defendants’ Second
24

25
26 1 On March 17, 2021, State Defendants alerted Plaintiff that certain documents claimed
27 to be protected by the deliberative process privilege had been inadvertently produced
28 to Plaintiff. (Wee Decl. Ex. 10.) State Defendants provided no additional information
supporting their claim of privilege with respect to these documents.

1 Revised Privilege Log still withheld 35 documents on the basis of the deliberative process
2 privilege. The State Defendants also failed on both February 25 and March 10 to provide
3 any sworn declaration from the government invoking the deliberative process privilege.

4 **D. Ongoing Dispute and Depositions**

5 State Defendants have withheld 35 documents on the basis of the deliberative
6 process privilege. Based on the limited information provided in their Second Revised
7 Privilege Log, these documents all detail discussions about the “transgender benefits”
8 provided under the Plan. As State Defendants’ production of document is rolling, State
9 Defendants may continue to assert the privilege over additional documents and withhold
10 potentially critical evidence on grounds they have failed to establish, and now effectively
11 forfeited. These documents are also germane to depositions that are currently ongoing.
12 Several of the withheld documents involve ADOA employees who have already been
13 deposed (Ms. Yvette Medina), or whose depositions are upcoming, including: Ms. Marie
14 Isaacson, on March 26, 2021; Mr. Scott Bender, on March 31, 2021; and, ADOA Director,
15 Mr. Paul Shannon in April 2021.

16 **ARGUMENT**

17
18 A party “may obtain discovery regarding any non-privileged matter that is relevant
19 to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ.
20 P. 26(b)(1); *Ocean Garden Prods. Inc. v. Blessings Inc.*, No. CV-18-00322-TUC-RM,
21 2020 WL 4284383, at *1 (D. Ariz. July 27, 2020) (Márquez, J.) Discovery may be
22 compelled when a respondent unjustifiably objects to the production of responsive
23 documents. Fed. R. Civ. P. 37(a)(3)(B)(iv); *Ocean Garden Prods. Inc.*, 2020 WL
24 4284383, at *2. An objection based on the “deliberative process” privilege must be
25 asserted with particularity, *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB,
26 2016 WL 8199308, at *4 (D. Ariz. July 21, 2016), and must comply with clear procedural
27 requirements, or else be waived. *See L.H. v. Schwarzenegger*, No. CIVS-06-2042 LKK
28 GGH, 2008 WL 2073958, at *8 (E.D. Cal. May 14, 2008). State Defendants have

1 repeatedly failed to assert the deliberative process privilege with particularity and to
 2 comply with its clear procedural requirements, so their objections on such grounds should
 3 be deemed forfeited.²

4 Even if State Defendants properly asserted the deliberative process privilege, the
 5 privilege is a qualified one that may be overcome where the “need for the materials and
 6 the need for accurate fact-finding override the government’s interest in non-disclosure.”
 7 *F.T.C.*, 742 F.2d at 1161. In all events, State Defendants’ deliberative process privilege
 8 claims should be overcome given the heightened public interest in civil rights actions,
 9 like Plaintiff’s Title VII and Equal Protection Claims (brought on behalf of Arizona State
 10 employees), and because State Defendants have placed the facts of their decision-making
 11 process directly in dispute.

12 **I. DEFENDANTS HAVED FAILED TO SATISFY THEIR PRIMA FACIE**
 13 **BURDEN FOR INVOKING THE DELIBERATIVE PROCESS PRIVILEGE**

14 The deliberative process privilege protects documents or testimony³ that “reflect
 15 advisory opinions, recommendations and deliberations comprising part of a process by
 16 which government decisions and policies are formulated.” *F.T.C.*, 742 F.2d at 1161.

17
 18 2 State Defendants additionally assert the attorney-client privilege over four of the
 19 documents they claim are shielded by the deliberative process privilege. (Ex. 8,
 20 Second Revised Privilege Log, Nos. 20, 21, 75, and 207.) The information contained
 21 in the Second Revised Privilege Log is not sufficient to enable Plaintiff to assess the
 22 validity of State Defendants’ claim, or that these documents could not be sufficiently
 23 redacted to protect privileged information. *See United States v. Ruehle*, 583 F.3d 600,
 24 607-08 (9th Cir. 2009) (attorney-client privilege is “to be strictly confined within the
 25 narrowest possible limits consistent with the logic of its principle”). Plaintiff asks that
 26 the Court perform an *in camera* review of these four documents to determine whether
 27 these documents are subject to the attorney-client privilege, and if the privileged
 28 information is separable.

3 *See Unknown Parties*, 2016 WL 8199308, at *4 (“Generally the privilege is invoked
 to protect documents, but courts have applied it to testimony as well and have made
 no distinction between the two.”); *Id.*, at *4-5 (rejecting deliberative process privilege
 claim with respect to deposition topics)

1 The proponent bears a “prima facie burden” of demonstrating that an agency head (or her
 2 representative) has specifically invoked the privilege through the submission of a sworn
 3 declaration. *Mayfield v. Cnty. of Los Angeles*, No. 219-CV-1298-FMO(SKx), 2020 WL
 4 2510649, at *1 (C.D. Cal. Mar. 20, 2020); *EEOC v. Swissport Fueling, Inc.*, No. CV-10-
 5 2101-PHX-GMS, 2012 WL 1648416, at *15 (D. Ariz. May 10, 2012) (“[T]he claim of
 6 deliberative due process privilege must be raised by a formal claim made by the head of
 7 the agency after she has personally considered the material in question prior to the
 8 invocation of the privilege” (emphasis added)); *Unknown Parties*, 2016 WL 8199308, at
 9 *5 (agency head and not counsel must assert privilege for public policy reasons).

10 State Defendants have failed to satisfy their *prima facie* burden as they have not
 11 provided any sworn declarations by an agency head (or her representative) invoking the
 12 privilege, attesting to her personal review of the documents at issue, or explaining the
 13 potential harm production of such documents poses to the government.⁴ *Cf. Cal. Native*
 14 *Plant Soc’y v. U.S. E.P.A.*, 251 F.R.D. 408, 413 (N.D. Cal. 2008) (submission of multiple
 15 “declarations by senior agency officials” not sufficient). Plaintiff alerted State
 16 Defendants to their procedural failure both in writing and during the parties’ two meet
 17 and confer conferences. (Wee Decl. Ex. 7 at 8; Wall Decl. ¶¶ 9, 11.) State Defendants
 18 failed to correct this error on multiple occasions, thereby forfeiting their objection on
 19 these grounds.

20 **II. STATE DEFENDANTS HAVE FAILED TO ARTICULATE HOW**
 21 **WITHHELD DOCUMENTS ARE “PREDECISIONAL” AND**
 22 **“DELIBERATIVE”**

23 State Defendants bear the further burden of establishing that the withheld

24 4 It is not even clear *which* governmental entity—*i.e.*, the ADOA or the Arizona
 25 Governor’s Office—seeks to invoke the privilege. State Defendants provide only that
 26 their assertion of the deliberative process privilege is premised on the involvement of
 27 “Ms. Marie Isaacson—a representative of ADOA” who “discusses the transgender
 28 surgery exclusion with Ms. Christina Corieri—a representative of the Governor’s
 Office.” (Wee Decl. Ex. 5, at 2.)

1 documents or testimony are both: (1) “predecisional,” *i.e.*, “generated before the adoption
2 of an agency's policy or decision”; and (2) “deliberative,” *i.e.*, reflecting “opinions,
3 recommendations, or advice about agency policies.” *F.T.C.*, 742 F.2d at 1161; *N.*
4 *Pacifica, LLC v. City of Pacifica*, 274 F. Supp. 2d 1118, 1121 (N.D. Cal. 2003). State
5 Defendants have not carried this burden, failing to assert with particularity that the
6 withheld documents are either predecisional or deliberative. Their claims fail for several
7 additional reasons too.

8 First, with respect to all the withheld documents, State Defendants have failed to
9 “assert with precision the reason why each document is subject to the asserted
10 [deliberative process] privilege”. *EEOC*, 2012 WL 1648416, at *15 (emphasis added);
11 *Cal. Native Plant Soc’y*, 251 F.R.D. at 413 (proponent must describe “how each document
12 fits into the deliberative process” of policy formation). The Privilege Logs fail to do so,
13 providing only rote descriptions of each withheld document as somehow relating to
14 “transgender benefits.” State Defendants’ descriptions fall into only three categories—
15 documents: (i) “regarding recommended proposed revisions to transgender benefits” (Ex.
16 8, Second Revised Privilege Log Nos. 6-7, 20-21, 50, 67, 70-71, 76, 125, 153, 170-75,
17 225-227); (ii) “discussing proposed transgender benefits” (Nos. 216-223); or (iii)
18 “regarding transgender benefits” (Nos. 75, 204-09). The lack of specificity about each
19 document is plainly inadequate. *Cal. Native Plant Soc’y*, 251 F.R.Dat 413 (“an index of
20 documents, providing just basic information and a brief description, is inadequate even
21 when accompanied by conclusory affidavits”) (emphasis added); Fed. R. Civ. P.
22 26(b)(5)(A). Due to the lack of particularity, State Defendants have also failed to
23 establish that the privilege applies to the entirety of each withheld document, and that
24 privileged information, if any, could not be otherwise redacted. *See Karnoski v. Trump*,
25 926 F.3d 1180, 1204 (9th Cir. 2019) (“if the government can segregate and disclose non-
26 privileged factual information within a document, it must”).
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28

1 Second, with respect to documents dated after December 8, 2016,⁵ State
 2 Defendants have failed to show that the withheld documents are “predecisional.” *See*
 3 *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151-52 (1975) (“[L]ower courts have
 4 uniformly drawn a distinction between predecisional communications, which are
 5 privileged . . . and communications made after the decision and designed to explain it,
 6 which are not” (emphasis added)). By December 8, 2016, State Defendants had
 7 communicated to Network Providers that there had been no change to the Plan’s exclusion
 8 of gender-affirming surgeries. (Wee Decl. Ex. 11 (December 8, 2016 email from ADOA
 9 employee to Cigna representative stating that the ADOA “will be covering the counseling
 10 and hormonal therapy but not the surgery”). Documents after December 8, 2016,
 11 therefore do not satisfy the “predecisional” prong.

12 Third, with respect to documents reflecting State Defendants’ interpretation of
 13 Section 1557 of the Affordable Care Act, or ACA,⁶ State Defendants have failed to show
 14 that the documents are “deliberative.” These documents likely do not “disclose the
 15 personal opinions or mental processes of decision-makers” in formulating State
 16 Defendants’ policy on the Plan’s exclusion, but rather interpret or explain the impact of a
 17 new federal regulation on that policy. *Cal. Native Plant Soc’y*, 251 F.R.D. at 413; *see*
 18 *also Greenpeace v. Nat’l Marine Fisheries Serv.*, 198 F.R.D. 540, 543 (W.D. Wash. 2000)
 19 (“the privilege is centrally concerned with protecting the process by which the *policy* is
 20

21 5 Wee Decl. Ex. 8, Second Revised Privilege Log: No. 6 (January 13, 2017 email); No.
 22 7 (January 13, 2017 email); No. 50 (January 13, 2017 email); No. 67 (February 19,
 23 2019 email); No. 70 (October 25, 2018 email); No. 71 (October 25, 2018 email); No.
 24 76 (December 15, 2016 email); No. 125 (January 13, 2017 email); No. 153 (February
 25 3, 2020 email); No. 170 (December 15, 2016 email); No. 171 (December 15, 2016
 26 email); No. 172 (December 14, 2016 email); No. 216 (May 24, 2018 email); No. 217
 (May 23, 2018 email); No. 218 (May 23, 2018 email); No. 219 (May 23, 2018 email);
No. 220 (May 23, 2018 email); No. 221 (May 23, 2018 Email); No. 222 (May 23,
 2018 email); No. 223 (May 23, 2018 email); and No. 225 (December 16, 2016 email).

27 6 Wee Decl. Ex. 8, Second Revised Privilege Log, Nos. 20-21, 50, 67, 70-71, 75-76,
 28 170-75, 204-209, and 225-27.

1 formulated” (emphasis in original)); *Mobil Oil Corp. v. Dep't of Energy*, 102 F.R.D. 1, 5
2 (N.D.N.Y. 1983) (“Working law communications, *i.e.*, those explanations or
3 interpretations of an existing decision, are not within the protection of the privilege”
4 (quotations omitted)).

5 Fourth, State Defendants have failed to show that deliberative process privilege
6 applies to documents State Defendants shared with parties who are not part of either the
7 ADOA or the Arizona Governor’s Office’s decision-making process.⁷ *See North Dakota*
8 *ex rel. Olson v. Andrus*, 581 F.2d 177, 179, 181-82 n.9 (8th Cir. 1978) (privileged
9 documents voluntarily disclosed to opposing counsel effected a waiver); *Marisol A. v.*
10 *Giuliani*, No. 95 Civ. 10533(RJW), 1998 WL 132810, at *8 (S.D.N.Y. Mar. 23, 1998)
11 (privilege waived to the extent protected information was publicly published in statements
12 and plans of action); *Shell Oil Co. v. I.R.S.*, 772 F. Supp. 202, 209-11 (D. Del. 1991)
13 (agency waived deliberative process privilege by orally reading to third party contents of
14 protected document).

15 **III. EVEN IF DELIBERATIVE PROCESS PRIVILEGE APPLIED, THE NEED** 16 **FOR ACCURATE FACT-FINDING WOULD OVERCOME THE PRIVILEGE**

17 The deliberative process privilege is not absolute, but qualified. *F.T.C.*, 742 F.2d
18 at 1161. It may be overcome when the “need for the materials and the need for accurate
19 fact-finding override the government’s interest in non-disclosure.” *Id.* For example,
20 where the agency’s decision-making process is itself at issue, and not merely collateral to
21 the dispute. *In re Subpoena Duces Tecum Served on Off. of Comptroller of Currency*,
22 145 F.3d 1422, 1424 (D.C. Cir. 1998); *see also N. Pacifica, LLC*, 274 F. Supp. 2d at 1123
23 (compelling testimony about City Council decision-making process, motive and intent).
24 Or where the public interest in disclosure is compelling, as in civil rights actions. *See,*
25 *e.g., N. Pacifica, LLC*, 274 F. Supp. 2d at 1121 (asserting equal protection claims);

26
27 7 Ex. 8 Second Revised Privilege Log Nos. 216-223 (documents exchanged between
28 various “various Arizona cities, counties, and agencies”).

1 *Arizona Dream Act Coal. v. Brewer*, No. CV-12-02546-PHX-DGC, 2014 WL 171923
2 (D. Ariz. Jan. 15, 2014) (claiming discrimination based off of immigration status). Here,
3 State Defendants have placed their decision-making process directly at issue, claiming
4 that there are legitimate, non-discriminatory, and non-pretextual reasons for the Plan’s
5 exclusion. (Dkt. No. 89 at 28.) Further, Plaintiff seeks to vindicate his (and other public
6 employees’) civil rights under Title VII and the Equal Protection Clause. (Dkt. No. 86 at
7 13-17.) In all events therefore, State Defendants’ assertion of the privilege would be
8 overcome.

9 The need for disclosure of the withheld documents is bolstered by the four-factor
10 balancing test promulgated by courts, including in the Ninth Circuit, to determine when
11 to overturn the deliberative process privilege. The test balances: “1) the relevance of the
12 evidence; 2) the availability of other evidence; 3) the government's role in the litigation;
13 and 4) the extent to which disclosure would hinder frank and independent discussion
14 regarding contemplated policies and decisions.” *F.T.C.*, 742 F.2d at 1161. An additional
15 four factors recognized by courts also bolsters the need for disclosure, including: “(5) the
16 interest of the litigant, and ultimately society, in accurate judicial fact finding”; (6) “the
17 seriousness of the litigation and the issues involved”; (7) “the presence of issues
18 concerning alleged governmental misconduct”; and (8) “the federal interest in the
19 enforcement of federal law.” *N. Pacifica, LLC*, 274 F. Supp. 2d at 1122 (internal citations
20 omitted); *see United States v. Irvin*, 127 F.R.D. 169, 173 (C.D. Cal. 1989) (setting out 8-
21 factor test). On every factor, the balance of equities tips strongly in favor of disclosure.

22 **A. The Four-Factor Balancing Test Strongly Favors Disclosure Of The**
23 **Withheld Documents**

24 The first factor, *i.e.*, relevance, strongly favors disclosure. In civil rights cases such
25 as this one, in which the government’s motivations are directly at issue, information about
26 the government’s “deliberative process” is highly relevant. *N. Pacifica*, 274 F. Supp. 2d
27 at 1124 (“Because the City Council's motive and intent are central to NP's equal protection
28 claim th[is] factor[] weigh[s] strongly in favor of disclosure.”); *In re Subpoena Duces*

1 *Tecum Served on Off. of Comptroller of Currency*, 145 F.3d at 1424 (“If the plaintiff’s
2 cause of action is directed at the government’s intent, however, it makes no sense to
3 permit the government to use the privilege as a shield”).

4 To give just one example, several of the withheld documents are communications
5 between ADOA and a policy advisor from the governor’s office name Christine Corieri.⁸
6 Before arriving at the governor’s office, this policy advisor had tweeted from her personal
7 twitter account complaining about advocates requiring Medicare to provide “taxpayer
8 dollars for gender reassignment” surgeries. (Wee Decl. Ex. 12.) To the extent that Ms.
9 Corieri had any influence over the State Defendants’ decision to maintain the Plan’s
10 exclusion, documents concerning her participation are highly relevant to determining
11 whether her personal opinions about gender affirming surgeries tainted ADOA’s
12 decision.

13 The second factor, *i.e.*, the availability of evidence, also strongly favors disclosure
14 as the withheld documents (and testimony about them) constitute the only source of
15 certain evidence of the State Defendants’ legitimate, non-discriminatory, non-pretextual
16 reasons for the Plan’s exclusion (or lack thereof). The availability (or unavailability) of
17 comparable evidence is arguably the “most important factor” in determining whether the
18 deliberative process privilege should be overcome. *N. Pacifica, LLC*, 274 F. Supp. 2d at
19 1124. The lack of an administrative record otherwise detailing the government’s
20 decision-making process strongly supports disclosure. *Cf. id.* at 1125 (overcoming the
21 privilege because the “administrative record before the City Council [did] not exhaust the
22 universe of information considered by the body”). Even more so, where the government’s
23 discriminatory intent is potentially relevant to the dispute, and may not be adequately
24 captured by a record. *Id.*; see *Mayfield*, 2020 WL 2510649, at *2 (second and third factors
25 supported disclosure because the evidence sought was “primarily, if not exclusively”
26

27 8 Wee Decl. Ex. 8, Second Revised Privilege Log, Nos. 76, 170-175, 204-206, 208-
28 209, 226-227.

1 under the government’s control (citation omitted)). Here, to the extent any of the withheld
2 documents are predecisional (of which there would be only a few, *see supra* § 2), there
3 is no administrative record to speak of, such as minutes of meetings, or other comparable
4 evidence of whether State Defendants’ had a legitimate, non-discriminatory, and non-
5 pretextual justification for the Plan’s exclusion, aside from the withheld documents.

6 The third factor, *i.e.*, the government’s role in the litigation, strongly favors
7 disclosure as the State Defendants are named defendants in this dispute. The deliberative
8 process privilege “may be inapplicable where the agency’s decision-making process is
9 itself at issue.” *Greenpeace*, 198 F.R.D. at 543; *Mayfield*, 2020 WL 2510649, at *2 (third
10 factor favored disclosure where “the government . . . is a party to and the focus of the
11 litigation” (quotation and citation omitted)).

12 The fourth factor, *i.e.*, potential hindrance to “frank and independent discussion
13 regarding contemplated policies,” strongly favors disclosure as the withheld documents
14 largely do not concern a contemplated policy, but a longstanding one. Further, absent the
15 sworn declaration from an agency head (or her representative), there is no evidence to
16 support that there will be any hindrance. State Defendants’ failure to correct this
17 procedural defect cannot be excused. *See Unknown Parties*, 2016 WL 8199308, at *4
18 (“Defendants have no excuse for procedural non-compliance or for failing to prepare a
19 privilege log with the specificity necessary [to] prevail on the merits of its assertions of
20 privilege”); *Mayfield*, 2020 WL 2510649, at *2 (government failed to set out “how
21 disclosure of the investigative files *in this specific case* would hinder candid discussion
22 of contemplated public policies (emphasis in original)).

23 **B. Additional Four Factors Strongly Favor Disclosure Of The Withheld** 24 **Documents**

25 The fifth factor, *i.e.*, the interest in accurate judicial fact finding, the sixth factor,
26 *i.e.*, the seriousness of the litigation, and the eighth factor, *i.e.*, the “federal interest in the
27 enforcement of federal law,” all strongly favor disclosure because Plaintiff seeks to
28 vindicate federal constitutional rights, as well as civil rights. *N. Pacifica, LLC*, 274 F.

1 Supp. 2d at 1123-24; *In re Subpoena Duces Tecum Served on Off. of Comptroller of*
2 *Currency*, 145 F.3d at 1424 (“[I]t seems rather obvious to us that the privilege has no
3 place in a Title VII action or in a constitutional claim for discrimination.”) Preliminarily,
4 in “every case, the desirability of accurate fact finding weighs in favor of disclosure.” *N.*
5 *Pacifica, LLC*, 274 F. Supp. 2d at 1124. The seriousness of the litigation, and the federal
6 interest in the dispute, is even greater here because Plaintiff asserts a violation of the
7 Equal Protection Clause involving a protected class, requiring heightened scrutiny. *Cf.*
8 *id.* at 1124 (“[E]ven though NP has alleged a violation of equal protection, no suspect
9 class such as race or gender or some other basis for heightened scrutiny is involved”); *see*
10 *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1741 (2020) (discrimination on the basis
11 of transgender status is discrimination on the basis of sex under Title VII).

12 The seventh factor, *i.e.*, issues involving alleged governmental misconduct,
13 likewise strongly favors disclosure because such misconduct relates to the violation of
14 constitutional and civil rights. *See Grossman v. Schwarz*, 125 F.R.D. 376, 381 (S.D.N.Y.
15 1989) (“In a civil rights action where the deliberative process of State or local officials is
16 itself genuinely in dispute, privileges designed to shield that process from public scrutiny
17 must yield to the overriding public policies expressed in the civil rights laws.”); *see also*
18 *N. Pacifica, LLC*, 274 F. Supp. 2d at 1123-24; *In re Subpoena Duces Tecum Served on*
19 *Off. of Comptroller of Currency*, 145 F.3d at 1424. Although Plaintiff asserts that the
20 Plan’s exclusion facially discriminates against transgender and gender nonconforming
21 individuals in violation of Title VII and the Equal Protection Clause, above, State
22 Defendants have put their intent (including any potential misconduct) at issue in this
23 dispute.

CONCLUSION

For all the reasons discussed above, Plaintiff's Motion should be granted.

Dated: March 18, 2021

ACLU FOUNDATION OF ARIZONA

By /s/ Christine K. Wee

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Attorneys for Plaintiff Russell B. Toomey

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2021 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 email to all parties by operation of the Court's electronic filing system.

/s/Christine Wee
Christine K. Wee

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UNITED STATES DISTRICT COURT

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.

No. 4:19-cv-00035-TUC-RM (LAB)

**PLAINTIFF'S LRCIV
STATEMENT**

1 Pursuant to Local Rule of Civil Procedure 7.2(j)-(k), and 37.1(a), Plaintiff Russell
2 B. Toomey (“Plaintiff”) hereby submits the following statement (“Plaintiff’s LRCiv
3 Statement”) in support of his Motion for Entry of an Order compelling the production of
4 documents (the “Motion”).

5 **FACTUAL BACKGROUND**

6 On December 8, 2020, Plaintiff served his First Request for Production of
7 Documents and Tangible Things (“Request for Production”, “Request”, or “RFP”) upon
8 Defendants State of Arizona, Andy Tobin, and Paul Shannon (hereinafter the “State
9 Defendants”). On January 21, 2021, State Defendants served responses and objections to
10 Plaintiff’s Request for Production. Since the time State Defendants served their response
11 to Plaintiff’s Request to Produce Documents, State Defendants have provided three
12 separate “final” privilege logs, most recently on March 10, 2021 (hereinafter “Privilege
13 Log”). Per the Privilege Log, State Defendants, without basis, withhold production of
14 thirty-five (35) documents on the basis, in whole or in part, of the deliberative process
15 privilege.

16 **LRCIV 7.2(J) STATEMENT**

17 On February 10, 2021, and then again on March 3, 2021, the Parties met and
18 conferred by telephonic conference on several topics, including the subject of the
19 deliberative process privilege. (*Id.*) At both conferences, Plaintiff reiterated their
20 objections to State Defendants’ assertion of the deliberative process privilege. Counsel
21 are agreed that the Parties had made a sincere effort in good faith to resolve or narrow the
22 dispute concerning State Defendants’ assertion of the deliberative process privilege, but
23 Parties have been unable to do so.

24 **LRCIV 37.1 STATEMENT**

25 **1. Plaintiff’s Request for Production No. 1:**

26 (1) **Request:** “Please produce all documents related to the Plan’s current
27 or prior Transgender Healthcare Exclusion, including, but not limited to: (a) all
28

1 draft and previous version of the Transgender Healthcare Exclusion, including
2 the earliest iteration of the Transgender Healthcare Exclusion, and any
3 attachments or supplement thereto (whether actual or proposed); (b) all
4 documents (to include any formal or informal financial or budgetary or other
5 analyses, actuarial reports, or other reports or memoranda) and communications
6 between Defendants and all internal and external persons (including, but not
7 limited to, any insurance company, any consultant, the Alliance Defending
8 Freedom, the Center for Arizona Policy, or any lobbying or interest group
9 regarding whether any form or transition-related care or the Transgender Health
10 Exclusion should be adopted, modified, retained, or eliminated, and the
11 rationale provided or discussed; (c) all documents and communications with
12 internal and external persons pertaining to Defendants' initial decision to
13 exclude transition-related or the Transgender Health Exclusion, including
14 minutes or recordings of meetings where coverage for or exclusion of any form
15 of transition-related care was discussed."

16 (2) **Response:** "The State Defendants object to Request For Production
17 No. 1 on the ground that it is overbroad, unduly burdensome, oppressive,
18 harassing, and seeks to impose unreasonable costs on the State Defendants. The
19 State Defendants further object that the scope of the Request Is not proportional
20 to the needs of the case. The State Defendants further object that the Request
21 seeks documents and communications protected by the attorney-client
22 privilege, the work product doctrine, the deliberative process privilege, and
23 other applicable privileges. The State Defendants further object that the Request
24 seeks information protected by the constitutional, statutory and/or common law
25 privacy rights of the Plan beneficiaries. The State Defendants further object to
26 the Request to the extent that it seeks documents not within the possession,
27 custody, and control of the Arizona Department of Administration. Subject to
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1 and without waiving the foregoing objections, the State Defendants respond as
2 follows: The State Defendants will produce non-privilege documents
3 responsive to Request For Production No. 1 in the possession, custody, and
4 control of the Arizona Department of Administration. The State Defendants are
5 not in possession, custody, or control of any Health Plan Documents prior to
6 2005.

7 (3) **Deficiency:** State Defendants response, objections, and Privilege
8 Log are deficient. First, State Defendants have not complied with the
9 procedural requirements for invoking the deliberative process privileged,
10 including through the submission of a sworn declaration from the government.
11 As such, State Defendants effectively forfeited any objection on the basis of the
12 privilege. Second, State Defendants have not asserted the privilege with
13 particularity, including providing details about how the documents withheld are
14 either predecisional or deliberative. Third, in all events, the privilege should be
15 overcome because the need for accurate fact-finding overcomes the privilege.

16 **2. Plaintiff's Request for Production No. 2**

17 (1) **Request:** "Please produce all documents and communications
18 between Defendants and internal and external persons relating to and regarding
19 the State of Arizona's decision to join the litigation in the Northern District of
20 Texas bearing Case No. 7:16-cv-00108 (originally filed as *Franciscan Alliance,*
21 *Inc. et al. v. Burwell et. al.*, later re-designated as *Franciscan Alliance, Inc. et*
22 *al. v. Price et al.* and *Franciscan Alliance, Inc. et al. v. Azar II et al.*), and the
23 State of Arizona's participation in that litigation."

24 (2) **Response:** "The State Defendants object to Request For Production
25 No. 2 on the ground that it seek information which is neither relevant nor
26 reasonably related to any claim or defense in this matter. Any decision made to
27 participate in the aforementioned litigation is irrelevant to the matters at issue
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1 in this case. The State Defendants further object that the Request is overbroad,
2 unduly burdensome, oppressive, harassing, and seeks to impose unreasonable
3 costs on the State Defendants. The State Defendants further object that the
4 request is not proportional to the needs of the case. The State Defendants further
5 object that the Request seeks documents and communications protected by the
6 attorney-client privilege, the work product doctrine, the deliberative process
7 privilege, and other applicable privileges. Moreover, the State Defendants
8 further object that the Request seeks documents not in the possession, custody,
9 or control of the Arizona Department of Administration, Defendants Andy
10 Tobin or Paul Shannon in their official capacities, or their predecessors. Subject
11 to and without waiving the foregoing objections, the State Defendants respond
12 as follows: The State Defendants will produce non-privileged documents
13 responsive to Request For Production No. 2 in the possession, custody, and
14 control of the Arizona Department of Administration.

15 (3) **Deficiency:** State Defendants response, objections, and Privilege
16 Log are deficient. First, State Defendants have not complied with the
17 procedural requirements for invoking the deliberative process privileged,
18 including through the submission of a sworn declaration from the government.
19 As such, State Defendants effectively forfeited any objection on the basis of the
20 privilege. Second, State Defendants have not asserted the privilege with
21 particularity, including providing details about how the documents withheld are
22 either predecisional or deliberative. Third, in all events, the privilege should be
23 overcome because the need for accurate fact-finding overcomes the privilege.

24 **3. Plaintiff's Request for Production No. 3**

25 (1) **Request:** "Please produce all versions and iterations of the Plan's
26 policies/lists of Exclusions and General Limitations (e.g., Article 9.1 of
27 ADOA's PPO and EPO Plans, Article 10.1 of ADOA's HAS Plan) from the
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1 years 2010 through present, as well as all documents and communications
2 between Defendants and internal or external persons regarding creating,
3 amending, continuing, or eliminating any exclusion of coverage contained in
4 any version/iteration of the Plan's Exclusions and General Limitations policy,
5 including, but not limited to, the potential costs of enforcing, amending, or
6 eliminating such coverage, the medical necessity, safety, and efficacy
7 (including whether a procedure is deemed experimental or cosmetic) of
8 excluded treatments and services; or the public health effects of enforcing,
9 amending, or eliminating such excluded coverage. Such documents should
10 include any and all actuarial reports, analyses, or memorandums pertaining to
11 such exclusions of coverage."

12 (2) **Response:** "The State Defendants object to Request For Production
13 No. 3 on the ground that it is overbroad, unduly burdensome, oppressive,
14 harassing, and seeks to impose unreasonable costs of State Defendants. The
15 State Defendants further object that the Request is vague and ambiguous as to
16 the term "medical necessity." The State Defendants further object that the
17 Request is not proportional to the needs of the case. The State Defendants
18 further object that the Request seeks information which is duplicative of
19 Request for Production No. 1. The State Defendants further object that the
20 Request seeks information which is neither relevant nor reasonably related to
21 any claim or defense in this matter. The State Defendants further object that the
22 Request seeks documents and communications protected by the attorney-client
23 privilege, the work product doctrine, the deliberative process privilege, and
24 other applicable privileges. The State Defendants further object that the Request
25 seeks information protected by the constitutional, statutory, and/or common law
26 privacy of the Plan beneficiaries. The State Defendants further object to the
27 Request to the extent that it seeks documents not within its possession, custody,
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1 and control of the Arizona Department of Administration. Subject to and
2 without waiving the foregoing objections, the State Defendants respond as
3 follows: The State Defendants will produce copies of the Health Plans from
4 2010 to present.”

5 (3) **Deficiency:** State Defendants response, objections, and Privilege
6 Log are deficient. First, State Defendants have not complied with the
7 procedural requirements for invoking the deliberative process privileged,
8 including through the submission of a sworn declaration from the government.
9 As such, State Defendants effectively forfeited any objection on the basis of the
10 privilege. Second, State Defendants have not asserted the privilege with
11 particularity, including providing details about how the documents withheld are
12 either predecisional or deliberative. Third, in all events, the privilege should be
13 overcome because the need for accurate fact-finding overcomes the privilege.

14 **4. Plaintiff’s Request for Production No. 4**

15 (1) **Request:** “Please Produce all documents and communications
16 between the Defendants and internal or external persons regarding whether any
17 treatment of gender dysphoria is “Medically Necessary.”

18 (2) **Response:** “The State Defendants object to Request For Production
19 No. 4 on the ground that it is overbroad, unduly burdensome, oppressive,
20 harassing, and seeks to impose unreasonable costs on the State Defendants. The
21 State Defendants further object that the Request is vague and ambiguous as to
22 the term “medically necessary.” The State Defendants further object that the
23 Request is not proportional to the needs of the case. The State Defendants
24 further object that the Requests seeks information which is neither relevant nor
25 reasonably related to any claim or defense in this matter. The State Defendants
26 further object that the Request seeks documents and communications protected
27 by the attorney-client privilege, the doctor-patient privilege, the work product
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1 doctrine, the deliberative process privilege, and other applicable privileges. The
2 State Defendants further object that the Request seeks information protected by
3 the constitutional, statutory, and/or common law privacy rights of the Plan
4 beneficiaries. The State Defendants further object to the Request to the extent
5 that it seeks documents not within the possession, custody, and control of the
6 Arizona Department of Administration. Finally, the State Defendants further
7 object because the Parties already agreed, as set forth in the Joint Status Report
8 to the Court on October 23, 2020 (Doc. 128), to narrow this case by agreeing
9 that the medical necessity of gender transition surgeries will not be an issue in
10 this case. *See* Doc. 128 at 11:11-20.”

11 (3) **Deficiency:** State Defendants response, objections, and Privilege
12 Log are deficient. First, State Defendants have not complied with the
13 procedural requirements for invoking the deliberative process privileged,
14 including through the submission of a sworn declaration from the government.
15 As such, State Defendants effectively forfeited any objection on the basis of the
16 privilege. Second, State Defendants have not asserted the privilege with
17 particularity, including providing details about how the documents withheld are
18 either predecisional or deliberative. Third, in all events, the privilege should be
19 overcome because the need for accurate fact-finding overcomes the privilege.

20 **5. Plaintiff’s Request for Production No. 5**

21 (1) **Request:** “Please produce all documents and communications
22 between the Defendants and internal or external persons concerning (a)
23 transgender people, (b) gender transition, (c) change of sex, (d) sex
24 reassignment, (e) transsexualism; or (f) gender reassignment.”

25 (2) **Response:** “The State Defendants object to Request For Production
26 No. 5 on the ground that it is overbroad, unduly burdensome, oppressive,
27 harassing, and seeks to impose unreasonable costs on the State Defendants. The
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1 State Defendants further object that the Request is not proportional to the needs
2 of the case. The State Defendants further object that the Request seeks
3 documents and communications protected by the attorney-client privilege, the
4 doctor-patient privilege, the work product doctrine, the deliberative process
5 privilege, and other applicable privileges. The State Defendants further object
6 that the Request seeks information protected by the constitutional, statutory,
7 and/or common law privacy rights of the Plan beneficiaries. The State
8 Defendants further object to the Request to the extent that it seeks documents
9 not within the possession, custody, and control of the Arizona Department of
10 Administration.”

11 (3) **Deficiency:** State Defendants response, objections, and Privilege
12 Log are deficient. First, State Defendants have not complied with the
13 procedural requirements for invoking the deliberative process privileged,
14 including through the submission of a sworn declaration from the government.
15 As such, State Defendants effectively forfeited any objection on the basis of the
16 privilege. Second, State Defendants have not asserted the privilege with
17 particularity, including providing details about how the documents withheld are
18 either predecisional or deliberative. Third, in all events, the privilege should be
19 overcome because the need for accurate fact-finding overcomes the privilege.

20 **6. Plaintiff’s Request for Production No. 6**

21 (1) **Request:** “Please produce documents sufficient to show, from 2010
22 to present: (a) the number of hysterectomies paid for by the Plan each year, the
23 medical reason for the surgery, and the individual and aggregate cost of the
24 surgeries; and (b) the number of medically necessary cosmetic or reconstructive
25 surgical procedures paid for by the Plan each year (including but not limited to
26 chest-reconstruction surgery, vaginoplasty, or phalloplasty, or other surgery
27 related to the reproductive or urogenital system) the medical reason for the
28

1 surgery, and the individual and aggregate cost of the surgeries.”

2 (2) **Response:** “The State Defendants object to Request For Production
3 No. 6 on the ground that it is overbroad, unduly burdensome, oppressive,
4 harassing, and seeks to impose unreasonable costs on the State Defendants. The
5 State Defendants further object that the Request is vague and ambiguous as to
6 the terms “medically necessary,” “cosmetic,” and “reconstructive” procedures.
7 The State Defendants further object that the Request is not proportional to the
8 needs of the case. The State Defendants further object that the Request seeks
9 information which is neither relevant nor reasonably related to any claim or
10 defense in this matter to the extent it is seeking information regarding medical
11 treatment and/or services other than for gender transition surgery. The State
12 Defendants further object that the Request seeks documents and
13 communications protected by the attorney-client privilege, the doctor-patient
14 privilege, the work product doctrine, the deliberative process privilege, and
15 other applicable privileges. The State Defendants further object that the Request
16 seeks information protected by the constitutional, statutory, and/or common law
17 privacy rights of the Plan beneficiaries. The State Defendants further object to
18 the Request to the extent that it seeks documents not within the possession,
19 custody, and control of the Arizona Department of Administration.”

20 (3) **Deficiency:** State Defendants response, objections, and Privilege
21 Log are deficient. First, State Defendants have not complied with the
22 procedural requirements for invoking the deliberative process privileged,
23 including through the submission of a sworn declaration from the government.
24 As such, State Defendants effectively forfeited any objection on the basis of the
25 privilege. Second, State Defendants have not asserted the privilege with
26 particularity, including providing details about how the documents withheld are
27 either predecisional or deliberative. Third, in all events, the privilege should be
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1 overcome because the need for accurate fact-finding overcomes the privilege.

2 **7. Plaintiff's Request for Production No. 9**

3 (1) **Request:** "Please produce all document supporting Your responses
4 to Plaintiff's First set of Interrogatories provided to Defendants on June 5,
5 2020."

6 (2) **Response:** "The State Defendants object that Request For Production
7 No. 9 is vague and ambiguous as to what documents "support" the State
8 Defendants' responses. The State Defendants further object to the Request on
9 the ground that it is overbroad, unduly burdensome, oppressive, harassing, and
10 seeks to impose unreasonable costs on the State Defendants. The State
11 Defendants further object that the Request seeks documents and
12 communications protected by the attorney-client privilege, the doctor-patient
13 privilege, the work product doctrine, deliberative process privilege, and other
14 applicable privileges. The State Defendants further object that the Request
15 seeks information protected by the constitutional, statutory, and/or common law
16 privacy rights of the Plan beneficiaries. The State Defendants further object to
17 the Request to the extent that it seeks documents not within the possession,
18 custody, and control of the Arizona Department of Administration. Subject to
19 and without waiving the foregoing objections, the State Defendants respond as
20 follows: The State Defendants have already produced non-privileged
21 documents responsive to Request For Production No. 9 in the possession,
22 custody, and control of the Arizona Department of Administration."

23 (3) **Deficiency:** State Defendants response, objections, and Privilege
24 Log are deficient. First, State Defendants have not complied with the
25 procedural requirements for invoking the deliberative process privileged,
26 including through the submission of a sworn declaration from the government.
27 As such, State Defendants effectively forfeited any objection on the basis of the
28

1 privilege. Second, State Defendants have not asserted the privilege with
2 particularity, including providing details about how the documents withheld are
3 either predecisional or deliberative. Third, in all events, the privilege should be
4 overcome because the need for accurate fact-finding overcomes the privilege.
5

6 Dated: March 18, 2021

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24 *Attorneys for Plaintiff Russell B. Toomey*
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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2021 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 email to all parties by operation of the Court's electronic filing system.

/s/Christine Wee
Christine K. Wee

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UNITED STATES DISTRICT COURT

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.

4:19-cv-00035-TUC-RM (LAB)

**DECLARATION OF
CHRISTINE K. WEE IN
SUPPORT OF PLAINTIFF
RUSSELL B. TOOMEY'S
MOTION TO COMPEL**

1 I, Christine K. Wee, submit this declaration under penalty of perjury pursuant to
2 28 U.S.C. § 1746 and declare as follows:

3 1. I am a Senior Staff Attorney at ACLU Foundation of Arizona, licensed to
4 practice law in the State of Arizona, and represent Plaintiff Russell B. Toomey (“Dr.
5 Toomey” or “Plaintiff”).

6 2. I submit this declaration in support of Plaintiff’s Motion for Entry of an
7 Order Compelling the Production of Documents.

8 3. I base this declaration on my personal knowledge and on information
9 obtained in the course of the above-captioned matter.

10 4. **Exhibit 1** as attached to Plaintiff’s Motion is a true and correct copy of
11 Jordan C. Wall’s declaration, dated March 18, 2021.

12 5. **Exhibit 2** as attached to Plaintiff’s Motion is a true and correct copy of
13 Plaintiff’s Request for Production on State Defendants, dated December 8, 2020.

14 6. **Exhibit 3** as attached to Plaintiff’s Motion is a true and correct copy of
15 State Defendants’ first privilege log, dated December 22, 2020.

16 7. **Exhibit 4** as attached to Plaintiff’s Motion is a true and correct copy of an
17 email from Willkie Farr & Gallagher LLP to State Defendants, dated January 5, 2020.

18 8. **Exhibit 5** as attached to Plaintiff’s Motion is a true and correct copy of
19 State Defendant’s letter to Willkie Farr & Gallagher LLP, dated January 21, 2021.

20 9. **Exhibit 6** as attached to Plaintiff’s Motion is a true and correct copy of
21 State Defendants’ Responses and Objections to Plaintiff’s First Request for Production
22 of Documents and Tangible Things, dated January 21, 2021.

23 10. **Exhibit 7** as attached to Plaintiff’s Motion is a true and correct copy of
24 Plaintiff’s letter to State Defendants, dated February 3, 2021.

25 11. **Exhibit 8** as attached to Plaintiff’s Motion is a true and correct copy of
26 State Defendants’ second privilege log, dated February 25, 2021.

27 12. **Exhibit 9** as attached to Plaintiff’s Motion is a true and correct copy of
28

1 State Defendants' third privilege log, dated March 10, 2021.

2 13. **Exhibit 10** as attached to Plaintiff's Motion is a true and correct copy of
3 State Defendants' letter to Plaintiff's Counsel, dated March 17, 2021.

4 14. **Exhibit 11** as attached to Plaintiff's Motion is a true and correct copy of
5 State Defendants' produced document, bates AZSTATE.000586.

6 15. **Exhibit 12** as attached to Plaintiff's Motion is a true and correct of
7 Plaintiff's Supplemental Initial Discovery Responses on Statement on Twitter, dated
8 February 13, 2021.

9 I declare under penalty of perjury that the foregoing is true is and correct.

10 Dated: March 18, 2021

11 *By /s/ Christine Wee*
12 ACLU FOUNDATION OF ARIZONA
13 Victoria Lopez
14 Christine K Wee
15 3707 North 7th Street, Suite 235
16 Phoenix, Arizona 85014

17 AMERICAN CIVIL LIBERTIES UNION
18 FOUNDATION
19 Joshua A. Block*
20 Leslie Cooper*
21 125 Broad Street, Floor 18
22 New York, New York 10004
23 *Admitted pro hac vice

24 WILLKIE FARR & GALLAGHER LLP
25 Wesley R. Powell*
26 Matthew S. Freimuth*
27 Jordan C. Wall**
28 787 Seventh Avenue
New York, New York 10019
*Admitted pro hac vice
**Admission pro hac vice pending

Attorneys for Plaintiff Russell B. Toomey

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2021 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 email to all parties by operation of the Court's electronic filing system.

/s/ Christine K. Wee
Christine K. Wee

EXHIBIT 1

1 **Victoria Lopez – 330042**
2 **Christine K Wee – 028535**
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***Admission Pro hac vice pending*

21
22 *Attorneys for Plaintiff Russell B. Toomey*
23
24
25
26
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28

UNITED STATES DISTRICT COURT

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.

No. 4:19-cv-00035

DECLARATION OF JORDAN C. WALL IN SUPPORT OF PLAINTIFF’S MOTION FOR AN ORDER COMPELLING THE PRODUCTION OF DOCUMENTS

I, JORDAN C. WALL, declare as follows:

1. I am a Senior Associate at Willkie Farr & Gallagher LLP, and represent Plaintiff Russell B. Toomey.

2. I submit this declaration in support of Plaintiff’s Motion For An Order Compelling Production Of The Documents, filed with this Court on March 18, 2021.

1 3. I base this declaration on my own personal knowledge and on information obtained
2 in the course of the above-captioned matter.

3 4. On December 8, 2020, Plaintiff served on Defendants the State of Arizona, Andy
4 Tobin, and Paul Shannon (“State Defendants”) his First Request for Production of Documents and
5 Tangible Things (“First Request for Production”). (Wee Decl. Ex. 2.)

6 5. On December 22, 2020, State Defendants’ served on Plaintiff their first privilege
7 log (“First Privilege Log”). (Wee Decl. Ex. 3.) State Defendants’ First Privilege Log made no
8 mention of the deliberative process privilege.

9 6. On January 5, 2021, Plaintiff notified by email State Defendants of deficiencies
10 with their First Privilege Log. (Wee Decl. Ex. 4.)

11 7. On January 21, 2021, State Defendants served on Plaintiff responses and objections
12 to his First Request for Production (Wee Decl. Ex. 6), along with a cover letter responding to
13 Plaintiff’s January 5, 2021 email. (Wee Decl. Ex. 5.) In that cover letter, State Defendants raised
14 the deliberative process privilege for the first time. (*Id.* at 2.) State Defendants did not at this time
15 serve on Plaintiff an additional or updated privilege log, or provide any sworn declaration from a
16 governmental agency head (or her representative) asserting the privilege.

17 8. On February 3, 2021, Plaintiff served on State Defendants a letter, raising, among
18 other deficiencies with State Defendants’ discovery responses to date, procedural and substantive
19 deficiencies with State Defendants’ assertion of the deliberative process privilege. (Wee Decl. Ex.
20 7.) Plaintiff specifically raised in that letter that State Defendants had failed to provide the required
21 sworn declaration, or otherwise state with particularity how the documents withheld were either
22 predecisional or deliberative, and that, in all events, the privilege should be overcome, as the State
23 Defendants’ decision-making process is directly at issue in the dispute. (*Id.* at 7-8.)
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1 9. On February 10, 2021, I met and conferred telephonically with counsel for State
2 Defendants, including their lead counsel, Mr. Ryan C. Curtis of Fennemore Craig, P.C., regarding
3 discovery in this dispute, including the State Defendants’ improper withholding of documents on
4 the basis of the deliberative process privilege. During that meeting, I reiterated Plaintiff’s
5 objections to State Defendants’ assertion of the deliberative process privilege raised in Plaintiff’s
6 February 3, 2021 letter. State Defendants’ counsel agreed to serve an updated privilege log
7 providing additional details in support of their privilege claims, as well as to evaluate whether
8 there were any documents erroneously withheld on the basis of the deliberative process privilege.
9

10 10. On February 25, 2021, State Defendants served on Plaintiff a revised privilege log
11 (“Revised Privilege Log”). (Wee Decl. Ex. 8.) This Revised Privilege Log provided additional
12 details about the documents withheld, including broad descriptions that they concerned
13 “transgender benefits,” but did not otherwise assert the deliberative process privilege with
14 particularity.
15

16 11. On March 3, 2021, I again met and conferred telephonically with Mr. Curtis.
17 During that meeting, I again reiterated Plaintiff’s objections to the State Defendants’ continued
18 assertion of the deliberative process privilege, and again raised State Defendant’s failure to meet
19 the procedural and substantive requirements for asserting deliberative process privilege. Counsel
20 agreed that the parties had made a sincere effort in good faith to resolve or narrow the dispute, but
21 at this time were unable to do so without assistance from the Court.
22

23 12. On March 10, 2021, State Defendants served on Plaintiff a second revised privilege
24 log (“Second Revised Privilege Log”). (Wee Decl. Ex. 9.) This Second Revised Privilege Log
25 failed to provide any meaningful additional details about the nature of State Defendants’ assertion
26 of the deliberative process privilege.
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1
2 I certify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing
3 is true and correct.

4
5 Dated: March 18, 2021

6 By /s/ Jordan C. Wall

7 WILLKIE FARR & GALLAGHER LLP

8 Wesley R. Powell*

9 Matthew S. Freimuth*

10 Jordan C. Wall**

787 Seventh Avenue

New York, New York 10019

11 *Admitted pro hac vice

**Admission pro hac vice pending

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22 *Attorneys for Plaintiff Russell B. Toomey*

EXHIBIT 2

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UNITED STATES DISTRICT COURT
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.

No. 4:19-cv-00035

PLAINTIFF’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS

Pursuant to the Federal Rules of Civil Procedure Rule 26 and 34 (together, the “Rules”), Plaintiff Russell B. Toomey, on behalf of himself and the certified Classes, hereby requests the Defendants produce the following documents and tangible things at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, within 30 days of service hereof.

DEFINITIONS

1
2 1. The term “communication,” as used herein, means the transmittal of information
3 (in the form of facts, ideas, inquiries, or otherwise), whether orally or in writing, or by any other
4 means or medium.

5
6 2. The terms “concerning,” “relating to,” “referring to,” “arising out of,” and their
7 cognates are to be understood in their broadest sense and each means concerning, constituting,
8 identifying, evidencing, summarizing, commenting upon, referring to, relating to, arising out of,
9 describing, digesting, reporting, listing, analyzing, studying, discussing, stating, setting forth,
10 reflecting, interpreting, concerning, recording, including, negating, manifesting, containing or
11 comprising the subject matter identified.

12
13 3. The terms “describe” and “description,” as used herein, mean to give a detailed
14 written account or representation of the subject matter – including, but not limited to, when used
15 with respect to any act, action, accounting, activity, audit, practice, process, occurrence, occasion,
16 course of conduct, happening, negotiation, relationship, scheme, communication, conference,
17 discussion, development, circumstances, service, transaction, instance, incident, or event – setting
18 forth the following: (a) its general nature; (b) the time and place thereof; (c) a chronological
19 account setting forth each element thereof, what such element consisted of and what transpired as
20 part thereof; (d) the identity (as defined herein) of each person who performed any function or had
21 any role in connection therewith (*i.e.*, speaker, participant, contributor of information, witness,
22 etc.) or who has any knowledge thereof, together with a description of such person’s function, role
23 or knowledge; (e) the identity (as defined herein) of each document that refers thereto or that was
24 used, referred to or prepared in the course of or as a result thereof; and (f) the identity (as defined
25 herein) of each oral communication that was a part thereof or referred thereto.
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1 4. The terms “document” and “documents” shall have the broadest meaning allowable
2 under the Rules and applicable case law, and shall include without limitation, electronically stored
3 information and written, printed, typed, recorded, or graphic matter of every kind and description,
4 both originals and copies and all attachments and appendices thereto. Without limiting the
5 foregoing, the terms “document” and “documents” shall include all agreements, contracts,
6 applications, communications, interoffice or intraoffice correspondence, books, letters, telegrams,
7 telexes, messages, memoranda, records, reports, books, summaries, electronic mail, texts, chats,
8 records of telephone conversations or interviews, summaries or other records of personal
9 conversations, minutes or summaries or other records of personal meetings and conferences,
10 summaries or other records of meetings and conferences, summaries, entries, calendars,
11 appointment books, time records, instructions, work assignments, visitor records, forecasts,
12 statistical data, statistical statements, work sheets, drafts, graphs, maps, charts, tables, marginal
13 notations, notebooks, telephone bills or records, bills, statements and records of obligation and
14 expenditure, invoices, lists, journals, advertising, recommendations, files, printouts, compilations,
15 tabulations, purchase orders, receipts, sell orders, confirmations, checks, letters of credit,
16 envelopes or folders or similar containers, vouchers, analyses, studies, surveys, transcripts of
17 hearings, transcripts of testimony, expense reports, microfilm, microfiche, articles, speeches, tape
18 or disc recordings, sound recordings, video recordings, film, tapes, photographs, punch cards,
19 programs, data compilations from which information can be obtained (including matter used in
20 data processing), and other printed, written, handwritten, typewritten, recorded, stenographic,
21 computer-generated, or electronically stored matter (or printouts thereof), however and by
22 whomever produced, prepared, reproduced, disseminated, or made.
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1 5. “Draft(s)” shall mean any formulation, outline, sketch, conceptualization, or
2 version of a document created prior to the final version of that document.

3 6. The term “factual and/or legal bases” includes, but is not limited to, any and all
4 documents, facts, communications or contentions.

5 7. The terms “identify,” “specify” and “state” mean to refer to the subject matter by
6 providing a detailed account or description of the subject matter, including, but not limited to, the
7 following:
8

- 9 a. when applicable to a document, to set forth in writing at a minimum and in the
10 following order: (i) the name of the document; (ii) the nature of the document (*e.g.*,
11 letter, contract, memorandum) and any other information (*i.e.*, its title, index or file
12 number) which would facilitate in the identification thereof; (iii) the date the
13 document was prepared or created; (iv) the identity of each person who performed
14 any function or had any role in connection therewith (*i.e.*, author, contributor of
15 information, recipient, etc.) or who has any knowledge thereof, together with a
16 description of each such person’s function, role or knowledge; (v) its subject matter
17 and substance, or, in lieu thereof, annex a legible copy of the document to Your
18 answers to these interrogatories; (vi) identification of all persons who are in
19 possession of the original and any copy of the document; (vii) its present location
20 and the identity of its present custodian, or, if its present location and custodian are
21 not known, a description of its last known disposition; (viii) where a document is other
22 than a paper (*i.e.*, computer or recording tape, microfilm disk, microfiche, etc.), a
23 full description of the tangible thing on which the information is recorded, and the
24 device or the devices needed to read or listen to the document; and (ix) if the
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1 document has been destroyed or is otherwise no longer in existence or cannot be
2 found, the reason why such document no longer exists, the identity of the person(s)
3 responsible for document no longer being in existence and the identity of the
4 document's last custodian.

5 b. when applicable to a natural person, to set forth in writing at a minimum and in the
6 following order: (i) his/her full name; (ii) his/her present and/or last known business
7 and residence address and telephone number, or an undertaking that the person may
8 be contacted through responding counsel; (iii) his/her present or last known
9 business affiliation; and (iv) his/her present or last known business position
10 (including job title and a description of job functions, duties and responsibilities);
11

12 c. when applicable to any entity or person other than a natural person, to set forth in
13 writing at a minimum and in the following order: (i) its full name; (ii) the address
14 and telephone number of its principal place of business; (iii) the jurisdiction under
15 the laws of which it has been organized or incorporated and the date of such
16 organization or incorporation; (iv) the identity of all individuals who acted and/or
17 authorized another to act on its behalf in connection with the matters referred to;
18 (v) in the case of a corporation, the names of its directors and principal officers;
19 and (vi) in the case of an entity other than a corporation, the identities of its partners
20 or principals or all individuals who acted or who authorized another to act on its
21 behalf in connection with the matters referred to;
22

23 d. when applicable to an oral communication, to set forth in writing at a minimum and
24 in the following order: (i) the date, time, place, manner and substance of such
25 communication; (ii) the identity of all persons who participated in, listened to, or
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1 had access to transcripts or summaries of such communication or copies thereof;
2 (iii) each such person's function, role, or knowledge; and (iv) the identity of all
3 documents which memorialize, commemorate, summarize, record or directly refer
4 or relate, in whole or in part, to such communication.

5 8. The term "including" means "including, but not limited to," and shall not be
6 construed to limit the scope of any definition or request herein.
7

8 9. The term "person" means any natural person, corporation, partnership,
9 proprietorship, association, joint venture, group, governmental or public entity, or any other form
10 or organization of legal entity, and all of their directors, officers, employees, representatives, and
11 agents. The term "person" specifically includes, but is not limited to, any interest or lobbying
12 group, or any employee or representative thereof, such as the Center for Arizona Policy, the
13 Alliance Defending Freedom, the American Legislative Exchange Council, the Christian Medical
14 and Dental Society, and the Franciscan Alliance, Inc.
15

16 10. "Defendants" mean Defendants State of Arizona, Arizona Board of Regents, d/b/a
17 University of Arizona, Ron Shoopman, Larry Penley, Ram Krishna, Bill Ridenour, Lyndel
18 Manson, Karrin Taylor Robson, Jay Heiler, Fred DuVal, Andy Tobin, and Paul Shannon and all
19 of their predecessors and successors in interest, and all of their representatives, attorneys, and
20 agents. The Defendant, State of Arizona, includes the current and prior administrations of the
21 Office of the Arizona Governor, the Arizona Attorney General's Office, as well as current and
22 former members and employees of the Arizona Legislature, in their official capacities.
23

24 11. The "Plan" means the State of Arizona's self-funded health plan controlled by the
25 Arizona Department of Administration.
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1 redacted and indicated as such. You shall provide the information set forth in Instruction No. 6 for
2 each such redaction. Any attachment to an allegedly privileged document shall be produced unless
3 You also contend that the attachment is privileged, in which case the information required in
4 Instruction No. 6 shall be provided separately for each such attachment.

5
6 7. If any documents requested were at one time in existence but no longer are, please
7 so state, specifying in detail for each document: (a) the document type, (b) a specific description
8 of the subject matter of the document, (c) the date upon which the document ceased to exist, (d)
9 the identity of each Person having knowledge of the circumstances under which the document
10 ceased to exist, and (e) the identity of each Person having knowledge or who had knowledge of
11 the contents thereof.

12
13 8. Each Request for Production set forth herein is a request for the original (or copy
14 when the original is not available) of the final version of such document(s), as well as non-identical
15 copies by reason of notations or markings.

16
17 9. More than one Request for Production set forth herein may call for production of
18 the same document. The presence of such duplication is not intended and shall not be interpreted
19 to narrow or limit in any way the scope of each individual Request for Production set forth herein.

20
21 10. The documents or tangible things produced in response hereto shall be segregated
22 and clearly marked or labeled so as to correspond to the specific production request to which such
23 documents or tangible things are responsive and are being produced. Alternatively, such
24 documents or tangible things shall be produced as they are kept in the usual course of business,
25 including the production of files from which such documents or tangible things are taken.
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1 11. Information shall not be withheld merely because such information is stored
2 electronically (e.g., word processing files, electronic mail, databases, accounting information, and
3 spreadsheets).

4 12. In addition to physical documents or objects, each Request for Production set forth
5 herein specifically calls for the production of electronic or magnetic data responsive to the Request,
6 including data that has been deleted.
7

8 13. Each Request for Production set forth herein calls for the following methods of
9 production:

10 a. *Hard Copy Documents.* (i) All black and white hard copy documents will be
11 scanned and produced in electronic form. The hard copy documents shall be
12 converted to a single page TIFF images and produced following the same protocol
13 set forth herein or otherwise agreed to by the parties. (ii) Images of all file labels,
14 file headings, and file folders associated with any hard copy document will be
15 produced with the images of the hard copy documents. (iii) Document breaks for
16 paper documents shall be based on Logical Document Determination (or “LDD”)
17 rather than on physical document breaks. (iv) The database load file shall include
18 the following fields: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH,
19 CUSTODIAN, REDACTED, and CDVOLUME.
20

21
22 b. *Metadata Fields and Processing.* Each of the metadata and coding fields set forth
23 in **Appendix 1** that can be extracted shall be produced for that document. The
24 parties are not obligated to manually populate any of the fields in **Appendix 1** if
25 such fields cannot be extracted from a document, with the exception of the
26 following: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, and
27

1 CUSTODIAN. The parties will make reasonable efforts to ensure that metadata
2 fields automatically extracted from the documents are correct.

3 c. *TIFFs*. Single page Group IV TIFFs should be provided, at least 300 dots per inch
4 (dpi). Single page TIFF images should be named according to the unique bates
5 number, followed by the extension “.TIF”. Original document orientation should
6 be maintained (*i.e.*, portrait to portrait and landscape to landscape).

7
8 d. *Text Files*. For each document originating in electronic format, a separate text file
9 containing the full text of each document should be provided with a file with the
10 TIFF images and a file with the document metadata. Text of native files should be
11 extracted directly from the native file. The text file should be named according to
12 the unique bates number, followed by the extension “.TXT.” The parties agree that
13 the full text and/or OCR of any document will not be contained within a database
14 load file, but rather as a standalone file with each text file containing the text for an
15 entire single document.

16
17 e. *Database Load Files*. An ASCII delimited data file (.txt, .dat, or .csv) that can be
18 loaded into commercially acceptable database software (*e.g.*, Concordance). The
19 first line of each text file must contain a header row identifying each data field by
20 name. Each document within the database load file must contain the same number
21 of fields as identified in the header row.

22
23 f. *Cross-Reference Image File Registration*. An image load file that can be loaded
24 into commercially acceptable production software (*e.g.*, Opticon, iPro). Each TIFF
25 in a production must be referenced in the corresponding image load file. An
26 exemplar load file format is below.

1 ABC0000001,PROD001,\\IMAGES\001\ABC0000001.tif,Y,,,2
2 ABC0000002,PROD001,\\IMAGES\001\ABC0000002.tif,,,,
3 ABC0000003,PROD001,\\IMAGES\001\ABC0000003.tif,Y,,,1

- 4 g. *Bates Numbering.* All images must be assigned a unique and sequential Bates
5 Number. Each party agrees to use the same Bates Numbering format through its
6 entire production unless a new Bates format is necessary, at which point the party
7 using the new Bates Numbering format will inform the other party of the change.
- 8 h. *Protective Order Designations.* Any document(s) determined by the producing
9 party to fall within the scope of a protective order shall have the appropriate level
10 of designated language (*i.e.*, CONFIDENTIAL, ATTORNEYS’ EYES ONLY,
11 OUTSIDE COUNSEL RESTRICTED, etc.) afforded by the protective order
12 endorsed on each tiff image of said document(s).
- 13 i. *Native File Productions.* The parties agree that when producing a native file, they
14 will include a TIFF image as a placeholder for the file to represent the file in the
15 production set. The TIFF image placeholder for a native file should be branded with
16 a unique Bates number and state “See Native Document” on the TIFF image. The
17 native file should then be renamed to match the Bates number assigned to the
18 document with its original file extension. The filename field produced in the
19 production load file that reflects the original metadata should maintain the original
20 file name. If a native file falls within the scope of a protective order (*see* paragraph
21 (h), above), then the appropriate designation is to be included in the filename along
22 with the assigned Bates number (*i.e.*, ABC000001_CONFIDENTIAL.xls).
- 23 j. *Microsoft Office files, WordPerfect, and other standard documents (e.g., Google*
24 *Docs and PDF documents).* MS Office files, WordPerfect, other standard
25 documents, such as PDF documents, will be converted to single-page TIFF images
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1 and produced consistent with the specifications herein. If the document contains
2 comments or tracked changes, then the TIFF images shall be generated to include
3 the comments or track changes contained in the file.

4 k. *Email and attachments.* E-mail and attachments should be converted to single-page
5 TIFF images and produced consistent with the specifications provided herein.
6 Attachments shall be processed as separate documents, and the text database load
7 file shall include a field in which the producing party shall identify the production
8 range of all attachments of each e-mail.
9

10 l. *Microsoft PowerPoint and other Presentation Files.* The parties shall process
11 presentations (e.g., MS PowerPoint, Google Presently) to include hidden slides and
12 speaker's notes by imaging in a way that both the slide and the speaker's notes
13 display on the TIFF image.

14 m. *Spreadsheets.* The parties shall produce spreadsheets (e.g., MS Excel, Google Trix)
15 in native format where available. *See paragraph (i) above.* If a spreadsheet requires
16 redaction, the parties will use native file redaction applications (e.g., Blackout).

17 n. *Good Cause for Additional Native Files.* If good cause exists to request production
18 of specified files in native format, then the party may request such production and
19 provide an explanation of the need for native file review.

20 o. *Other Documents or Data.* If production of certain structured or other electronic
21 data that is not easily converted to static TIFF images, such as databases, CAD
22 drawings, GIS data, videos, audio files, websites, social media, then the parties will
23 meet and confer to discuss an appropriate form of production.
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1 p. *Social media and other web-based content.* The production of social media or other
2 web-based content should be converted to single-page TIFF images and produced
3 consistent with the specifications provided herein. If the social media and/or web-
4 based content cannot be produced in single-page TIFF images, then the parties shall
5 meet and confer to discuss a form of production. Further, the parties will also
6 confer regarding the specific web location of the social media or other web-based
7 content and agree upon the available metadata that can be produced therewith.
8

9 q. *Color Documents.* Parties will produce documents in black and white, unless to do
10 so would alter or obscure the substance of the document. A party may request that
11 a reasonable number of documents be produced in a color format upon review of
12 the other party's production.in single page JPEG format.
13

14 r. *Redactions.* In the event that a document requires redaction, the parties agree the
15 native file, if applicable, will be excluded from the production. In addition, any
16 redacted text will be omitted from the full text and/or OCR, and any corresponding
17 metadata fields from the production. The TIFF image will readily identify the
18 redactions.

19 s. *Production Media.* Documents and electronically stored information ("ESI") shall
20 be produced on optical media (CD or DVD), external hard drives, or via an FTP
21 site, or similar, readily accessible electronic media.
22

23 t. *Encryption.* Industry-standard encryption tools and practices must be used when
24 transferring data between parties. Passwords must be at least 8 characters with a
25 mix of character sets and sent in a separate communication from the encrypted data.
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1 Among other places, You shall search for electronic documents stored on all servers, networks,
2 hard drives, desktop computers, notebook computers, personal digital devices, all back-up storage
3 media or devices, and with any third-party cloud providers. Each responsive Document shall be
4 produced in its entirety. In producing documents, if an identical copy appears in more than one
5 Person's files, You shall either (1) produce each copy or (2) provide the names of each Custodian
6 in the "Custodian" field.

7
8 14. Documents not otherwise responsive to these requests shall be produced if such
9 documents concern the documents that are responsive to the requests or if such documents are
10 attached to documents called for by these requests and constitute routing slips, transmittal
11 memoranda, letters, emails, comments, evaluations, or similar materials.

12
13 15. Your response to these Requests for Production should not be delayed if they cannot
14 be fully complied with by the date set for the presentation of documents for any reason, including,
15 but not limited to, the assertion of any privilege, interposition of any objection, ongoing
16 investigation, or current unavailability of documents. All available documents should be produced
17 on the date set for presentation, and any unavailable documents should be produced as soon as
18 they become available.

19
20 16. These Requests for Production are deemed to be continuing in nature so as to
21 require that You supplement Your response if You obtain or discover additional information or
22 documents between the time of the initial response and the time of hearing or trial herein. This
23 paragraph shall not be construed to alter any obligation to comply with all other instructions in
24 these Requests for Production.

25
26 17. Plaintiffs hereby expressly reserve the right to supplement these Requests for
27 Production and to propound new requests, to the extent permitted by applicable law and rules.

1 18. In construing any request, instruction or definition, the singular form of a word shall
2 include the plural and the plural form of a word shall include the singular.

3 19. The connectives “and” and “or” shall be construed disjunctively or conjunctively
4 as necessary to bring within the scope of the request all documents that might otherwise be
5 construed to be outside of its scope.

6 20. The terms “all” and “each” shall be construed as all and each, as necessary to bring
7 within the scope of the request all information that might otherwise be construed to be outside
8 of its scope.

9 21. Plaintiff is willing to meet and confer in good faith with respect to any objections
10 set forth by You.
11

12
13 **RELEVANT TIME PERIOD**

14 1. The relevant Time Period for these Requests for Production shall be through the
15 date of production, unless otherwise specified.
16

17 **REQUESTS FOR PRODUCTION**

18 **REQUEST FOR PRODUCTION NO. 1:** Please produce all documents related to the
19 Plan’s current or prior Transgender Healthcare Exclusion, including, but not limited to

20 (a) all drafts and previous versions of the Transgender Healthcare Exclusion, including the
21 earliest iteration of the Transgender Health Exclusion, and any amendments or supplements thereto
22 (whether actual or proposed);

23 (b) all documents (to include any formal or informal financial or budgetary or other
24 analyses, actuarial reports, or other reports or memoranda) and communications between
25 Defendants and all internal and external persons (including, but not limited to, any insurance
26 company, any consultant, the Alliance Defending Freedom, the Center for Arizona Policy, or any
27

1 lobbying or interest group regarding whether any form of transition-related care or the Transgender
2 Health Exclusion should be adopted, modified, retained, or eliminated, and the rationale provided
3 or discussed.

4 (c) all documents and communications with internal and external persons pertaining to
5 Defendants' initial decision to exclude transition-related care, as well as any subsequent decisions
6 to adopt, amend, retain, or eliminate any form of transition-related care or the Transgender Health
7 Exclusion, including minutes or recordings of meetings where coverage for or exclusion of any
8 form of transition-related care was discussed.
9

10 **REQUEST FOR PRODUCTION NO. 2:** Please produce all documents and
11 communications between Defendants and internal and external persons relating to and regarding
12 the State of Arizona's decision to join the litigation in the Northern District of Texas bearing Case
13 No. 7:16-cv-00108 (originally filed as *Franciscan Alliance, Inc. et al v. Burwell et al*, later re-
14 designated as *Franciscan Alliance, Inc. et al v. Price et al* and *Franciscan Alliance, Inc. et al v.*
15 *Azar II et al*), and the State of Arizona's participation in that litigation.
16

17 **REQUEST FOR PRODUCTION NO. 3:** Please produce all versions and iterations of
18 the Plan's policies/lists of Exclusions and General Limitations (*e.g.*, Article 9.1 of ADOA's PPO
19 and EPO Plans, Article 10.1 of ADOA's HSA Plan) from the years 2010 through the present, as
20 well as all documents and communications between Defendants and internal or external persons
21 regarding creating, amending, continuing, or eliminating any exclusion of coverage contained in
22 any version/iteration of the Plan's Exclusions and General Limitations policy, including, but not
23 limited to, the potential costs of enforcing, amending, or eliminating such excluded coverage, the
24 medical necessity, safety, and efficacy (including whether a procedure is deemed experimental or
25 cosmetic) of excluded treatments and services; or the public health effects of enforcing, amending,
26
27
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1 or eliminating such excluded coverage. Such documents should include any and all actuarial
2 reports, analyses, or memorandums pertaining to such exclusions of coverage.

3 **REQUEST FOR PRODUCTION NO. 4:** Please produce all documents and
4 communications between the Defendants and internal or external persons regarding whether any
5 treatment of gender dysphoria is “Medically Necessary.”

6 **REQUEST FOR PRODUCTION NO. 5:** Please produce all documents and
7 communications between the Defendants and internal or external persons concerning (a)
8 transgender people, (b) gender transition, (c) change of sex, (d) sex reassignment, (e)
9 transsexualism; or (f) gender reassignment.
10

11 **REQUEST FOR PRODUCTION NO. 6:** Please produce documents sufficient to show,
12 from 2010 to the present:

13 (a) the number of hysterectomies paid for by the Plan each year, the medical reason for the
14 surgery, and the individual and aggregate cost of the surgeries; and

15 (b) the number of medically necessary cosmetic or reconstructive surgical procedures paid
16 for by the Plan each year (including but not limited to chest-reconstruction surgery,
17 vaginoplasty, or phalloplasty, or other surgery related to the reproductive or urogenital
18 system) the medical reason for the surgery, and the individual and aggregate cost of
19 the surgeries.
20
21

22 **REQUEST FOR PRODUCTION NO. 7:** Please produce all documents (to include any
23 formal or informal financial or budgetary or other analyses, plans, actuarial reports, or other reports
24 or memoranda) to show (1) the total annual expenses (*i.e.*, the amounts paid by the Plan to medical
25 providers) for all treatment and services provided under the Plan from 2010 to the present,
26 including a cost breakdown of the total expenses for each type of treatment or service; and (2) the
27
28

CERTIFICATE OF SERVICE

I, Nicholas Reddick, hereby certify that on December 8, 2020 I served the foregoing Plaintiff's First Request for Production of Documents and Tangible Things to Defendants via email:

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/s/ Nicholas Reddick

EXHIBIT 3

Toomey v. State of Arizona , et al., Case No. 4:19-CV-00035

State of Arizona Privilege/ Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description
1	EML00006426	EML00006426	6/27/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	EKRATZ@FCLAW.com; Scott Bender <Scott.Bender@azdoa.gov>	Rose Bernal <Rose.Bernal@azdoa.gov>; Jennifer Bowling <Jennifer.Bowling@azdoa.gov>; GGOODMAN@FCLAW.com; RCURTIS@FCLAW.com	Attorney-Client Communication	RE: Memorandum regarding leave, premiums, termination dates, and ACA Hours of Service (ADOA Benefits questions)
2	EML00006427	EML00006427	6/24/2016	Jennifer Bowling <Jennifer.Bowling@azdoa.gov>	Marie Isaacson <Marie.Isaacson@azdoa.gov>; Scott Bender <Scott.Bender@azdoa.gov>; Rose Bernal <Rose.Bernal@azdoa.gov>	Jennifer Bowling <Jennifer.Bowling@azdoa.gov>	Attorney-Client Communication	RE: State of AZ benefit plan forms and documents
3	EML00007337	EML00007337	8/2/2016	Elizabeth Schafer <Elizabeth.Schafer@azdoa.gov>	Marie Isaacson <Marie.Isaacson@azdoa.gov>		Attorney-Client Communication	re: draft cover memo 1557 Rule
4	EML00007338	EML00007338	8/2/2016	Elizabeth Schafer <Elizabeth.Schafer@azdoa.gov>	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Yvette Medina <Yvette.Medina@azdoa.gov>	Attorney-Client Communication	re: draft cover memo 1557 Rule
5	EML00007339	EML00007339	8/2/2016	Maria Vega	Mike Liburdi, General Counsel		Attorney-Client Communication	re: draft cover memo 1557 Rule
6	AZSTATE.005551	AZSTATE.005551	1/13/2017	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>		Attorney-Client Communication	re: plan document updates
7	EML00012436	EML00012436	1/13/2017	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	Marie Isaacson <Marie.Isaacson@azdoa.gov>		Attorney-Client Communication	re: plan document updates
8	EML00012642	EML00012642	10/19/2016	RCURTIS@FCLAW.com	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Nicole Ong <Nicole.Ong@azdoa.gov>; John Fry <john.fry@azag.gov>; EKRATZ@FCLAW.com	Attorney-Client Communication	ACA 1557 Implementation [FC-Email.FID7081187]
9	EML00012648	EML00012648	10/18/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	RCURTIS@FCLAW.com	Nicole Ong <Nicole.Ong@azdoa.gov>; John Fry <john.fry@azag.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]
10	EML00012649	EML00012649	10/18/2016	RCURTIS@FCLAW.com	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Nicole Ong <Nicole.Ong@azdoa.gov>; John Fry <john.fry@azag.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]
11	EML00012651	EML00012651	10/18/2016	Nicole Ong <Nicole.Ong@azdoa.gov>	Marie Isaacson <Marie.Isaacson@azdoa.gov>		Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]
12	EML00012656	EML00012656	10/17/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	RCURTIS@FCLAW.com; John Fry <john.fry@azag.gov>	Nicole Ong <Nicole.Ong@azdoa.gov>; bcc: Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]
13	EML00012660	EML00012660	10/17/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Fry, John <John.Fry@azag.gov>; RCURTIS@FCLAW.com	Nicole Ong <Nicole.Ong@azdoa.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]
14	EML00012661	EML00012661	10/17/2016	Fry, John <John.Fry@azag.gov>	'Marie Isaacson' <Marie.Isaacson@azdoa.gov>; RCURTIS@FCLAW.com	Nicole Ong <Nicole.Ong@azdoa.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]

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State of Arizona Privilege/ Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description
15	EML00012662	EML00012662	10/17/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	RCURTIS@FCLAW.com; John Fry <john.fry@azag.gov>	Nicole Ong <Nicole.Ong@azdoa.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC- Email.FID7081187]
16	EML00012663	EML00012663	10/17/2016	RCURTIS@FCLAW.com	Fry, John <John.Fry@azag.gov>; 'Marie Isaacson' <Marie.Isaacson@azdoa.gov>	Nicole Ong <Nicole.Ong@azdoa.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC- Email.FID7081187]
17	EML00012664	EML00012664	10/17/2016	Fry, John <John.Fry@azag.gov>	'Marie Isaacson' <Marie.Isaacson@azdoa.gov>; RCURTIS@FCLAW.com	Nicole Ong <Nicole.Ong@azdoa.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC- Email.FID7081187]
18	EML00012665	EML00012665	10/17/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	RCURTIS@FCLAW.com	John Fry <john.fry@azag.gov>; Nicole Ong <Nicole.Ong@azdoa.gov>	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC- Email.FID7081187]
19	EML00012676	EML00012676	10/11/2016	RCURTIS@FCLAW.com	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Fry, John <John.Fry@azag.gov>; EKRAZ@FCLAW.com	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC- Email.FID7081187]
20	EML00012868	EML00012868	8/3/2016	Marie Isaacson	Mike Liburdi, General Counsel		Attorney-Client Communication; work- product	Draft cover memo 1557 Rule
21	EML00012875	EML00012875	8/2/2016	Marie Isaacson	Mike Liburdi, General Counsel		Attorney-Client Communication; work- product	Draft cover memo 1557 Rule
22	EML00012878	EML00012878	8/1/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Yvette Medina <Yvette.Medina@azdoa.gov>; Scott Bender <Scott.Bender@azdoa.gov>; Elizabeth Schafer <Elizabeth.Schafer@azdoa.gov>		Attorney-Client Communication	FW: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
23	EML00012879	EML00012879	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication; work- product	MEMO - ACA 1557 and Regs
24	EML00012889	EML00012889	7/27/2016	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	RCURTIS@FCLAW.com; Marie Isaacson <Marie.Isaacson@azdoa.gov>	CSHUPE@FCLAW.com; EKRAZ@FCLAW.com	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
25	EML00012890	EML00012890	7/27/2016	RCURTIS@FCLAW.com	Marie Isaacson <Marie.Isaacson@azdoa.gov>	CSHUPE@FCLAW.com; EKRAZ@FCLAW.com; Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
26	EML00012891	EML00012891	7/27/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	RCURTIS@FCLAW.com	CSHUPE@FCLAW.com; EKRAZ@FCLAW.com; Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
27	EML00012893	EML00012893	7/26/2016	Fry, John <John.Fry@azag.gov>	Marie Isaacson <Marie.Isaacson@azdoa.gov>		Attorney-Client Communication	Re: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
28	EML00012899	EML00012899	7/25/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	John Fry <john.fry@azag.gov>	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	Attorney-Client Communication	FW: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]

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State of Arizona Privilege/ Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description
29	EML00012900	EML00012900	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication; work-product	MEMO - ACA 1557 and Regs
30	EML00012909	EML00012909	7/22/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	RCURTIS@FCLAW.com	CSHUPE@FCLAW.com; EKRAZ@FCLAW.com	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
31	EML00012910	EML00012910	7/22/2016	RCURTIS@FCLAW.com	marie.isaacson@azdoa.gov	CSHUPE@FCLAW.com; EKRAZ@FCLAW.com	Attorney-Client Communication	ACA 1557 - Discrimination and Gender Identity
32	EML00012911	EML00012911	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication; work-product	MEMO - ACA 1557 and Regs
33	EML00013079	EML00013079	5/25/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	EKRAZ@FCLAW.com		Attorney-Client Communication	FW: Materials regarding our Health Plans
34	EML00014080	EML00014080	11/20/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>	Paul Shannon <paul.shannon@azdoa.gov>	Attorney-Client Communication	Re: draft - Gender dysphoria issues to Kate King CONFIDENTIAL 11-20-19 - Invitation to edit
35	EML00014082	EML00014082	11/19/2019	Scott Bender <scott.bender@azdoa.gov>	Paul Shannon <paul.shannon@azdoa.gov>	Michael Meisner <michael.meisner@azdoa.gov>	Attorney-Client Communication	Re: draft - Gender dysphoria issues to Kate King CONFIDENTIAL 11-20-19 - Invitation to edit
36	EML00014083	EML00014083	11/19/2019	Paul Shannon <paul.shannon@azdoa.gov>	michael.meisner@azdoa.gov	scott.bender@azdoa.gov	Attorney-Client Communication	draft - Gender dysphoria issues to Kate King CONFIDENTIAL 11-20-19 - Invitation to edit
37	EML00014130	EML00014130	10/30/2019	Michael Meisner <michael.meisner@azdoa.gov>	Paul Shannon <paul.shannon@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>	Attorney-Client Communication	Re: United Healthcare - Gender Dysphoria Treatment
38	EML00014131	EML00014131	10/29/2019	Paul Shannon <paul.shannon@azdoa.gov>	Michael Meisner <michael.meisner@azdoa.gov>; Scott Bender <scott.bender@azdoa.gov>		Attorney-Client Communication	Fwd: United Healthcare - Gender Dysphoria Treatment
39	EML00014160	EML00014160	10/8/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>		Attorney-Client Communication	Re: Toomey v. State of AZ
40	EML00014161	EML00014161	10/8/2019	Scott Bender <scott.bender@azdoa.gov>	Michael Meisner <michael.meisner@azdoa.gov>		Attorney-Client Communication	Fwd: Toomey v. State of AZ
41	EML00014186	EML00014186	10/1/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>		Attorney-Client Communication	Re: United Healthcare transgender benefit
42	EML00014196	EML00014196	9/30/2019	Scott Bender <scott.bender@azdoa.gov>	Michael Meisner <michael.meisner@azdoa.gov>		Attorney-Client Communication	Fwd: United Healthcare transgender benefit
43	EML00014200	EML00014200	9/26/2019	Scott Bender <scott.bender@azdoa.gov>	Michael Meisner <michael.meisner@azdoa.gov>		Attorney-Client Communication	Fwd: United Healthcare transgender benefit
44	EML00014201	EML00014201	9/26/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>		Attorney-Client Communication	Re: United Healthcare transgender benefit
45	EML00014202	EML00014202	9/26/2019	Scott Bender <scott.bender@azdoa.gov>	Michael Meisner <michael.meisner@azdoa.gov>		Attorney-Client Communication	Fwd: United Healthcare transgender benefit
46	EML00014215	EML00014215	9/23/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>; Paul Shannon <paul.shannon@azdoa.gov>		Work-Product	Re: Estimated annual costs to included transgender benefits: \$11 million per year
47	EML00014216	EML00014216	9/23/2019	Michael Meisner			Work-Product	ADOA Estimated annual costs

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State of Arizona Privilege/Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description
48	EML00014218	EML00014218	9/23/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott.Bender <scott.bender@azdoa.gov>; Paul Shannon <paul.shannon@azdoa.gov>		Work-Product	Estimated annual costs to included transgender benefits: \$11 million per year
49	EML00018839	EML00018839	8/30/2018	Nicolette Schultz <nicolette.schultz@azdoa.gov>	Paul Shannon <paul.shannon@azdoa.gov>		Attorney-Client Communication	
50	EML00019497	EML00019497	1/13/2017	Yvette Medina <Yvette.Medina@azdoa.gov>	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>		Attorney-Client Communication	FW: ACA §1557 Non-Discrimination
51	EML00019822	EML00019822	7/27/2016	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	RCURTIS@FCLAW.com		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
52	EML00019823	EML00019823	7/27/2016	RCURTIS@FCLAW.com	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
53	EML00019824	EML00019824	7/27/2016	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	RCURTIS@FCLAW.com		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
54	EML00019825	EML00019825	7/27/2016	RCURTIS@FCLAW.com	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
55	EML00019829	EML00019829	7/27/2016	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	John Fry <john.fry@azag.gov>		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
56	EML00019830	EML00019830	7/27/2016	nicolette.schultz@azdoa.gov	John Fry <john.fry@azag.gov>		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
57	EML00019831	EML00019831	7/27/2016	Fry, John <John.Fry@azag.gov>	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>		Attorney-Client Communication	Re: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
58	EML00019837	EML00019837	7/27/2016	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	John Fry <john.fry@azag.gov>		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
59	EML00019838	EML00019838	7/26/2016	Fry, John <John.Fry@azag.gov>	'Nicolette A Schultz' <Nicolette.Schultz@azdoa.gov>		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]
60	EML00019839	EML00019839	7/26/2016	Nicolette A Schultz <Nicolette.Schultz@azdoa.gov>	John Fry <john.fry@azag.gov>		Attorney-Client Communication	Scheduling meeting for ACA 1557 - Discrimination and Gender Identity
61	EML00021020	EML00021020	1/8/2016	Michael Bailey, Chief Deputy (AG)	Marc Lamber (FCLaw)	Marie Isaacson; Rex Nowlan	Attorney Client	Marc Lamber letter
62	EML00021053	EML00021053	12/11/2019	Scott Bender <scott.bender@azdoa.gov>	Nicole Sornsin <Nicole.Sornsin@azdoa.gov>; Kimberly Suci <Kim.Suciu@azdoa.gov>; Paul Shannon <paul.shannon@azdoa.gov>		Attorney-Client Communication	Gender Reassignment services appeal
63	EML00021133	EML00021133	11/6/2019	Paul Shannon <paul.shannon@azdoa.gov>	Nicole Sornsin <Nicole.Sornsin@azdoa.gov>; Kimberly Suci <kim.suciu@azdoa.gov>		Attorney-Client Communication	Fwd: Harmful exclusions from state healthcare plan.

Toomey v. State of Arizona , et al., Case No. 4:19-CV-00035

State of Arizona Privilege/ Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description
64	EML00021178	EML00021178	9/23/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott.Bender <scott.bender@azdoa.gov>; Paul Shannon <paul.shannon@azdoa.gov>		Work-Product	Re: Estimated annual costs to included transgender benefits: \$11 million per year
65	EML00021179	EML00021179	9/23/2019	Michael Meisner			Work-Product	ADOA Estimated annual costs
66	EML00021181	EML00021181	9/23/2019	Michael Meisner <michael.meisner@azdoa.gov>	Scott.Bender <scott.bender@azdoa.gov>; Paul Shannon <paul.shannon@azdoa.gov>		Work-Product	ADOA Estimated annual costs
67	EML00021265	EML00021265	2/19/2019	Scott Bender <scott.bender@azdoa.gov>	Paul Shannon <paul.shannon@azdoa.gov>		Attorney-Client Communication	Fwd: FW: ACA §1557 Non-Discrimination
68	EML00021298	EML00021298	10/15/2018	Yvette Medina <Yvette.Medina@azdoa.gov>	Paul Shannon <paul.shannon@azdoa.gov>		Attorney-Client Communication	Re: Request for documentation regarding ADOA's medical coverage
69	EML00021303	EML00021303	10/10/2018	Paul Shannon <paul.shannon@azdoa.gov>	Yvette Medina <yvette.medina@azdoa.gov>; Scott Bender <scott.bender@azdoa.gov>		Attorney-Client Communication	Fwd: Request for documentation regarding ADOA's medical coverage
70	EML00026061	EML00026061	10/25/2018	Yvette Medina <Yvette.Medina@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>		Attorney-Client Communication	Fwd: FW: ACA §1557 Non-Discrimination
71	EML00031546	EML00031546	10/25/2018	Yvette Medina <Yvette.Medina@azdoa.gov>	Scott Bender <scott.bender@azdoa.gov>		Attorney-Client Communication	Fwd: FW: ACA §1557 Non-Discrimination
72	ESI00000686	ESI00000686	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication; work-product	2016-07-20 Fennemore Craig Memo re ACA sect 1557 (
73	ESI00000688	ESI00000688	2/5/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication; work-product	2019-02-05 P. Shannon letter to N. Sornsin
74	ESI00000689	ESI00000689	2/5/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication; work-product	2019-02-05 P. Shannon letter with documentation
75	ESI00000690	ESI00000690	8/3/2016	Marie Isaacson	Mike Liburdi		Attorney-Client Communication; work-product	ACA 1557 Non-Discrimination - Transgender Coverage_ Memo to M. Liburdi
76	ESI00000698	ESI00000698	12/15/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Christina Corieri <ccorieri@az.gov>	Scott Bender <Scott.Bender@azdoa.gov>, Nicole Ong <Nicole.Ong@azdoa.gov>	Attorney-Client Communication	State of Arizona Mail - RE_ ACA §1557 Non-Discrimination
78	ESI00000700	ESI00000700	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication; work-product	MEMO - ACA 1557 and Regs - RCurtis 7-22-16
79	ESI00000701	ESI00000701	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication; work-product	MEMO - ACA 1557 and Regs - RCurtis 7-22-16
80	ESI00000702	ESI00000702	8/1/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	Yvette Medina <Yvette.Medina@azdoa.gov>, Scott Bender <Scott.Bender@azdoa.gov>, Elizabeth Schafer <Elizabeth.Schafer@azdoa.gov>		Attorney-Client Communication	State of Arizona Mail - FW_ ACA 1557 - Discrimination and Gender Identity

Toomey v. State of Arizona , et al., Case No. 4:19-CV-00035

State of Arizona Privilege/ Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description
81	ESI00000703	ESI00000703	7/6/2016	Marie Isaacson <Marie.Isaacson@azdoa.gov>	"EKRAZ@FCLAW.com" <EKRAZ@fclaw.com>	"RCURTIS@FCLAW.com" <RCURTIS@fclaw.com>, "CSHUPE@FCLAW.com" <CSHUPE@fclaw.com>, Scott Bender<Scott.Bender@azdoa.gov>	Attorney-Client Communication	State of Arizona Mail - RE_ The Plan Participation Chart we Discussed
82	ESI00000772	ESI00000772	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication; work- product	2016-07-20 Memorandum from Fennemore Craig to M. Isaacson re ACA 1557 and TransGender coverage requirements
83	ESI00000773	ESI00000773	2/5/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication; work- product	2019-02-05 Memo from Paul Shannon to Nicole Sornsin re Plan Exceptions
84	AZSTATE.000784	AZSTATE.001365	2/14/2020	Ashleigh E Hope			Redacted - Confidential, non-relevant information	ADOA / UnitedHealthcare Vendor Tracking Log - Closed
85	AZSTATE.001366	AZSTATE.001678	2/10/2020	Ashleigh E Hope			Redacted - Confidential, non-relevant information	ADOA / CIGNA Project Tracking Log - Closed
86	AZSTATE.001679	AZSTATE.001695	2/10/2020	Ashleigh E Hope			Redacted - Confidential, non-relevant information	ADOA / Aetna Tracking Log - Open
87	AZSTATE.001696	AZSTATE.001778	2/10/2020	Ashleigh E Hope			Redacted - Confidential, non-relevant information	ADOA / Aetna Tracking Log - Closed
88	AZSTATE.001779	AZSTATE.002089	2/3/2020	Ashleigh E Hope			Redacted - Confidential, non-relevant information	ADOA / CIGNA Project Tracking Log - Closed
89	AZSTATE.002090	AZSTATE.002751	9/3/2019	Ashleigh E Hope			Redacted - Confidential, non-relevant information	ADOA / MedImpact Project Tracking Log - Closed
90	AZSTATE.003186	AZSTATE.003188	1/17/2017	Stu Wilbur			Redacted - Confidential, non-relevant information	Benefits Services Division - Draft Meeting Agenda/ Team Members
91	AZSTATE.003438	AZSTATE.003454	11/9/2015	Ashleigh E Hope			Redacted - Confidential, non-relevant information	ADOA / BCBSAZ Project Tracking Log - Open
92	AZSTATE.003466	AZSTATE.003467	1/17/2017	Stu Wilbur			Redacted - Confidential, non-relevant information	Benefits Services Division - Meeting Agenda
93	AZSTATE.005416	AZSTATE.005418	1/17/2017	Stu Wilbur			Redacted - Confidential, non-relevant information	Benefits Services Division - Draft Meeting Agenda/ Team Members
94	AZSTATE.005541	AZSTATE.005541	1/26/2017	Stu Wilbur			Redacted - Confidential, non-relevant information	Benefits Services Division - Meeting Agenda
95	AZSTATE.005547	AZSTATE.005548	1/17/2017	Stu Wilbur			Redacted - Confidential, non-relevant information	Benefits Services Division - Meeting Agenda
96	AZSTATE.006534	AZSTATE.006536	1/13/2020	Scott Bender <scott.bender@azdoa.gov>	Paul Shannon <paul.shannon@azdoa.gov>		Redacted - Personally Identifiable Information	Fwd: Harmful exclusions from state healthcare plan..msg
97	AZSTATE.006880	AZSTATE.006880	8/23/2017	Rose Bernal <Rose.Bernal@azdoa.gov>	Scott Bender <Scott.Bender@azdoa.gov>; Erin King <Erin.King@MedImpact.com>; 'Kayla Stivason' <Kayla.Stivason@azdoa.gov>		Redacted - Personally Identifiable Information	FW: Additional Information - Appeal.msg
98	AZSTATE.007001	AZSTATE.007001	8/23/2017	Rose Bernal <Rose.Bernal@azdoa.gov>	Wilson, Staci R - (staciw) <staciw@email.arizona.edu>	Galarte, Francisco J - (galarte) <galarte@email.arizona.edu>	Redacted - Personally Identifiable Information	RE: Additional Information - Appeal.msg
99	AZSTATE.007002	AZSTATE.007003	8/21/2017	Rose Bernal <Rose.Bernal@azdoa.gov>	Galarte, Francisco J - (galarte) <galarte@email.arizona.edu>	Staci R. Wilson, Helena A. Rodrigues, Kayla Stivason	Redacted - Personally Identifiable Information	RE: Appeal Denied secure.msg

Toomey v. State of Arizona , et al., Case No. 4:19-CV-00035

State of Arizona Privilege/ Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description
100	AZSTATE.007004	AZSTATE.007005	8/1/2017	Wilson, Staci R - (staciw) <staciw@email.arizona.edu>	Rose Bernal <Rose.Bernal@azdoa.gov>		Redacted - Personally Identifiable Information	RE: Transgender coverage - hormone therapy.msg
101	AZSTATE.007006	AZSTATE.007007	8/1/2017	Shannon Daniel <Shannon.Daniel@medimpact.com>	Rose Bernal <Rose.Bernal@azdoa.gov>	Yvette Medina <Yvette.Medina@azdoa.gov>, Scott Bender <Scott.Bender@azdoa.gov>	Redacted - Personally Identifiable Information	RE: Transgender coverage - hormone therapy.msg
102	AZSTATE.009655	AZSTATE.009659	1/10/2020				Redacted - Confidential, non-relevant information	Project Tracking Log - Open Items
103	AZSTATE.010325	AZSTATE.010325	4/22/2019				Redacted - Personally Identifiable Information	ADOA Excel spreadsheet
104	AZSTATE.010904	AZSTATE.010904	1/26/2017				Redacted - Confidential, non-relevant information	Draft meeting Agenda
105	AZSTATE.011038	AZSTATE.011045	9/29/2016				Redacted - Confidential, non-relevant information	Draft Medical Director Meeting Minutes
106	AZSTATE.011046	AZSTATE.011049	9/28/2016	Eveleth, Ray G <EvelethR@aetna.com>	Scott Bender <Scott.Bender@azdoa.gov>; Yvette Medina <Yvette.Medina@azdoa.gov>	Dash, Jay A.	Redacted - Confidential, non-relevant information	RE: Medical director meeting.msg

EXHIBIT 4

Abdalla, Gabriela

From: Reddick, Nicholas
Sent: Tuesday, January 5, 2021 11:04 AM
To: 'Curtis, Ryan'; Cohan, Shannon
Cc: Killian, Kristen; Joshua Block; 'Christine Wee'
Subject: RE: Toomey - Pending Discovery Requests [FC-Email.FID11439673]
Attachments: 2021.01.05 JT MO to extend deadline for end of discovery DRAFT.DOCX

Hi Ryan,

Thanks to you and Shannon for discussing the open discovery matters with us yesterday. To recap our conversation:

1. **Deadline Extensions.** Plaintiffs agreed to a two-week extension (to January 21, 2021) for the State Defendants' to respond to Plaintiff's first Request for Production. In exchange, State Defendants agreed to consent to a one month extension of the overall discovery deadline. Please see a draft of the joint motion requesting an extension of the discovery deadline. Once you provide any edits, we can share with ABOR as well to seek their consent.
2. **Production Issues.** You confirmed that the forthcoming State Defendants' production will be responsive to the following requests (as set forth in our March 26, 2020 and November 20, 2020 deficiency letters and noted in our call):
 - a. Information pertaining to the genesis of the Plan's exclusion for transition-related care.
 - b. Communications with the ABOR employees we identified in our Nov. 20, 2020 letter.
 - c. Responsive records from the governor's office, the legislature, and the AG's office, to the extent such communications or information are in the custody and control of the State Defendants. We identified that communications discussing House Bills 2293 and 2294 introduced in January 2017 to ban transgender health coverage and a 2020 bill to ban transgender athletes from competing in their identified gender are responsive to Plaintiffs' requests.
 - d. Records pertaining to all individuals listed in the Defendants' disclosures and witness lists. We noted Andy Tobin and Elizabeth Thorson as two such witnesses for which no documents have been produced to date.
3. **Privilege Log.** We requested additional explanation for several items listed on the State Defendants' privilege log, as they do not, on their face, suggest an attorney-client privileged communication (e.g. no attorney listed in the "To", "CC" or "From" fields), or a document that would be covered by the work product privilege. Specifically, we requested that an explanation be provided as to why documents pertaining to Christina Corieri, who is listed as a Senior Policy Advisor for Arizona Governor's Office, are marked privileged. **Additionally, we request an explanation as to the withholdings of Doc. Nos. 2-4, 6-7, 22, 34-50, 64-71, and 80 from the log.**
4. **Deposition Scheduling.**
 - a. You agreed to provide us with an update as to the availability during the last two weeks of February 2021 of the following witnesses to sit for a deposition: Jennifer Bowling, Chanelle Bergren, Yvette Medina, Elizabeth Schafer, Michael Meisner, Scott Bender, Craig Brown, Gilbert Davidson, Elizabeth Thorson, and Christina Corieri.
 - b. As for Marie Isaacson, while your office is currently listed as the contact for her, you noted that you plan to provide Plaintiffs with different contact information in which to contact Ms. Isaacson for a deposition. **Given this, we plan to reach out to Ms. Isaacson independently to discuss scheduling a deposition. Please let us know if you have any objections to us doing so.**

5. **Production Metadata.** Shannon will work with your vendor to populate the "Master Date" metadata field that is missing from the State Defendants' productions, or otherwise let us know if the relevant date for each document is located in an alternate data field.

Please let us know if we are missing anything or getting any of this wrong.

Best,
Nick

Nicholas Reddick
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: [+1 202 303 1156](tel:+12023031156) | Fax: +1 202 303 2156
nreddick@willkie.com | <vCard> | www.willkie.com bio
Pronouns: he, him, his

From: Curtis, Ryan <RCurtis@fennemorelaw.com>
Sent: Thursday, December 31, 2020 7:00 PM
To: Reddick, Nicholas <NReddick@willkie.com>
Cc: Killian, Kristen <KKillian@willkie.com>; Cohan, Shannon <scohan@fennemorelaw.com>
Subject: RE: Toomey - Pending Discovery Requests [FC-Email.FID11439673]

*** EXTERNAL EMAIL ***

That works. I'll send an invite and include Christine and Josh.

Ryan C. Curtis, Chair - ERISA & Employee Benefits Practice Group
T: 602.916.5426 | F: 602.916.5626 | M: 480.290.3785
rcurtis@fennemorelaw.com

From: Reddick, Nicholas <NReddick@willkie.com>
Sent: Thursday, December 31, 2020 4:10 PM
To: Curtis, Ryan <RCurtis@fennemorelaw.com>
Cc: Killian, Kristen <KKillian@willkie.com>; Cohan, Shannon <scohan@fennemorelaw.com>
Subject: Re: Toomey - Pending Discovery Requests [FC-Email.FID11439673]

Ryan,

Thanks for your email. Would 1pm eastern (11am Phoenix time) on Monday work? Josh and Christine from the ACLU will plan to join as well, as there are a few additional discovery related things to discuss.

Happy New Year.

Best,
Nick

Sent from [Workspace ONE Boxer](#)

Nicholas Reddick
Willkie Farr & Gallagher LLP
1875 K Street, N.W. | Washington, DC 20006-1238
Direct: [+1 202 303 1156](tel:+12023031156) | Fax: +1 202 303 2156
nreddick@willkie.com | <vCard> | [www.willkie.com bio](http://www.willkie.com/bio)
Pronouns: he, him, his

On December 31, 2020 at 3:34:24 PM EST, Curtis, Ryan <RCurtis@fennemorelaw.com> wrote:

*** EXTERNAL EMAIL ***

Nick –

I wanted to reach out regarding Plaintiffs' First Request for Production. At present, our response is due January 7. We have been and continue to work diligently on gathering, reviewing, and compiling information for our response. We have encountered a few challenges due to key people for ADOA being away in observation of the holidays and associate Shannon Cohan being involved in a lengthy complex arbitration that went on days longer than expected this month. Be assured, we have made this matter a priority. The document request is also rather extensive and we expect the production to be voluminous, although we also intend to preserve some objections which we will confirm in writing. We have also been working to address the additional items set forth in your letter dated November 20, which we are expecting to respond to along with our response to the Request for Production. While we continue to work diligently on this, it is becoming clear that we will not be in a position to provide a full response and production to the Request for Production by January 7, but we will be able to do so by Friday, January 21.

I would like to discuss this with you. I realize we have a time difference and I am reaching out to you the day before a holiday, so I am not sure if you have availability today. If not, I would be glad to schedule a time to discuss on Monday. Please let me know your availability.

Ryan C. Curtis, Chair - ERISA & Employee Benefits Practice Group

FENMORE.

2394 East Camelback Road, Suite 600, Phoenix, AZ 85016-3429
T: 602.916.5426 | F: 602.916.5626 | M: 480.290.3785
rcurtis@fennemorelaw.com | [View Bio](#)
Admitted in Arizona and Nevada



Fennemore has expanded to California. [Read more here.](#)

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

Important Notice: This email message is intended to be received only by persons entitled to receive the confidential information it may contain. Email messages to clients of Willkie Farr & Gallagher LLP presumptively contain information that is confidential and legally privileged; email messages to non-clients are normally confidential and may also be legally privileged. Please do not read, copy, forward or store this message unless you are an intended recipient of it. If you have received this message in error, please forward it back. Willkie Farr & Gallagher LLP is a limited liability partnership organized in the United States under the laws of the State of Delaware, which laws limit the personal liability of partners.

EXHIBIT 5

FENNEMORE.

Shannon Cohan
Associate

scohan@fennemorelaw.com

2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
PH (602) 916-5409 | FX (602) 916-5609
fennemorelaw.com

January 21, 2021

VIA EMAIL

Victoria Lopez
Christine Wee
ACLU Foundation of Arizona
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
vlopez@acluaz.org
cwee@acluaz.org

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Wesley R. Powell
Matthew S. Freimuth
Nicholas Reddick
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, NY 10019
wpowell@willkie.com
mfreimuth@willkie.com
nreddick@willkie.com

Re: *Toomey v. State of Arizona, et al.*
State Defendants' Privilege Log

Counsel:

This letter responds to your email dated January 5, 2021 in which you raised certain concerns regarding document nos. 2-4, 6-7, 22, 34-50, 64-71, and 80 on the State Defendants' privilege log. You also requested an explanation as to why documents pertaining to Christina Corieri, who is a Senior Policy Advisor for the Arizona Governor's Office, are marked privileged.

Upon review, the State Defendants will re-produce document no. 69 in redacted form. Additionally, the State Defendants will re-produce document nos. 49 and 68 without redactions.

A. Document Nos. 2-4, 22, and 80

In each of these documents, Arizona Department of Administration ("ADOA") employees discuss legal advice provided by Fennemore Craig. As such, these documents are protected by the attorney-client privilege.

FENNEMORE.

January 21, 2021
Page 2

B. Document Nos. 6–7, 50, 67, and 70–71

The State Defendants have revised the privilege log entries for these documents to reflect that they were withheld and/or redacted pursuant to the deliberative process privilege. The deliberative process privilege is a federal common law privilege which shields from disclosure inter-agency or intra-agency memorandums or letters. 5 U.S.C. § 552(b)(5) (1996).

In each of these communications, Ms. Marie Isaacson—a representative of ADOA—discusses the transgender surgery exclusion with Ms. Christina Corieri—a representative of the Governor’s Office. These discussions occurred during ADOA’s consideration of whether it was required by law to provide coverage for gender reassignment surgery and possible revisions to the existing exclusion, and occurred prior to ADOA’s determination of the final plan language. The recommendations and suggestions discussed by ADOA and the Governor’s Office are covered by the deliberative process privilege. As such, these documents are not discoverable.

C. Document Nos. 34–36

The State Defendants have revised the privilege log entries for these documents to reflect that they were withheld pursuant to the work product doctrine. Rule 26(b)(3) memorializes the work product doctrine. It states that “a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party”

In each of these emails, Mr. Scott Bender, Mr. Paul Shannon, and Mr. Michael Meisner discuss the creation of a document for prior counsel, Ms. Kate King, for her use in representing the State Defendants in this matter. As such, the documents fall within the protections of Rule 26(b)(3) and are not discoverable absent a showing of substantial need by Plaintiff.

D. Document Nos. 37–38, 39–40 and 41–45

Each of these emails were withheld pursuant to the attorney-client privilege. Document nos. 37–38, 39–40 and 41–45 contain communications from prior counsel, Ms. Kate King, to ADOA employees. Such communications are privileged.

We understand that Plaintiff raised concerns about these documents because the privilege log does not indicate that Ms. King was party to these communications. That is because the top-most email in the chain is between Mr. Scott Bender and Ms. Michael Meisner, and does not include Ms. King. However, this portion of the document remains privileged as Mr. Bender and Mr. Meisner are discussing the communications with Ms. King.

These discussions are further protected by application of the work product doctrine. As stated above, the work product doctrine provides that “a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party” Fed. R. Civ. Proc. 26(b)(3). In document nos. 37–38, 39–40 and 41–45, Mr. Bender and

FENNEMORE.

January 21, 2021
Page 3

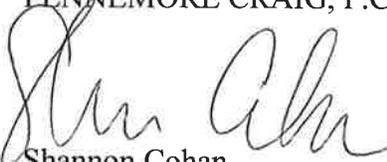
Mr. Meisner discuss gathering information specifically requested by Ms. King for her use in representing the State Defendants in this matter. As such, the portions of document nos. 37–38, 39–40 and 41–45 not including Ms. King are protected by the work product doctrine and are not discoverable absent a showing of substantial need by Plaintiff.

E. Document Nos. 46–48 and 64–66

Each of these emails were withheld pursuant to the work product doctrine. As stated above, the work product doctrine provides that “a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party” Fed. R. Civ. Proc. 26(b)(3). In document nos. 46–48 and 64–66, Mr. Bender and Mr. Meisner discuss gathering information specifically requested by Ms. King for her use in representing the State Defendants in this matter. As such, document nos. 46–48 and 64–66 fall solidly within the work product protections and are not discoverable absent a showing of substantial need by Plaintiff.

Sincerely,

FENNEMORE CRAIG, P.C.



Shannon Cohan

cc:

Ryan Curtis

Paul F. Eckstein
Austin C. Yost
Perkins Coie, LLP
2901 N. Central Ave, Suite 2000
Phoenix, AZ 85012
peckstein@perkinscoie.com
ayost@perkinscoie.com

EXHIBIT 6

1 FENNEMORE CRAIG, P.C.
 Timothy J. Berg (No. 004170)
 Amy Abdo (No. 016346)
 2 Ryan Curtis (No. 025133)
 Shannon Cohan (No. 034429)
 3 2394 E. Camelback Road
 Suite 600
 4 Phoenix, Arizona 85016
 Telephone: (602) 916-5000
 5 Email: tberg@fennemorelaw.com
 Email: amy@fennemorelaw.com
 6 Email: rcurtis@fennemorelaw.com
 Email: scohan@fennemorelaw.com
 7

8 *Attorneys for Defendants State of Arizona,
 Andy Tobin, and Paul Shannon*

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

11 Russell B. Toomey,

12 Plaintiff,

13 v.

14 State of Arizona, *et al.*,

15 Defendants.

Case No. CV 19-0035-TUC-RM (LAB)

**STATE DEFENDANTS’
 RESPONSES TO PLAINTIFF’S
 FIRST REQUEST FOR
 PRODUCTION OF DOCUMENTS
 AND TANGIBLE THINGS**

17 Pursuant to Rules of Civil Procedure 26 and 34, Defendants State of Arizona, Andy
 18 Tobin, and Paul Shannon (hereinafter the “State Defendants”) hereby respond to Plaintiff’s
 19 First Request For Production of Documents And Tangible Things, served December 8,
 20 2020, as follows:

21 **PRELIMINARY STATEMENT**

22 The State Defendants have not fully completed their investigation of the facts
 23 relating to this case, discovery is underway, and the State Defendants have not begun
 24 preparing for trial. All answers contained herein are based only upon the information
 25 presently available to and specifically known by the State Defendants and they disclose
 26 only those conclusions and contentions which presently occur to them. Further
 27 investigation, legal research and analysis may supply additional facts, add meaning to the

1 known facts, and may establish entirely new factual conclusions and legal contentions, all
2 of which may lend substantial additions to, changes, and variations from the responses
3 herein set forth.

4 The following answers are given without prejudice to or waiver of the State
5 Defendants' right to introduce evidence of subsequently discovered and developed
6 conclusions or contentions. The answers contained herein are made in a good faith effort
7 to supply as much factual information and as much specification of legal contentions as is
8 presently known, but in no way should be to the prejudice of the State Defendants in relation
9 to discovery, research or analysis. The State Defendants specifically reserve the right to
10 supplement, amend and/or modify any or all of the answers contained herein as discovery
11 progresses.

12 **GENERAL OBJECTIONS**

13 1. These responses are made solely for the purpose of and use in this litigation.
14 Each response is given subject to all appropriate objections (including, but not limited to,
15 objections concerning relevancy, materiality, propriety, and admissibility) that would
16 require the exclusion of any statement contained herein if the request were asked of, or any
17 statement contained herein were made by, a witness testifying in court. The State
18 Defendants reserve all such objections and grounds therefor and may interpose them at the
19 time of trial.

20 2. The State Defendants object to this discovery to the extent it seeks
21 information other than that which may be obtained through a reasonably diligent search of
22 their records.

23 3. The State Defendants object to this discovery as overbroad, unduly
24 burdensome, oppressive, harassing, and seek to impose unreasonable costs on the State
25 Defendants to the extent that it purports to require the State Defendants to conduct a search
26 of all of their files, including all of their electronic files, or to inquire of all their employees,
27 in an attempt to locate each piece of information or every document that might be

1 responsive. The State Defendants further object to this discovery to the extent that the scope
2 of information requested is not proportional to the needs of the case.

3 4. The State Defendants object to this discovery to the extent it seeks
4 information protected by the attorney-client privilege, the “work-product” doctrine, the
5 doctor-patient privilege, the deliberative process privilege, and/or any other applicable
6 protection or privilege. The inadvertent production of any privileged information is not a
7 waiver of the State Defendants’ rights to assert any applicable privilege with respect to such
8 information.

9 5. The State Defendants object to this discovery to the extent it is vague,
10 ambiguous, and unintelligible and requires the State Defendants to speculate as to the nature
11 and scope of the information sought.

12 6. The State Defendants object to this discovery to the extent it seeks
13 information that is in the public domain and/or to which Plaintiff has equal or greater access.

14 7. The State Defendants object to this discovery to the extent it seeks
15 information which is neither relevant nor reasonably related to any claim or defense or is
16 otherwise beyond the scope of discovery contemplated by the Federal Rules of Civil
17 Procedure.

18 8. The State Defendants object to this discovery to the extent it seeks documents
19 or information not in their possession, custody, or control. In particular, State Defendants
20 are producing document in the custody and control of the Arizona Department of
21 Administration. Therefore, documents that may be in the custody and control of the
22 Arizona Governor’s Office, the Arizona Attorney General’s Office, or the Arizona
23 Legislature are not being produced.

24 9. The State Defendants object to this discovery to the extent it seeks
25 information, the production of which would violate any constitutional, statutory or common
26 law privacy interest of any representative of the State Defendants or any other person or
27 entity, including, but not limited to, beneficiaries of the Plan.

1 of the case. The State Defendants further object that the Request seeks documents and
2 communications protected by the attorney-client privilege, the work product doctrine, the
3 deliberative process privilege, and other applicable privileges. The State Defendants further
4 object that the Request seeks information protected by the constitutional, statutory and/or
5 common law privacy rights of the Plan beneficiaries. The State Defendants further object
6 to the Request to the extent that it seeks documents not within the possession, custody, and
7 control of the Arizona Department of Administration. Subject to and without waiving the
8 foregoing objections, the State Defendants respond as follows:

9 The State Defendants will produce non-privileged documents responsive to Request
10 For Production No. 1 in the possession, custody, and control of the Arizona Department of
11 Administration. The State Defendants are not in possession, custody, or control of any
12 Health Plan documents prior to 2005.

13 **REQUEST FOR PRODUCTION NO. 2:** Please produce all documents and
14 communications between Defendants and internal and external persons relating to and
15 regarding the State of Arizona's decision to join the litigation in the Northern District of
16 Texas bearing Case No. 7:16-cv-00108 (originally filed as *Franciscan Alliance, Inc. et al.*
17 *v. Burwell et al.*, later re-designated as *Franciscan Alliance, Inc. et al. v. Price et al.* and
18 *Franciscan Alliance, Inc. et al. v. Azar II et al.*), and the State of Arizona's participation in
19 that litigation.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** The State Defendants object
21 to Request For Production No. 2 on the ground that it seeks information which is neither
22 relevant nor reasonably related to any claim or defense in this matter. Any decision made
23 to participate in the aforementioned litigation is irrelevant to the matters at issue in this case.
24 The State Defendants further object that the Request is overbroad, unduly burdensome,
25 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
26 State Defendants further object that the Request is not proportional to the needs of the case.
27 The State Defendants further object that the Request seeks documents and communications

1 protected by the attorney-client privilege, the work product doctrine, the **deliberative**
2 **process privilege**, and other applicable privileges. Moreover, the State Defendants further
3 object that the Request seeks documents not in the possession, custody, or control of the
4 Arizona Department of Administration because such decisions are not made by the Arizona
5 Department of Administration, Defendants Andy Tobin or Paul Shannon in their official
6 capacities, or their predecessors. Subject to and without waiving the foregoing objections,
7 the State Defendants respond as follows:

8 The State Defendants will produce non-privileged documents responsive to Request
9 For Production No. 2 in the possession, custody, and control of the Arizona Department of
10 Administration.

11 **REQUEST FOR PRODUCTION NO. 3:** Please produce all versions and iterations of
12 the Plan's policies/lists of Exclusions and General Limitations (*e.g.*, Article 9.1 of ADOA's
13 PPO and EPO Plans, Article 10.1 of ADOA's HSA Plan) from the years 2010 through
14 present, as well as all documents and **communications between Defendants and internal or**
15 **external persons regarding creating, amending, continuing, or eliminating any exclusion of**
16 **coverage contained in any version/iteration of the Plan's Exclusions and General**
17 **Limitations policy, including, but not limited to, the potential costs of enforcing, amending,**
18 **or eliminating such excluded coverage, the medical necessity, safety, and efficacy**
19 **(including whether a procedure is deemed experimental or cosmetic) of excluded treatments**
20 and services; or the public health effects of enforcing, amending, or eliminating such
21 excluded coverage. Such documents should include any and all actuarial reports, analyses,
22 or memorandums pertaining to such exclusions of coverage.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** The State Defendants object
24 to Request For Production No. 3 on the ground that it is overbroad, unduly burdensome,
25 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
26 State Defendants further object that the Request is vague and ambiguous as to the term
27 "medical necessity." The State Defendants further object that the Request is not
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1 proportional to the needs of the case. The State Defendants further object that the Request
2 seeks information which is duplicative of Request For Production No. 1. The State
3 Defendants further object that the Request seeks information which is neither relevant nor
4 reasonably related to any claim or defense in this matter. The State Defendants further
5 object that the Request seeks documents and communications protected by the attorney-
6 client privilege, the work product doctrine, the deliberative process privilege, and other
7 applicable privileges. The State Defendants further object that the Request seeks
8 information protected by the constitutional, statutory, and/or common law privacy rights of
9 the Plan beneficiaries. The State Defendants further object to the Request to the extent that
10 it seeks documents not within the possession, custody, and control of the Arizona
11 Department of Administration. Subject to and without waiving the foregoing objections,
12 the State Defendants respond as follows:

13 The State Defendants will produce copies of the Health Plans from 2010 to present.

14 **REQUEST FOR PRODUCTION NO. 4:** Please produce all documents and
15 communications between the Defendants and internal or external persons regarding whether
16 any treatment of gender dysphoria is “Medically Necessary.”

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** The State Defendants object
18 to Request For Production No. 4 on the ground that it is overbroad, unduly burdensome,
19 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
20 State Defendants further object that the Request is vague and ambiguous as to the term
21 “medically necessary.” The State Defendants further object that the Request is not
22 proportional to the needs of the case. The State Defendants further object that the Request
23 seeks information which is neither relevant nor reasonably related to any claim or defense
24 in this matter. The State Defendants further object that the Request seeks documents and
25 communications protected by the attorney-client privilege, the doctor-patient privilege, the
26 work product doctrine, the deliberative process privilege, and other applicable privileges.
27 The State Defendants further object that the Request seeks information protected by the
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1 constitutional, statutory, and/or common law privacy rights of the Plan beneficiaries. The
2 State Defendants further object to the Request to the extent that it seeks documents not
3 within the possession, custody, and control of the Arizona Department of Administration.
4 Finally, the State Defendants further object because the Parties already agreed, as set forth
5 in the Joint Status Report to the Court on October 23, 2020 (Doc. 128), to narrow this case
6 by agreeing that the medical necessity of gender transition surgeries will not be an issue in
7 this case. *See* Doc. 128 at 11:11-20.

8 **REQUEST FOR PRODUCTION NO. 5:** Please produce all documents and
9 communications between the Defendants and internal or external persons concerning (a)
10 transgender people, (b) gender transition, (c) change of sex, (d) sex reassignment, (e)
11 transsexualism; or (f) gender reassignment.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** The State Defendants object
13 to Request For Production No. 5 on the ground that it is overbroad, unduly burdensome,
14 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
15 State Defendants further object that the Request is not proportional to the needs of the case.
16 The State Defendants further object that the Request seeks documents and communications
17 protected by the attorney-client privilege, the doctor-patient privilege, the work product
18 doctrine, the deliberative process privilege, and other applicable privileges. The State
19 Defendants further object that the Request seeks information protected by the constitutional,
20 statutory, and/or common law privacy rights of the Plan beneficiaries. The State Defendants
21 further object to the Request to the extent that it seeks documents not within the possession,
22 custody, and control of the Arizona Department of Administration.

23 **REQUEST FOR PRODUCTION NO. 6:** Please produce documents sufficient to show,
24 from 2010 to present:

25 (a) the number of hysterectomies paid for by the Plan each year, the medical reason
26 for the surgery, and the individual and aggregate cost of the surgeries; and

27 (b) the number of medically necessary cosmetic or reconstructive surgical
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1 procedures paid for by the Plan each year (including but not limited to chest-reconstruction
2 surgery, vaginoplasty, or phalloplasty, or other surgery related to the reproductive or
3 urogenital system) the medical reason for the surgery, and the individual and aggregate cost
4 of the surgeries.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** The State Defendants object
6 to Request For Production No. 6 on the ground that it is overbroad, unduly burdensome,
7 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
8 State Defendants further object that the Request is vague and ambiguous as to the terms
9 “medically necessary,” “cosmetic,” and “reconstructive” procedures. The State Defendants
10 further object that the Request is not proportional to the needs of the case. The State
11 Defendants further object that the Request seeks information which is neither relevant nor
12 reasonably related to any claim or defense in this matter to the extent it is seeking
13 information regarding medical treatment and/or services other than for gender transition
14 surgery. The State Defendants further object that the Request seeks documents and
15 communications protected by the attorney-client privilege, the doctor-patient privilege, the
16 work product doctrine, the deliberative process privilege, and other applicable privileges.
17 The State Defendants further object that the Request seeks information protected by the
18 constitutional, statutory, and/or common law privacy rights of the Plan beneficiaries. The
19 State Defendants further object to the Request to the extent that it seeks documents not
20 within the possession, custody, and control of the Arizona Department of Administration.

21 **REQUEST FOR PRODUCTION NO. 7:** Please produce all documents (to include any
22 formal or informal financial or budgetary or other analyses, plans, actuarial reports, or other
23 reports or memoranda) to show (1) the total annual expenses (*i.e.*, the amounts paid by the
24 Plan to medical providers) for all treatment and services provided under the Plan from 2010
25 to present, including a cost breakdown of the total expenses for each type of treatment or
26 service; and (2) the total annual amounts paid by the Defendants to pay for the Plan for all
27 Plan recipients from 2010 to present, including an itemized breakdown of the total amounts

1 paid to the extent possible, and (3) budget projections and actuarial analyses of the Plan's
2 fiscal soundness.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** The State Defendants object
4 to Request For Production No. 7 on the ground that it is overbroad, unduly burdensome,
5 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
6 State Defendants further object that the Request is vague as to the term "fiscal soundness."
7 The State Defendants further object that the Request is not proportional to the needs of the
8 case. The State Defendants further object that the Request seeks information which is
9 neither relevant nor reasonably related to any claim or defense in this matter to the extent it
10 is seeking information regarding medical treatment and/or services other than for gender
11 transition surgery. The State Defendants further object that the Request seeks documents
12 and communications protected by the attorney-client privilege, the doctor-patient privilege,
13 the work product doctrine, and other applicable privileges. The State Defendants further
14 object that the Request seeks information protected by the constitutional, statutory, and/or
15 common law privacy rights of the Plan beneficiaries. The State Defendants further object
16 to the Request to the extent that it seeks documents not within the possession, custody, and
17 control of the Arizona Department of Administration. Subject to and without waiving the
18 foregoing objections, the State Defendants respond as follows:

19 The State Defendants do not have possession, custody, or control of responsive
20 documents prior to 2013. The State Defendants will produce non-privileged documents
21 responsive to Request For Production No. 7 in the possession, custody, and control of the
22 Arizona Department of Administration.

23 **REQUEST FOR PRODUCTION NO. 8:** All documents or communications you intend
24 to rely on at trial.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** The State Defendants object
26 to Request for Production No. 8 on the ground that it is not yet the time for identifying the
27 State Defendants' exhibits for trial and discovery is still ongoing. Subject to and without
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1 waiving the foregoing objections, the State Defendants respond as follows:

2 The State Defendants have already produced documents responsive to Request For
3 Production No. 8 in the possession, custody, and control of the Arizona Department of
4 Administration. The State Defendants reserve the right to supplement this response as
5 discovery progresses.

6 **REQUEST FOR PRODUCTION NO. 9:** Please produce all documents supporting Your
7 responses to Plaintiff's First Set of Interrogatories provided to Defendants on June 5, 2020.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** The State Defendants object
9 that Request For Production No. 9 is vague and ambiguous as to what documents "support"
10 the State Defendants' responses. The State Defendants further object to the Request on the
11 ground that it is overbroad, unduly burdensome, oppressive, harassing, and seeks to impose
12 unreasonable costs on the State Defendants. The State Defendants further object that the
13 Request seeks documents and communications protected by the attorney-client privilege,
14 the doctor-patient privilege, the work product doctrine, deliberative process privilege, and
15 other applicable privileges. The State Defendants further object that the Request seeks
16 information protected by the constitutional, statutory, and/or common law privacy rights of
17 the Plan beneficiaries. The State Defendants further object to the Request to the extent that
18 it seeks documents not within the possession, custody, and control of the Arizona
19 Department of Administration. Subject to and without waiving the foregoing objections,
20 the State Defendants respond as follows:

21 The State Defendants have already produced non-privileged documents responsive
22 to Request For Production No. 9 in the possession, custody, and control of the Arizona
23 Department of Administration.

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DATED this 21st day of January 2021.

FENNEMORE CRAIG, P.C.

By: s/ Ryan Curtis
Timothy J. Berg
Amy Abdo
Ryan Curtis
Shannon Cohan
Attorneys for Defendants State of Arizona,
Andy Tobin, and Paul Shannon

COPY of the foregoing e-mailed this
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EXHIBIT 7

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February 3, 2021

VIA EMAIL

Ryan Curtis, Esq.
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2394 E. Camelback Road, Suite 600
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Re: *Russell B. Toomey, v. State of Arizona, et al*, No. CV-19-00035-TUC-RM (LAB)

Dear Ryan and Shannon:

We write with respect to the State of Arizona, Andy Tobin, and Paul Shannon's (collectively, the "State Defendants") Responses and Objections to Dr. Toomey's First Request for Production of Documents and Tangible Things, dated January 21, 2021 ("Responses and Objections"), the State's third production of documents on January 21, 2021 ("Third Production"), and your letter of January 21, 2021 regarding updates to your privilege logs (the "January 21, 2021 Letter").

I. THE STATE DEFENDANTS' RESPONSES AND OBJECTIONS

The State Defendants' Responses and Objections to Dr. Toomey's First Request for Production of Documents, served December 8, 2020 ("Plaintiff's First RFP") indicate that they are withholding non-privileged documents responsive to Plaintiff's First RFP that are relevant to claims and defenses asserted in this matter. Further, the State Defendants' Responses and Objections provide no reasonable justification for the withholding of these documents, reciting instead mere boilerplate objections, lacking all specificity. This is plainly improper. *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) (affirming district court's order requiring defendant to produce documents, finding that "boilerplate objections or "blanket refusals" are "insufficient" to justify withholding of requested documents). The State Defendants cannot shield such responsive documents through the mere assertion of rote objections to production.

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The State Defendants assert several General Objections and objections to specific requests without reasonable, credible, or specific bases. We address each in turn.

A. State Defendants' General Objections

Dr. Toomey disagrees with the State Defendants' broad characterization that Plaintiff's First RFP are generally "overbroad, unduly burdensome, oppressive, harassing, and seek to impose unreasonable costs" (General Objection No. 3), are "vague, ambiguous, and unintelligible" (General Objection No. 5), and seek discovery that is "neither relevant nor reasonably related to" claims or defenses asserted in this matter (General Objection No. 7). Dr. Toomey remains open to negotiations about the State Defendants' compliance with his discovery requests in ways that can minimize burden to your clients, but rejects, without more specific information than thus far provided, that any of its requests are on their face unreasonable, irrelevant, or indecipherable.

1. General Objection No. 8

In its General Objection No. 8, the State Defendants' General Objection No. 8 assert that they will not produce documents in the "custody and control of the Arizona Governor's Office, the Arizona Attorney General's Office, or the Arizona Legislature" on the basis that such documents are not in the State Defendants' possession, custody, or control. The State Defendants' objection is unreasonable and improper. The State of Arizona is a named defendant to this lawsuit. The Office of the Arizona Governor, the Arizona Attorney General's Office, and the Arizona Legislature are agents and instrumentalities of the State of Arizona, and to the extent they have in their possession, custody, and control responsive documents and information, the State Defendants must produce such information.

Unless the State Defendants agree to retract this objection, to which we do not accede, we will proceed with subpoenaing the Arizona's Governor's Office, the Arizona Attorney General's Office, and the Arizona Legislature. Please confirm who will accept service on behalf of those entities.

2. General Objection No. 10

Furthermore, the State Defendants' General Objection No. 10, which likewise objects to the Plaintiff's First RFP's definition of "Defendants" to the extent it includes the Office of the Arizona Governor and the Arizona Legislature, is for similar reasons without merit.

First, as noted immediately above, the State of Arizona is a named defendant in this lawsuit, and responsive documents in the possession, custody, and control of its agents and instrumentalities, including the Office of the Arizona Governor and the Arizona Legislature, must be produced.

Second, the State Defendants have identified members of the Office of the Arizona Governor as lay witnesses in possession of relevant information—specifically, Ms. Christina Corieri, the "Senior Policy Advisor for the Arizona Governor's Office."¹ It is plainly unreasonable for the State Defendants

¹ Defendants State of Arizona's, Andy Tobin's, and Paul Shannon's Lay Witness Disclosure, dated December 12, 2020 (Document 146), No. 14.

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to object to the production of relevant documents and information upon which they themselves intend to rely.

Third, the State Defendants' have asserted claims of privilege (addressed further below) based on the alleged involvement, and specific instructions, of the Office of the Arizona Governor with respect to policymaking decisions on transgender healthcare. The State Defendants likewise cannot use the Office of the Arizona Governor's involvement as both sword and shield.

As with General Objection No. 8, unless the State Defendants agree to retract this objection, to which we do not accede, we will proceed with subpoenaing the Arizona's Governor's Office, the Arizona Attorney General's Office, and the Arizona Legislature. Please confirm who will accept service on behalf of those entities.

B. State Defendants' Specific Objections

The State Defendants' Responses and Objections specifically object to (or do not otherwise commit to) the production of documents responsive to Request Nos. 4, 5, and 6 in Plaintiff's First RFP. We address the State Defendants' arguments below. Dr. Toomey reserves his rights with respect to his Request nos. 1, 2, 3, 7, 8, and 9, including the right to inquire about the State Defendants' compliance with those requests and the production of documents.

1. Request No. 4

The State Defendants do not indicate in their response to Request No. 4 whether they will produce documents responsive thereto. The State Defendants argue however that documents regarding the "medical necessity of treatment for gender dysphoria" are irrelevant because the Parties have stipulated that neither Dr. Toomey nor Defendants will have to prove or disprove the medical necessity of gender affirming surgery as an element of their respective claims or defenses. The State Defendants otherwise charge that Request No. 4 is vague and ambiguous, overbroad, unduly burdensome, oppressive, harassing, and seeks to impose unreasonable costs, among other objections.

We disagree. Documents about the State Defendants' discussion, deliberations, and decisions respecting the medical necessity of gender affirming surgery may be probative on a number of issues remaining in the case, including, without limitation: (1) the State Defendants' allegedly non-discriminatory rationale for excluding coverage of gender affirming surgery, (2) whether the exclusion of gender affirming surgery is substantially to an important governmental interest or rationally related to a legitimate governmental interest, and (3) the State Defendants' calculation of the costs associated with such care.

Further, Request No. 4 is in no way vague or ambiguous, overbroad, or unduly burdensome. The State Defendants have already produced documents referencing medical necessity as a factor in determining whether particular treatments for gender dysphoria are covered under a policy. *See e.g.* AZSTATE.211274 (Aetna guidance on gender reassignment surgery, explaining when gender reassignment surgery is medically necessary); AZSTATE.211399 (Cigna guidance on gender reassignment surgery, differentiating between medically necessary and cosmetic procedures). These

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documents show that that the State Defendants not only are familiar with “medical necessity” as a distinct concept, but considered what was medically necessary or cosmetic in its policymaking.

Please clarify if (1) the State Defendants have conducted a diligent search for documents responsive to Request No. 4, and (2) if so, have the State Defendants withheld any responsive documents based on their objections thereto.

2. Request No. 5

The State Defendants do not indicate in their response to Request No. 5 whether they will produce documents responsive thereto. The State Defendants argue however that “documents and communications” between the State Defendants and any internal or external person regarding “(a) transgender people, (b) gender transition, (c) change of sex, (d) sex reassignment, (e) transsexualism, or (f) gender reassignment” are irrelevant, overbroad, unduly burden, oppressive, and harassing, among other objections.

We strongly disagree that the documents sought by Request No. 5 are either irrelevant or disproportionate to the needs of this case. Internal communications among state employees regarding transgender people and gender reassignment go to the discriminatory intent of the coverage exclusion, which is at the heart of the dispute Dr. Toomey has with the State, as the Magistrate recognized in her recent recommendations to the District Court. 11/30/2020 Report and Recommendation at 6-9 (acknowledging that Dr. Toomey may use discovery to investigate the “circumstances surrounding” the creation of the exclusion, and whether the State’s alleged rational for the exclusion is in fact a “mere pretext” for discrimination). For example, if employees of the State Defendants expressed negative views about transgender people and also advocated for exclusion of transgender related care, communications demonstrating those negative views would be probative of discriminatory intent with respect to the gender reassignment exclusion.

Further, the State Defendants have provided no support for their burden arguments. As State Defendants are no doubt aware, collecting internal communications on this limited range of topics can be easily accomplished by applying search terms across the emails of a limited pool of relevant custodians. Dr. Toomey remains open to further conferring on the State Defendants’ compliance with this requests however.

Please clarify if (1) the State Defendants have conducted a diligent search for documents responsive to Request No. 5, and (2) if so, have the State Defendants withheld any responsive documents based on their objections thereto.

3. Request No. 6

The State Defendants do not indicate in their response to Request No. 6 whether they will produce documents responsive thereto. The State Defendants argue that documents about the number of analogous medical procedures the Arizona health plan provides coverages for each year (but other excludes to the extent such care relates to gender reassignment), including hysterectomies, cosmetic and

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reconstructive surgical procedures (such as chest-reconstruction surgery, vaginoplasty, phalloplasty, or other urogenital health surgeries).

We disagree that Request No. 6 seeks irrelevant information, or that it imposes an undue burden on the State Defendants. The documents sought here are highly relevant to understanding, and potentially challenging, the State's alleged rationale for excluding coverage for gender reassignment surgery. For example, if responsive records were to show that the historical cost of providing coverage for hysterectomies is small or negligible, and expanding coverage for gender reassignment surgery would only lead to a small increase in the number of hysterectomies covered per year, that would serve to underline the State's cost rationale for maintaining the policy exclusion.

Further, the State Defendants have not provided any support for their burden objection to this request. Request No. 6 is a "sufficient to show" request, and seeks information about a discrete set of procedures that are covered under the State's health care plans. If the requested information is kept by the State Defendants in the ordinary course of business, or if it has been provided to the State Defendants by the insurance companies that administer their health plans, we fail to see how collecting and producing such information is burdensome at all, much less unduly burdensome.

Please clarify if (1) the State Defendants have conducted a diligent search for documents responsive to Request No. 6, and (2) if so, have the State Defendants withheld any responsive documents based on their objections thereto.

II. THE STATE DEFENDANTS' THIRD PRODUCTION

On January 21, 2021, the State Defendants produced documents responsive to Plaintiff's First RFP (i.e., the "Third Production"). Although our review of the Third Production is ongoing, we have noticed a few issues with the adequacy and completeness of the State Defendants' production thus far.

1. Non-Responsive Redactions

The State Defendants' Third Production contains thousands of slip sheets stating "Withheld – Document Not Relevant" without any further information provided. *See, e.g.*, AZSTATE.055953 (attached). The production also contains many email attachments which are redacted almost in their entirety, leaving only small excerpts unredacted. *See, e.g.*, AZSTATE.055864 (attached). Given the volume of slip-sheets and redactions, we are concerned that the State has either slip-sheeted or redacted responsive, substantive content, or content necessary to fully understand the disclosed information. Such unilateral withholding of information and redacting is improper. *See Mason v. Ryan*, No. CV 17-08098-PCT-DGC (MHB), 2018 WL 1899231, at *4 (D. Ariz. Apr. 20, 2018) ("Even the redaction of irrelevant information deprives the opposing party of context for the relevant information.") The Federal Rules of Civil Procedure provide only limited grounds for the redaction of personally identifying information, and the State Defendants have given no indication that they have withheld documents or redacted them on such basis. Fed. R. Civ. P. 5.2.

Please clarify the legal basis upon which, and methodology by which, the State Defendants slip-sheeted or redacted documents in the Third Production based on responsiveness (or lack thereof). To the

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extent there is no legal basis for such redactions, Dr. Toomey requests that these slip sheeted documents and redactions be removed.

2. Sources of Non-Email ESI

We note that a few of the email communications produced by the State Defendants reference what appears to be a shared file folder/shared drive where documents related to the plan recommendation for gender reassignment surgery are stored. *See, e.g.*, AZSTATE.100638 (attached).²

Please confirm that the State Defendants have collected and produced all responsive documents from this source.

Please also identify whether the State Defendants have access to any other shared file folders, shared drives, cloud storage, or other electronic storage mediums containing documents responsive to Plaintiff's First RFP, and whether such documents have been collected and produced.

III. THE STATE DEFENDANTS' JANUARY 21, 2021 LETTER

The State Defendants' January 21, 2021 Letter provides additional details in support of its assertion that a number of documents have been properly withheld on the basis of either the attorney-client privilege, work product doctrine, or the deliberative process privilege.³ Based on the information provided thus far by the State Defendants, we believe several of these privilege claims are unfounded.

A. General Issues / Attorney-Client Privilege

Neither the State Defendants' January 21, 2021 Letter, nor their Privilege Log, provides sufficient information about the documents being withheld to permit Dr. Toomey to assess the State Defendants' privilege claims. The State Defendants have not identified the name and capacity of the attorneys purportedly involved in each entry on the Privilege Log, and they have not provided a summarized description of the content of the document. This information is necessary and helpful. Fed. R. Civ. P. 26(b)(5)(A)(ii); *see Ctr. for Envtl. Health v. Perdue*, No. 18-CV-01763-RS (TSH) (N.D. Cal. Nov. 18, 2019) (holding that parties withholding information claiming privilege protection must "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim."). The entries on the Privilege Log merely provide, presumably, the subject line of the correspondence (*see, e.g.*, Privilege Log, document no. 3 ("re: draft cover memo 1557 Rule")) and do not otherwise indicate the attorney on the correspondence. Without this information, it is all but impossible to assess the validity of the State Defendants' privilege claims.

² Referencing the following file path: "S:\BSD\BENEFITS\Health Plan Data\CONTRACT AND COMPLIANCE\PLAN ADMINISTRATION\Plan Change Recommendations\Gender Reassignment".

³ We respectfully requests that the State Defendants provide an updated privilege log reflecting the significant changes to the privilege log originally produced to Dr. Toomey on December 22, 2020 ("Privilege Log"), as indicated in the the January 21, 2021 Letter.

Ryan Curtis, Esq.
Shannon Cohan, Esq.
February 3, 2021
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B. Work Product Doctrine Claims

The additional information provided in Sections C, D, and E of the State Defendants' January 21, 2021 Letter regarding Privilege Log document nos. 34-36, 37-38, 39-40, 41-45, 46-48, and 64-66 is not sufficient to permit us to assess the validity of the State Defendants' work product claims. The State Defendants' effectively (and improperly) attempts to claim work product protection for these correspondences and attachments merely because they relate to a topic/issue in the litigation. This does not mean however, that the underlying documents and information gathered (and potentially repackaged for counsel) were originally created *because of* the litigation, as required by the work product doctrine. *See In re Grand Jury Investigation*, 974 F.2d at 1071 n. 2 (“The because of standard does not consider whether litigation was a primary or secondary motive behind the creation of a document. Rather, it considers the totality of the circumstances and affords protection when it can fairly be said that the document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of that litigation.”) (internal quotation marks omitted) Further, the absence of counsel on these correspondences, and counsel's apparent non-involvement in the supposed work product, further belies the State Defendants' work product claims. *See Warren v. Bastyr Univ.*, No. 2:11-CV-01800-RSL, (W.D. Wash. May 17, 2013) (holding that the work product doctrine does not extend to “documents created in furtherance of a party's business objectives and in the absence of any instructions or input from counsel[.]”) The State Defendants cannot shield responsive documents and information simply by claiming that counsel requested such information (although to be clear, Dr. Toomey does not seek discovery of counsel's requests itself or explanation about its relevance or use to the litigation).

To the extent the January 21, 2021 Letter and the Privilege Log do not provide sufficient information on whether the underlying documents and information discussed in document nos. 34-36, 37-38, 39-40, 41-45, 46-48, and 64-66 were created or developed for purposes of this litigation, or were gathered discussed and developed with counsel's involvement, the State Defendants' claims for work product protection fail. Absent additional information from the State Defendants in support of their work product claim, Dr. Toomey will move to compel their production of these documents.

C. Deliberative Process Privilege Claims

The January 21, 2021 Letter fails to provide sufficient information to permit us to assess the validity of the State Defendants' deliberative process privilege claims. For a document to be protected under the deliberative process privilege, it must be pre-decisional and deliberative. *F.T.C. v. Warner Communications Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984). Pre-decisional means that the document must pre-date the adoption of the policy. *Id.* To be considered deliberative in nature, the document must contain “opinions, recommendations, or advice about agency policies. Purely factual material that does not reflect deliberative processes is not protected.” *Id.*; *see also Greenpeace v. Nat'l Marine Fisheries Serv.*, 198 F.R.D. 540, 544 (W.D. Wash. 2000) (finding that scientific expertise applied to interpretation of facts in communications between agencies was not protected by the deliberative process privilege as the privilege “must relate to the exercise of policy-oriented judgment” and not just advice). There is nothing in the January 21, 2021 Letter and in the Privilege Log informing whether each of the documents claimed to be protected under the deliberative process privilege are pre-decisional and deliberative.

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Further, the burden of establishing the applicability of the deliberative process privilege falls on the State Defendants, which must do so observing a formal procedure. *Greenpeace*, 198 F.R.D. at 543; *see also Mayfield v. Cty. of Los Angeles*, No. 219CV1298FMOSKX, 2020 WL 2510649, at * (C.D. Cal. Mar. 20, 2020) (holding that burden had not been met where agency head had failed to “file a sworn declaration with specific facts demonstrating why each document (or portion of each document) is deliberative and predecisional and why a protective order would be inadequate to reduce the degree and type of harm that might result from requiring production.”) Here, there is no evidence that such a procedure has been followed by the State Defendants.

The deliberative process privilege is also not absolute. In all events, the State Defendants cannot shield relevant discovery from Dr. Toomey, if his “need for accurate fact finding override the government's interest in non-disclosure.” *F.T.C.*, 742 F.2d at 1161. Courts have consistently overturned the privilege in civil rights actions where the public interest in disclosure is compelling. *See, e.g., N. Pacifica, LLC v. City of Pacifica*, 274 F. Supp. 2d 1118, 1121 (N.D. Cal. 2003); *Arizona Dream Act Coal. v. Brewer*, No. CV-12-02546-PHX-DGC, (D. Ariz. Jan. 15, 2014); *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, (D. Ariz. July 21, 2016). Or where there the government’s decision-making process is at issue. *Jones v. Hernandez*, No. 16-CV-1986-W(WVG), 2017 WL 3020930, at *2-3 (S.D. Cal. July 14, 2017) (holding that the deliberative process privilege protection may be denied “(1) when there is reason to believe that the documents sought may shed light on government misconduct, and (2) when the agency’s decision-making process is itself at issue”) (citations omitted); *Greenpeace*, 198 F.R.D. at 54 (“the privilege may be inapplicable where the agency's decision-making process is itself at issue”). The State Defendants’ decision-making process is the central issue here, as the Magistrate Judge’s recent Report and Recommendation found that State’s policymaking intentions are relevant to assessing the State’s alleged rational for the exclusion of gender affirming surgery is in fact a “mere pretext” for discrimination. 11/30/2020 Report and Recommendation at 6-9.

Assuming, *arguendo*, that the deliberative process privilege applies to the claimed documents, it does not protect them in their entirety. *Karnoski v. Trump*, 926 F.3d 1180 (9th Cir. 2019) (finding that “if the government can segregate and disclose nonprivileged factual information within a document, it must.”) Further, the analysis of the applicability of the deliberative process privilege should be made in relation to each claimed document and not in bulk. *Id.* (finding that the district court analysis of the applicability of deliberative process privilege was inadequate because it covered all withheld documents together and demanding a more granular analysis.)

Absent additional information from the State Defendants in support of their deliberative process privilege claims, Dr. Toomey will move to compel production of these documents.

* * *

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This letter is not intended to address all of Dr. Toomey's issues with the State Defendants' responses to Plaintiff's First RFP, the State Defendants' Third Production (or any prior production), or any claim of privilege asserted by them. Nothing in this letter is intended to waive or limit in any way Dr. Toomey's rights to raise other issues not stated here.

We look forward to discussing these issues out our upcoming meet and confer.

Sincerely,

/s/ Wesley R. Powell

Wesley R. Powell
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099

Attachments:

- AZSTATE.211274
- AZSTATE.211399
- AZSTATE.055953
- AZSTATE.055864
- AZSTATE.100638

cc. Joshua A. Block
Leslie Cooper
American Civil Liberties Union Foundation
125 Broad Street, Floor 18
New York, NY 10004

Matthew S. Freimuth
Jordan C. Wall
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099

Paul F. Eckstein
Austin C. Yost
Perkins Coie LLP
2901 N. Central Ave., Suite 2000
Phoenix, AZ 85012-2788

EXHIBIT 8

Abdalla, Gabriela

From: Curtis, Ryan <RCurtis@fennemorelaw.com>
Sent: Thursday, February 25, 2021 7:34 PM
To: Sheets, Victoria; Cohan, Shannon; Abdo, Amy; Berg, Tim; 'ayost@perkinscoie.com'; 'peckstein@perkinscoie.com'; 'gnyberg@perkinscoie.com'; 'cwendt@perkinscoie.com'; 'Joshua Block'; 'Christine Wee'; Powell, Wesley; Freimuth, Matthew; Wall, Jordan; Killian, Kristen; Garbacz, Justin; Maya, Amanda; Abdalla, Gabriela
Subject: RE: Toomey v State of Arizona [FC-Email.FID11439673]
Attachments: 17665233_4(State-Toomey - FINAL Privilege Log).XLSX

*** EXTERNAL EMAIL ***

Counsel,

Attached please find an updated privilege log. This privilege log includes the information requested in Plaintiffs' February 4, 2021 letter. The privilege log was also updated to include privileged documents withheld from the State Defendant's January 21 document production. However, pursuant to the parties' agreement that the State Defendants will reproduce certain redacted documents after entry of a Protective Order, this updated privilege log does not include any documents in the January 21 production that were redacted due to confidentiality or HIPAA. Please let me know if you have any questions. Please also let us know the status of the Protective Order. We provided comments on February 17.

Regarding the Google Drive issue, our search was limited to non-email ESI which the listed custodians had access to. The search captured documents for custodians regardless of their current employment status so long as they were employed by ADOA at the time that the documents were migrated to the Google Drive. As you note, the search may not have captured documents for custodians who never had any access to the Google Drive (although such documents may have been captured due to other custodians' access). The Google Drive migration occurred in 2017; the custodians who were not employed at the time of the migration are:

- Chanelle Bergren – employment ended 3/18/2016
- Marcia Jarvis – employment ended 9/5/2014
- Lauren Thomas – employment ended 2/20/2015
- Amanda House – employment ended 1/31/2013

Please see the following dates for depositions:

Scott Bender: March 30, 31.

Marie Isaacson: March 26, April 23. Ms. Isaacson indicates that she could not be available for a ½ day deposition prior to these dates.

Michael Meisner: March 16 or 23

Paul Shannon: March 12 or March 19

Please let us know what dates you want to conduct these depositions so that we and these individuals can plan accordingly. They all have other demands on their time and need know as soon as possible whether they are free to schedule other things on dates not being used. We will likewise be in touch with you soon about which dates we prefer for Dr. Toomey's deposition from the available dates you list.

Ryan C. Curtis, Chair - ERISA & Employee Benefits Practice Group

FENNEMORE.

2394 East Camelback Road, Suite 600, Phoenix, AZ 85016-3429

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From: Sheets, Victoria

Sent: Thursday, February 25, 2021 10:48 AM

To: Curtis, Ryan ; Cohan, Shannon ; Abdo, Amy ; Berg, Tim ; 'ayost@perkinscoie.com' ; 'peckstein@perkinscoie.com' ; 'gnyberg@perkinscoie.com' ; 'cwendt@perkinscoie.com' ; 'Joshua Block' ; 'Christine Wee' ; Powell, Wesley ; Freimuth, Matthew ; Wall, Jordan ; Killian, Kristen ; Sheets, Victoria ; Garbacz, Justin ; Maya, Amanda ; Abdalla, Gabriela

Subject: Toomey v State of Arizona

Hello all,

We wanted to check in on the status of receiving the revised privilege log discussed during the meet & confer, particularly with respect to the deliberative process privilege which will be helpful to resolve early on. Please also let us know additional deposition dates that work on your end.

Our client is generally free for a deposition in April or May on Tuesdays and Wednesdays except for April 6-7 and May 11.

On fees for depositions, we propose that the party taking the deposition (Willkie, in Ms. Medina's case) will pay for the court reporter, and then each party can order their own transcripts/video.

Best,
Victoria

Victoria A. Sheets

Willkie Farr & Gallagher LLP

787 Seventh Avenue | New York, NY 10019-6099

Direct: [+1 212 728 8858](tel:+12127288858) | Fax: +1 212 728 8111

vsheets@willkie.com | [vCard](#) | www.willkie.com/bio

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EXHIBIT 9

State of Arizona Privilege/Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
1	EML00006426	EML00006426	6/27/2016	Marie Isaacson	Erwin Kratz; Scott Bender	Rose Bernal; Jennifer Bowling; Gail Goodman; Ryan Curtis	Attorney-Client Communication	RE: Memorandum regarding leave, premiums, termination dates, and ACA Hours of Service (ADOA Benefits questions)	Erwin Kratz, Fennemore Craig, P.C.	Email discussing legal advice provided by Mr. Kratz and requesting additional legal advice
2	EML00006427	EML00006428	6/24/2016	Jennifer Bowling	Marie Isaacson; Scott Bender; Rose Bernal	Jennifer Bowling	Attorney-Client Communication	RE: State of AZ benefit plan forms and documents	Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Kratz
3	EML00007337	EML00007337	8/2/2016	Elizabeth Schafer	Marie Isaacson		Attorney-Client Communication	re: draft cover memo 1557 Rule	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
4, 5	EML00007338	EML00007339	8/2/2016	Elizabeth Schafer	Marie Isaacson	Yvette Medina	Attorney-Client Communication	re: draft cover memo 1557 Rule	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis, attaching memo drafted by Mr. Curtis
6	AZSTATE.005551	AZSTATE.005554	1/13/2017	Marie Isaacson	Nicolette A Schultz		Deliberative Process Privilege	re: plan document updates		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
7	EML00012436	EML00012436	1/13/2017	Nicolette A Schultz	Marie Isaacson		Deliberative Process Privilege	re: plan document updates		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
8	EML00012642	EML00012644	10/19/2016	Ryan Curtis	Marie Isaacson	Nicole Ong; John Fry; Erwin Kratz	Attorney-Client Communication	ACA 1557 Implementation [FC-Email.FID7081187]	Erwin Kratz, Fennemore Craig, P.C.; Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicol Ong, ADOA General Counsel	Email providing legal advice from Mr. Curtis, with attachments
9	EML00012648	EML00012648	10/18/2016	Marie Isaacson	Ryan Curtis	Nicole Ong; John Fry	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
10	EML00012649	EML00012650	10/18/2016	Ryan Curtis	Marie Isaacson	Nicole Ong; John Fry	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email providing legal advice from Mr. Curtis, with attachments
11	EML00012651	EML00012651	10/18/2016	Nicole Ong	Marie Isaacson		Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
12	EML00012656	EML00012656	10/17/2016	Marie Isaacson	Ryan Curtis; John Fry	Nicole Ong; Nicolette A Schultz	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
13	EML00012660	EML00012660	10/17/2016	Marie Isaacson	John Fry; Ryan Curtis	Nicole Ong	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
14	EML00012661	EML00012661	10/17/2016	Fry, John	Marie Isaacson; Ryan Curtis	Nicole Ong	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
15	EML00012662	EML00012662	10/17/2016	Marie Isaacson	Ryan Curtis; John Fry	Nicole Ong	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
16	EML00012663	EML00012663	10/17/2016	Ryan Curtis	Fry, John; Marie Isaacson	Nicole Ong	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
17	EML00012664	EML00012664	10/17/2016	John Fry	Marie Isaacson; Ryan Curtis	Nicole Ong	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
18	EML00012665	EML00012665	10/17/2016	Marie Isaacson	Ryan Curtis	John Fry; Nicole Ong	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
19	EML00012676	EML00012676	10/11/2016	Ryan Curtis	Marie Isaacson	John Fry; Erwin Kratz	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
20	EML00012867	EML00012868	8/3/2016	Marie Isaacson	Elizabeth Schafer		Attorney-Client Communication; Deliberative Process Privilege	Draft cover memo 1557 Rule	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis, attaching a memo drafted by Mr. Curtis, and drafting correspondence between Ms. Isaacson, Department of Administration, and Mr. Liburdi, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
21	EML00012874	EML00012875	8/2/2016	Marie Isaacson	Elizabeth Schafer, Yvette Medina		Attorney-Client Communication; Deliberative Process Privilege	Draft cover memo 1557 Rule	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis, attaching a memo drafted by Mr. Curtis, and drafting correspondence between Ms. Isaacson, Department of Administration, and Mr. Liburdi, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
22, 23	EML00012878	EML00012888	8/1/2016	Marie Isaacson	Yvette Medina; Scott Bender; Elizabeth Schafer		Attorney-Client Communication	FW: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis, attaching a memo drafted by Mr. Curtis

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
24	EML00012889	EML00012889	7/27/2016	Nicolette A Schultz	Ryan Curtis; Marie Isaacson	Cindy Shupe; Erwin Kratz	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
25	EML00012890	EML00012890	7/27/2016	Ryan Curtis	Marie Isaacson	Cindy Shupe; Erwin Kratz; Nicolette A Schultz	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
26	EML00012891	EML00012891	7/27/2016	Marie Isaacson	Ryan Curtis	Cindy Shupe; Erwin Kratz; Nicolette A Schultz	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
27	EML00012893	EML00012898	7/26/2016	John Fry	Marie Isaacson		Attorney-Client Communication	Re: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
28, 29	EML00012899	EML00012908	7/25/2016	Marie Isaacson	John Fry	Nicolette A Schultz	Attorney-Client Communication	FW: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis, attaching a memo drafted by Mr. Curtis
30	EML00012909	EML00012909	7/22/2016	Marie Isaacson	Ryan Curtis	Cindy Shupe; Erwin Kratz	Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
31, 32	EML00012910	EML00012919	7/22/2016	Ryan Curtis	Marie Isaacson	Cindy Shupe; Erwin Kratz	Attorney-Client Communication	ACA 1557 - Discrimination and Gender Identity	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis, attaching a memo drafted by Mr. Curtis
33	EML00013079	EML00013098	5/25/2016	Marie Isaacson	Erwin Kratz		Attorney-Client Communication	FW: Materials regarding our Health Plans	Erwin Kratz, Fennemore Craig, P.C.	Email requesting legal advice from Mr. Kratz
34	EML00014080	EML00014080	11/20/2019	Michael Meisner	Scott Bender	Paul Shannon	Attorney-Client Communication	Re: draft - Gender dysphoria issues to Kate King CONFIDENTIAL 11-20-19 - Invitation to edit	Kate King, BurnsBarton PLC	Email drafting communication to Ms. King requesting legal advice
35	EML00014082	EML00014082	11/19/2019	Scott Bender	Paul Shannon	Michael Meisner	Attorney-Client Communication	Re: draft - Gender dysphoria issues to Kate King CONFIDENTIAL 11-20-19 - Invitation to edit	Kate King, BurnsBarton PLC	Email drafting communication to Ms. King requesting legal advice
36	EML00014083	EML00014083	11/19/2019	Paul Shannon	Michael Meisner	Scott Bender	Attorney-Client Communication	draft - Gender dysphoria issues to Kate King CONFIDENTIAL 11-20-19 - Invitation to edit	Kate King, BurnsBarton PLC	Email drafting communication to Ms. King requesting legal advice
37	EML00014130	EML00014130	10/30/2019	Michael Meisner	Paul Shannon	Scott Bender	Attorney-Client Communication	Re: United Healthcare - Gender Dysphoria Treatment	Kate King, BurnsBarton PLC; Kimberly Suci, ADOA General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email chain discussing legal advice provided by Ms. King and Ms. Sornsin
38	EML00014131	EML00014131	10/29/2019	Paul Shannon	Michael Meisner; Scott Bender		Attorney-Client Communication	Fwd: United Healthcare - Gender Dysphoria Treatment	Kate King, BurnsBarton PLC; Kimberly Suci, ADOA General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email chain discussing legal advice provided by Ms. King and Ms. Sornsin
39	EML00014160	EML00014160	10/8/2019	Michael Meisner	Scott Bender		Attorney-Client Communication	Re: Toomey v. State of AZ	Kate King, BurnsBarton PLC; Kimberly Suci, ADOA General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email chain discussing legal advice provided by Ms. King
40	EML00014161	EML00014161	10/8/2019	Scott Bender	Michael Meisner		Attorney-Client Communication	Fwd: Toomey v. State of AZ	Kate King, BurnsBarton PLC; Kimberly Suci, ADOA General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email chain discussing legal advice provided by Ms. King
41	EML00014186	EML00014186	10/1/2019	Michael Meisner	Scott Bender		Attorney-Client Communication	Re: United Healthcare transgender benefit	Kate King, BurnsBarton PLC	Email chain discussing legal advice provided by Ms. King
42	EML00014196	EML00014196	9/30/2019	Scott Bender	Michael Meisner		Attorney-Client Communication	Fwd: United Healthcare transgender benefit	Kate King, BurnsBarton PLC	Email chain discussing legal advice provided by Ms. King
43	EML00014200	EML00014200	9/26/2019	Scott Bender	Michael Meisner		Attorney-Client Communication	Fwd: United Healthcare transgender benefit	Kate King, BurnsBarton PLC	Email chain discussing legal advice provided by Ms. King
44	EML00014201	EML00014201	9/26/2019	Michael Meisner	Scott Bender		Attorney-Client Communication	Re: United Healthcare transgender benefit	Kate King, BurnsBarton PLC	Email chain discussing legal advice provided by Ms. King
45	EML00014202	EML00014202	9/26/2019	Scott Bender	Michael Meisner		Attorney-Client Communication	Fwd: United Healthcare transgender benefit	Kate King, BurnsBarton PLC	Email chain discussing legal advice provided by Ms. King
46, 47	EML00014215	EML00014216	9/23/2019	Michael Meisner	Scott Bender; Paul Shannon		Work-Product	Re: Estimated annual costs to included transgender benefits: \$11 million per year		Email discussing document created at the request of Ms. Kate King relating to Toomey litigation
48	EML00014218	EML00014218	9/23/2019	Michael Meisner	Scott Bender; Paul Shannon		Work-Product	Estimated annual costs to included transgender benefits: \$11 million per year		Email discussing document created at the request of Ms. Kate King relating to Toomey litigation
49	EML00018839	EML00018839					DOCUMENT PRODUCED OFF OF PRIVILEGE LOG			
50	EML00019497	EML00019497	1/13/2017	Yvette Medina	Nicolette A Schultz		Deliberative Process Privilege	FW: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
51	EML00019822	EML00019822	7/27/2016	Nicolette A Schultz	Ryan Curtis		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
52	EML00019823	EML00019823	7/27/2016	Ryan Curtis	Nicolette A Schultz		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
53	EML00019824	EML00019824	7/27/2016	Nicolette A Schultz	Ryan Curtis		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
54	EML00019825	EML00019825	7/27/2016	Ryan Curtis	Nicolette A Schultz		Attorney-Client Communication	RE: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
55	EML00019829	EML00019829	7/27/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis and Ms. Shupe, and requesting legal advice from Mr. Fry
56	EML00019830	EML00019830	7/27/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis and Ms. Shupe, and requesting legal advice from Mr. Fry

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
57	EML00019831	EML00019836	7/27/2016	John Fry	Nicolette A Schultz		Attorney-Client Communication	Re: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis and Ms. Shupe, and requesting legal advice from Mr. Fry
58	EML00019837	EML00019837	7/27/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis and Ms. Shupe, and requesting legal advice from Mr. Fry
59	EML00019838	EML00019838	7/26/2016	John Fry	Nicolette A Schultz		Attorney-Client Communication	RE: Scheduling meeting for ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis and Ms. Shupe, and requesting legal advice from Mr. Fry
60	EML00019839	EML00019839	7/26/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	Scheduling meeting for ACA 1557 - Discrimination and Gender Identity	Ryan Curtis, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis and Ms. Shupe, and requesting legal advice from Mr. Fry
61	EML00021020	EML00021020	1/8/2016	Michael Bailey	Marc Lamber	Marie Isaacson; Rex Nowlan	Attorney-Client Communication	Authorization for Outside Counsel to Provide Periodic Advice to the Arizona Department of Administration on Health and Employee Welfare Questions	Marc Lamber, Fennemore Craig, P.C.; Michael Bailey, Arizona Attorney General's Office	Letter requesting legal advice from Fennemore Craig, P.C.
62	EML00021053	EML00021053	12/11/2019	Scott Bender	Nicole Sornsin; Kimberly Suci; Paul Shannon		Attorney-Client Communication	Gender Reassignment services appeal	Kimberly Suci, ADOA Associate General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email requesting legal advice from Ms. Suci and Ms. Sornsin
63	EML00021133	EML00021133					DOCUMENT PRODUCED OFF OF PRIVILEGE LOG			
64, 65	EML00021178	EML00021179	9/23/2019	Michael Meisner	Scott Bender; Paul Shannon		Work-Product	Re: Estimated annual costs to included transgender benefits: \$11 million per year ADOA Estimated annual costs		Email discussing document created at the request of Ms. Kate King relating to Toomey litigation
66	EML00021181	EML00021181	9/23/2019	Michael Meisner	Scott Bender; Paul Shannon		Work-Product	ADOA Estimated annual costs		Email discussing document created at the request of Ms. Kate King relating to Toomey litigation
67	EML00021265	EML00021265	2/19/2019	Scott Bender	Paul Shannon		Deliberative Process Privilege	Fwd: FW: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
68	EML00021298	EML00021298					DOCUMENT PRODUCED OFF OF PRIVILEGE LOG			
69	EML00021303	EML00021303					DOCUMENT PRODUCED OFF OF PRIVILEGE LOG			
70	EML00026061	EML00026061	10/25/2018	Yvette Medina	Scott Bender		Deliberative Process Privilege	Fwd: FW: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
71	EML00031546	EML00031546	10/25/2018	Yvette Medina	Scott Bender		Deliberative Process Privilege	Fwd: FW: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
72	ESI00000686	ESI00000686	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication	Summary and Implications of ACA § 1557 and Transgender Coverage Requirements	Ryan Curtis, Fennemore Craig, P.C.	Memorandum providing legal advice from Mr. Curtis
73	ESI00000688	ESI00000688	2/5/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication	Re: Plan Exceptions	Nicole Sornsin, ADOA Associate General Counsel	Memorandum requesting legal advice from Ms. Sornsin
74	ESI00000689	ESI00000689	2/5/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication	Re: Plan Exceptions	Nicole Sornsin, ADOA Associate General Counsel	Memorandum requesting legal advice from Ms. Sornsin
75	ESI00000690	ESI00000690	8/3/2016	Marie Isaacson	Mike Liburdi		Attorney-Client Communication; Deliberative Process Privilege	Affordable Care Act § 1557, Non-discrimination - Transgender Coverage	Ryan Curtis, Fennemore Craig, P.C.	Memorandum to Mr. Liburdi, which summarizes legal advice provided by Mr. Curtis regarding transgender benefits and was provided to Mr. Liburdi in advance of finalization of 2017 Plan documents
76	ESI00000698	ESI00000698	12/15/2016	Marie Isaacson	Christina Corieri	Scott Bender; Nicole Ong	Deliberative Process Privilege	RE: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
77							ENTRY NUMBER INADVERTENTLY OMITTED			
78	ESI00000700	ESI00000700	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication	Summary and Implications of ACA § 1557 and Transgender Coverage Requirements	Ryan Curtis, Fennemore Craig, P.C.	Memorandum providing legal advice from Mr. Curtis
79	ESI00000701	ESI00000701	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication	Summary and Implications of ACA § 1557 and Transgender Coverage Requirements	Ryan Curtis, Fennemore Craig, P.C.	Memorandum providing legal advice from Mr. Curtis
80	ESI00000702	ESI00000702	8/1/2016	Marie Isaacson	Yvette Medina; Scott Bender; Elizabeth Schafer		Attorney-Client Communication	FW: ACA 1557 - Discrimination and Gender Identity [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing memorandum providing legal advice from Mr. Curtis
81	ESI00000703	ESI00000703	7/6/2016	Marie Isaacson	Erwin Kratz	Ryan Curtis; Cindy Shupe; Scott Bender	Attorney-Client Communication	RE: The Plan Participation Chart we Discussed [FC-Email.FID7081187]	Erwin Kratz, Fennemore Craig, P.C.	Email chain requesting legal advice from Mr. Kratz
82	ESI00000772	ESI00000772	7/20/2016	Ryan Curtis	Marie Isaacson		Attorney-Client Communication	Summary and Implications of ACA § 1557 and Transgender Coverage Requirements	Ryan Curtis, Fennemore Craig, P.C.	Memorandum providing legal advice from Mr. Curtis
83	ESI00000773	ESI00000773	2/5/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication	Re: Plan Exceptions	Nicole Sornsin, ADOA Associate General Counsel	Memorandum requesting legal advice from Ms. Sornsin
84	AZSTATE.000784	AZSTATE.001365	2/14/2020	Ashleigh E Hope			Confidential, non-relevant information	ADOA / UnitedHealthcare Vendor Tracking Log - Closed		Tracking log containing confidential, trade secret information
85	AZSTATE.001366	AZSTATE.001678	2/10/2020	Ashleigh E Hope			Confidential, non-relevant information	ADOA / CIGNA Project Tracking Log - Closed		Tracking log containing confidential, trade secret information
86	AZSTATE.001679	AZSTATE.001695	2/10/2020	Ashleigh E Hope			Confidential, non-relevant information	ADOA / Aetna Tracking Log - Open		Tracking log containing confidential, trade secret information
87	AZSTATE.001696	AZSTATE.001778	2/10/2020	Ashleigh E Hope			Confidential, non-relevant information	ADOA / Aetna Tracking Log - Closed		Tracking log containing confidential, trade secret information

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
88	AZSTATE.001779	AZSTATE.002089	2/3/2020	Ashleigh E Hope			Confidential, non-relevant information	ADOA / CIGNA Project Tracking Log - Closed		Tracking log containing confidential, trade secret information
89	AZSTATE.002090	AZSTATE.002751	9/3/2019	Ashleigh E Hope			Confidential, non-relevant information	ADOA / MedImpact Project Tracking Log - Closed		Tracking log containing confidential, trade secret information
90	AZSTATE.003186	AZSTATE.003188	1/17/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
91	AZSTATE.003438	AZSTATE.003454	11/9/2015	Ashleigh E Hope			Confidential, non-relevant information	ADOA / BCBSAZ Project Tracking Log - Open		Tracking log containing confidential, trade secret information
92	AZSTATE.003466	AZSTATE.003467	1/17/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
93	AZSTATE.005416	AZSTATE.005418	1/17/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
94	AZSTATE.005541	AZSTATE.005541	1/26/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
95	AZSTATE.005547	AZSTATE.005548	1/17/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
96	AZSTATE.006534	AZSTATE.006536	1/13/2020	Scott Bender	Paul Shannon		HIPAA/Personally Identifiable Information	Fwd: Harmful exclusions from state healthcare plan.msg		Email chain discussing Plan member complaint, which contains personally identifiable information
97	AZSTATE.006880	AZSTATE.006880	8/23/2017	Rose Bernal	Scott Bender; Erin King; Kayla Stivason		HIPAA/Personally Identifiable Information	FW: Additional Information - Appeal.msg		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
98	AZSTATE.007001	AZSTATE.007001	8/23/2017	Rose Bernal	Staci Wilson	[REDACTED]	HIPAA/Personally Identifiable Information	RE: Additional Information - Appeal.msg		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
99	AZSTATE.007002	AZSTATE.007003	8/21/2017	Rose Bernal	[REDACTED]	Staci R. Wilson; Helena A. Rodrigues; Kayla Stivason	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure.msg		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
100	AZSTATE.007004	AZSTATE.007005	8/1/2017	Staci Wilson	Rose Bernal		HIPAA/Personally Identifiable Information	RE: Transgender coverage - hormone therapy.msg		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
101	AZSTATE.007006	AZSTATE.007007	8/1/2017	Shannon Daniel	Rose Bernal	Yvette Medina; Scott Bender	HIPAA/Personally Identifiable Information	RE: Transgender coverage - hormone therapy.msg		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
102	AZSTATE.009655	AZSTATE.009659	1/10/2020				Confidential, non-relevant information	Project Tracking Log - Open Items		Tracking log containing confidential, trade secret information
103	AZSTATE.010325	AZSTATE.010325	4/22/2019				HIPAA/Personally Identifiable Information	Report of ADOA transgender services from Aetna		Report listing transgender healthcare services covered by the Plan, containing Plan members' personally identifiable information
104	AZSTATE.010904	AZSTATE.010904	1/26/2017				Confidential, non-relevant information	Draft meeting Agenda		Meeting agenda containing confidential conference call information
105	AZSTATE.011038	AZSTATE.011045	9/29/2016				Confidential, non-relevant information	Draft Medical Director Meeting Minutes		Meeting minutes containing confidential, trade secret information
106	AZSTATE.011046	AZSTATE.011049	9/28/2016	Eveleth, Ray G <EvelethR@aetna.com>	Scott Bender <Scott.Bender@azdoa.gov>; Yvette Medina <Yvette.Medina@azdoa.gov>	Dash, Jay A.	Confidential, non-relevant information	RE: Medical director meeting.msg		Meeting minutes containing confidential, trade secret information
107	AZSTATE.080734	AZSTATE.080738	1/25/2017				HIPAA/Personally Identifiable Information	Session Roster - 2017 Benefits Liaison Training		Benefits Liaison training roster containing confidential employee information
108	AZSTATE.080739	AZSTATE.080739	1/25/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
109	AZSTATE.083158	AZSTATE.083159	1/17/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
110	AZSTATE.083937	AZSTATE.083940	6/24/2016	Marie Isaacson	Jennifer Bowling; Scott Bender; Rose Bernal		Attorney-Client Communication	RE: State of AZ benefit plan forms and documents [FC-Email.FID7081187]	Erwin Kratz, Fenemore Craig, P.C.	Email discussing legal advice provided by Mr. Kratz and requesting additional legal advice
111	AZSTATE.083941	AZSTATE.083944	6/24/2016	Marie Isaacson	Scott Bender; Jennifer Bowling; Rose Bernal		Attorney-Client Communication	FW: State of AZ benefit plan forms and documents [FC-Email.FID7081187]	Erwin Kratz, Fenemore Craig, P.C.	Email discussing legal advice provided by Mr. Kratz and requesting additional legal advice
112	AZSTATE.084769	AZSTATE.084769	5/22/2017	Elizabeth Schafer			HIPAA/Personally Identifiable Information	Blue Cross Blue Shield of Arizona member Satisfaction Survey Results		Survey results containing confidential employee information
113	AZSTATE.085648	AZSTATE.085649	6/8/2016	Elizabeth Schafer	Scott Bender		Attorney-Client Communication	Re: Transgender benefits	Dawn Northup, Arizona Attorney General	Email discussing legal advice provided by Ms. Northup
114	AZSTATE.085875	AZSTATE.085875	5/27/2016	Elizabeth Schafer			HIPAA/Personally Identifiable Information	UnitedHealthcare member Satisfaction Survey Results		Survey results containing confidential employee information
115	AZSTATE.085877	AZSTATE.085877	5/11/2016	Elizabeth Schafer			HIPAA/Personally Identifiable Information	UnitedHealthcare member Satisfaction Survey Results		Survey results containing confidential employee information
116	AZSTATE.088316	AZSTATE.088316	6/28/2018				HIPAA/Personally Identifiable Information	UnitedHealthcare member Satisfaction Survey Results		Survey results containing confidential employee information
117	AZSTATE.088872	AZSTATE.088878	8/25/2017	Scott Bender	Mary Cappabianco; Erin Russell; Kayla Stivason; Rose Bernal	Sean Kirwan	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
118	AZSTATE.088879	AZSTATE.088885	8/25/2017	Mary Cappabianco	Scott Bender; Erin Russell; Kayla Stivason; Rose Bernal	Sean Kirwan	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
119	AZSTATE.088886	AZSTATE.088891	8/25/2017	Scott Bender	Erin Russell; Kayla Stivason; Rose Bernal	Sean Kirwan; Mary Cappabianco	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
120	AZSTATE.088892	AZSTATE.088897	8/24/2017	Erin Russell	Kayla Stivason; Rose Bernal	Scott Bender; Sean Kirwan; Mary Cappabianco	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
121	AZSTATE.088898	AZSTATE.088902	8/23/2017	Kayla Stivason	Erin Russell; Rose Bernal	Scott Bender; Sean Kirwan	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
122	AZSTATE.089023	AZSTATE.089026	8/22/2017	Erin Russell	Rose Bernal; Kayla Stivason	Scott Bender; Sean Kirwan	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
123	AZSTATE.094671	AZSTATE.094675	1/25/2017				HIPAA/Personally Identifiable Information	Session Roster - 2017 Benefits Liaison Training		Benefits Liaison training roster containing confidential employee information
124	AZSTATE.094676	AZSTATE.094676	1/26/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
125	AZSTATE.095605	AZSTATE.095608	1/13/2017	Marie Isaacson	Nicolette A Schultz		Deliberative Process Privilege	Re: Plan document updates		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents

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No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
126	AZSTATE.100639	AZSTATE.100640	6/8/2016	Nicolette A Schultz	Marie Isaacson		Attorney-Client Communication	Re: fyi	Dawn Northup, Arizona Attorney General; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA Associate General Counsel	Email chain discussing legal advice provided by Ms. Northup
127	AZSTATE.129503	AZSTATE.129504	1/31/2020	Scott Bender	Kimberly Suci; Nicole Sornsin; Paul Shannon		Attorney-Client Communication	Fwd: Members' using Hormone Replacement Drug Therapy	Kimberly Suci, ADOA Associate General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email requesting legal advice from Ms. Suci and Ms. Sornsin
128	AZSTATE.129505	AZSTATE.129507	1/13/2020	Paul Shannon	Nicole Sornsin; Kimberly Suci		Attorney-Client Communication	Fwd: Harmful exclusions from state healthcare plan.	Kimberly Suci, ADOA Associate General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email requesting legal advice from Ms. Suci and Ms. Sornsin
129	AZSTATE.129508	AZSTATE.129509	1/7/2020	Kimberly Suci	Paul Shannon	Nicole Sornsin	Attorney-Client Communication	Re: Transgender benefits	Kimberly Suci, ADOA Associate General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email requesting legal advice from Ms. Suci and Ms. Sornsin, and providing legal advice from Ms. Suci
130	AZSTATE.129510	AZSTATE.129510	1/7/2020	Paul Shannon	Kimberly Suci		Attorney-Client Communication	Fwd: Transgender benefits	Kimberly Suci, ADOA Associate General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email requesting legal advice from Ms. Suci and Ms. Sornsin
131	AZSTATE.129678	AZSTATE.129681	11/6/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication	Re: Harmful exclusions from state healthcare plan.	Nicole Sornsin, ADOA Associate General Counsel	Email requesting legal advice from Ms. Sornsin
132	AZSTATE.129682	AZSTATE.129684	11/6/2019	Nicole Sornsin	Paul Shannon		Attorney-Client Communication	Re: Harmful exclusions from state healthcare plan.	Nicole Sornsin, ADOA Associate General Counsel	Email providing legal advice from Ms. Sornsin
133	AZSTATE.129685	AZSTATE.129687	11/6/2019	Paul Shannon	Nicole Sornsin		Attorney-Client Communication	Re: Harmful exclusions from state healthcare plan.	Nicole Sornsin, ADOA Associate General Counsel	Email requesting legal advice from Ms. Sornsin
134	AZSTATE.129688	AZSTATE.129690	11/6/2019	Nicole Sornsin	Paul Shannon	Kimberly Suci	Attorney-Client Communication	Re: Harmful exclusions from state healthcare plan.	Nicole Sornsin, ADOA Associate General Counsel; Kimberly Suci, ADOA Associate General Counsel	Email providing legal advice from Ms. Sornsin
135	AZSTATE.129691	AZSTATE.129693	11/6/2019	Paul Shannon	Nicole Sornsin; Kimberly Suci		Attorney-Client Communication	Fwd: Harmful exclusions from state healthcare plan.	Nicole Sornsin, ADOA Associate General Counsel; Kimberly Suci, ADOA Associate General Counsel	Email requesting legal advice from Ms. Sornsin
136	AZSTATE.129694	AZSTATE.129695	11/6/2019	Scott Bender	Paul Shannon		HIPAA/Personally Identifiable Information	Fwd: Harmful exclusions from state healthcare plan.		Email chain discussing Plan member complaint, which contains personally identifiable information
137	AZSTATE.129696	AZSTATE.129696	10/25/2019	Paul Shannon	Nicole Sornsin; Kimberly Suci		Attorney-Client Communication	Fwd: Providers and payers get new court ruling on ACA protections for transgender patients	Nicole Sornsin, ADOA Associate General Counsel; Kimberly Suci, ADOA Associate General Counsel	Email requesting legal advice from Ms. Sornsin and Ms. Suci
138	AZSTATE.129813	AZSTATE.129814	10/15/2018	Paul Shannon	John Fry		Attorney-Client Communication	Fwd: Interesting Governing article...	John Fry, Arizona Attorney General's Office	Email requesting legal advice from Mr. Fry
139	AZSTATE.129815	AZSTATE.129817	10/10/2018	Paul Shannon	Yvette Medina; Scott Bender		Attorney-Client Communication	Fwd: Request for documentation regarding ADOA's medical coverage	John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Fry
140	AZSTATE.129818	AZSTATE.129819	10/6/2018	John Fry	Paul Shannon		Attorney-Client Communication	RE: Request for documentation regarding ADOA's medical coverage	John Fry, Arizona Attorney General's Office	Email providing legal advice from Mr. Fry
141	AZSTATE.129820	AZSTATE.129821	10/2/2018	Paul Shannon	John Fry		Attorney-Client Communication	Re: Request for documentation regarding ADOA's medical coverage	John Fry, Arizona Attorney General's Office	Email requesting legal advice from Mr. Fry
142	AZSTATE.129936	AZSTATE.129937	1/13/2020	Noah Munoz	Rose Bernal		HIPAA/Personally Identifiable Information	Fwd: Harmful exclusions from state healthcare plan.		Email chain discussing Plan member complaint, which contains personally identifiable information
143	AZSTATE.129942	AZSTATE.129942	11/6/2019	Noah Munoz	Scott Bender	Yvette Medina; Rose Bernal	HIPAA/Personally Identifiable Information	Fwd: Harmful exclusions from state healthcare plan.		Email chain discussing Plan member complaint, which contains personally identifiable information
144	AZSTATE.130286	AZSTATE.130286	8/23/2017	Staci Wilson	Rose Bernal	[REDACTED]	HIPAA/Personally Identifiable Information	Additional Information - Appeal		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
145	AZSTATE.130407	AZSTATE.130407	8/21/2017	[REDACTED]	Rose Bernal	Staci R. Wilson; Helena A. Rodrigues	HIPAA/Personally Identifiable Information	Appeal Denied		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
146	AZSTATE.130408	AZSTATE.130409	8/1/2017	Rose Bernal	Staci Wilson		HIPAA/Personally Identifiable Information	RE: Transgender coverage - hormone therapy		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
147	AZSTATE.130410	AZSTATE.130411	8/1/2017	Rose Bernal	Shannon Daniel	Scott Bender; Yvette Medina	HIPAA/Personally Identifiable Information	FW: Transgender coverage - hormone therapy		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
148	AZSTATE.136595	AZSTATE.136595	8/1/2017	Staci Wilson	Yvette Medina; Rose Bernal; Scott Bender		HIPAA/Personally Identifiable Information	Transgender coverage - hormone therapy		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
149	AZSTATE.136602	AZSTATE.136602	6/2/2017	Elizabeth Schafer			HIPAA/Personally Identifiable Information	Blue Cross Blue Shield of Arizona member Satisfaction Survey Results		Survey results containing confidential employee information
150	AZSTATE.139839	AZSTATE.139839	4/22/2019	Peter Chiappa			HIPAA/Personally Identifiable Information	Report of ADOA transgender services from Aetna		Report listing transgender healthcare services covered by the Plan, containing Plan members' personally identifiable information
151	AZSTATE.143577	AZSTATE.143581	1/25/2017				HIPAA/Personally Identifiable Information	Session Roster - 2017 Benefits Liaison Training		Benefits Liaison training roster containing confidential employee information
152	AZSTATE.143582	AZSTATE.143582	1/26/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
153	AZSTATE.151751	AZSTATE.151761	2/3/2020				Deliberative Process Privilege	Various notes from Ms. Isaacson		Notes summarizing discussion between Ms. Isaacson and Mr. Devlin, AHCCCS, regarding proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
154	AZSTATE.188313	AZSTATE.188313	3/27/2020				HIPAA/Personally Identifiable Information	UnitedHealthcare member Satisfaction Survey Results		Survey results containing confidential employee information
155	AZSTATE.189467	AZSTATE.189467	4/6/2020				HIPAA/Personally Identifiable Information	UnitedHealthcare member Satisfaction Survey Results		Survey results containing confidential employee information
156	AZSTATE.190624	AZSTATE.190624	4/10/2020				HIPAA/Personally Identifiable Information	UnitedHealthcare member Satisfaction Survey Results		Survey results containing confidential employee information
157	AZSTATE.207655	AZSTATE.207656	8/22/2017	Rose Bernal	Kayla Stivason		HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
158	AZSTATE.207657	AZSTATE.207659	8/22/2017	Kayla Stivason	Erin Russell	Scott Bender	HIPAA/Personally Identifiable Information	FW: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
159	AZSTATE.207660	AZSTATE.207662	8/22/2017	Kayla Stivason	Rose Bernal		HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
160	AZSTATE.207663	AZSTATE.207665	8/22/2017	Rose Bernal	Kayla Stivason		HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information

State of Arizona Privilege/Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
161	AZSTATE.207666	AZSTATE.207668	8/22/2017	Kayla Stivason	Rose Bernal	Erin Russell; Scott Bender	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
162	AZSTATE.207669	AZSTATE.207672	8/22/2017	Rose Bernal	Kayla Stivason	Erin Russell; Scott Bender	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
163	AZSTATE.207673	AZSTATE.207676	8/22/2017	Erin Russell	Rose Bernal; Kayla Stivason	Scott Bender	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
164	AZSTATE.207677	AZSTATE.207684	8/25/2017	Scott Bender	Mary Cappabianco; Erin Russell; Kayla Stivason; Rose Bernal	Sean Kirwan	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
165	AZSTATE.207685	AZSTATE.207693	8/25/2017	Erin Russell	Scott Bender; Mary Cappabianco; Kayla Stivason; Rose Bernal	Sean Kirwan	HIPAA/Personally Identifiable Information	RE: Appeal Denied secure		Email chain discussing Plan member medication denial appeal, which contains personally identifiable information
166	AZSTATE.207722	AZSTATE.207724	2/3/2017	Stu Wilbur			Confidential, non-relevant information	Benefits Services Division - Meeting Agenda		Meeting agenda containing confidential conference call information
167	AZSTATE.235593	AZSTATE.235597	10/29/2020	Rose Bernal	Rose Bernal; Amy Kenney-Hudson		HIPAA/Personally Identifiable Information	2020.10.29		Email chain and attachment discussing Plan documents and coverage, which contains personally identifiable information
168	EML00007556	EML00007557	10/6/2018	John Fry	Elizabeth Thorson		Attorney-Client Communication	Attorney-Client Privileged Communication	John Fry, Arizona Attorney General's Office	Email providing legal advice from Mr. Fry
169	EML00012453	EML00012453	1/3/2017	Nicole Ong	Marie Isaacson		Attorney-Client Communication	Federal judge halts transgender protections in Obamacare	Nicole Ong, ADOA General Counsel	Email providing legal advice from Ms. Ong
170	EML00012502	EML00012502	12/15/2016	Marie Isaacson	Christina Corieri	Scott Bender; Nicole Ong	Deliberative Process Privilege	RE: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
171	EML00012503	EML00012503	12/15/2016	Christina Corieri	Marie Isaacson		Deliberative Process Privilege	RE: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
172	EML00012504	EML00012504	12/14/2016	Marie Isaacson	Christina Corieri		Deliberative Process Privilege	RE: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
173	EML00012539	EML00012539	11/28/2016	Marie Isaacson	Christina Corieri		Deliberative Process Privilege	RE: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
174	EML00012540	EML00012540	11/28/2016	Christina Corieri	Marie Isaacson	Nicole Ong	Deliberative Process Privilege	RE: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
175	EML00012541	EML00012541	11/25/2016	Marie Isaacson	Christina Corieri	Nicole Ong; Scott Bender	Deliberative Process Privilege	RE: ACA §1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
176	EML00012603	EML00012603	10/26/2016	Nicole Ong	Marie Isaacson		Attorney-Client Communication	RE: You're Invited: Holiday Cheer and Discussion with Fennemore Craig's Labor & Employment Practice Group	Nicole Ong, ADOA General Counsel	Email providing legal advice from Ms. Ong
177	EML00012604	EML00012604	10/26/2016	Marie Isaacson	Nicole Ong		Attorney-Client Communication	RE: You're Invited: Holiday Cheer and Discussion with Fennemore Craig's Labor & Employment Practice Group	Nicole Ong, ADOA General Counsel	Email providing legal advice from Ms. Ong
178	EML00012605	EML00012605	10/26/2016	Marie Isaacson	Nicole Ong		Attorney-Client Communication	RE: You're Invited: Holiday Cheer and Discussion with Fennemore Craig's Labor & Employment Practice Group	Nicole Ong, ADOA General Counsel	Email providing legal advice from Ms. Ong
179	EML00012606	EML00012606	10/25/2016	Mike Lettman	Nicole Ong	Marie Isaacson	Attorney-Client Communication	RE: You're Invited: Holiday Cheer and Discussion with Fennemore Craig's Labor & Employment Practice Group	Nicole Ong, ADOA General Counsel	Email providing legal advice from Ms. Ong
180	EML00012612	EML00012612	10/25/2016	Nicole Ong	Marie Isaacson; Mike Lettman		Attorney-Client Communication	RE: You're Invited: Holiday Cheer and Discussion with Fennemore Craig's Labor & Employment Practice Group	Nicole Ong, ADOA General Counsel	Email providing legal advice from Ms. Ong
181	EML00012698	EML00012698	10/4/2016	Nicole Ong	Michael Liburdi; Christina Corieri; Marie Isaacson; John Fry		Attorney-Client Communication	FW: SW Benefits Update: IN Case You Missed It...	Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office	Email providing legal advice from Ms. Ong
182	EML00012744	EML00012744	9/14/2016	Ryan Curtis	Marie Isaacson	John Fry; Erwin Kratz	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
183	EML00012745	EML00012745	9/13/2016	Ryan Curtis	Marie Isaacson	John Fry; Erwin Kratz	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
184	EML00012800	EML00012800	8/31/2016	Marie Isaacson	Ryan Curtis	John Fry; Nicolette Schultz	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
185	EML00012802	EML00012802	8/31/2016	Ryan Curtis	Marie Isaacson	John Fry	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Curtis
186	EML00012965	EML00012973	7/7/2016	Marie Isaacson	Erwin Kratz	Ryan Curtis; Cindy Shupe; Scott Bender	Attorney-Client Communication	RE: The Plan Participate Chart we Discussed [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.; Cindy Shupe, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Kratz
187	EML00019747	EML00019747	9/2/2016	Nicolette A Schultz	Ryan Curtis		Attorney-Client Communication	Scheduling 9/21_Benefits	Ryan Curtis, Fennemore Craig, P.C.	Email chain requesting legal advice from Mr. Curtis
188	EML00013038	EML00013038	6/10/2016	Marie Isaacson	Nicole Ong; John Fry		Attorney-Client Communication	Transgender	John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain requesting legal advice from Mr. Fry and Ms. Ong

State of Arizona Privilege/Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
189	EML00013043	EML00013043	6/8/2016	Nicolette A Schultz	Scott Bender	Marie Isaacson	Attorney-Client Communication	Transgender Benefits	Dawn Northup, Arizona Attorney General	Email chain discussing legal advice provided by Ms. Northup
190	EML00013044	EML00013044	6/8/2016	Nicolette A Schultz	Marie Isaacson		Attorney-Client Communication	RE: fyi	Dawn Northup, Arizona Attorney General	Email chain discussing legal advice provided by Ms. Northup
191	EML00013045	EML00013045	6/8/2016	Nicole Ong	Marie Isaacson		Attorney-Client Communication	FW: fyi	Nicole Ong, ADOA General Counsel; John Fry, Arizona Attorney General's Office; Dawn Northup, Arizona Attorney General's Office	Email providing legal advice from Ms. Ong
192	EML00013139	EML00013158	5/6/2016	Marie Isaacson	Erwin Kratz		Attorney-Client Communication	Materials regarding our Health Plans	Erwin Kratz, Fennemore Craig, P.C.	Email requesting legal advice from Mr. Kratz
193	EML00013226	EML00013245	4/8/2016	Scott Bender	Marie Isaacson		Work-Product	RE: Materials for our attorney	Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing information requested by Mr. Kratz
194	EML00019630	EML00019630	10/17/2016	Marie Isaacson	Ryan Curtis; John Fry	Nicole Ong	Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain discussing legal advice provided by Mr. Curtis
195	EML00019693	EML00019693	9/13/2016	Erwin Kratz	Ryan Curtis; Nicolette A Schultz		Attorney-Client Communication	RE: Rescheduling Of Transgender Benefits Update [FC-Email.FID7081187]	Erwin Kratz, Fennemore Craig, P.C.; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
196	EML00019697	EML00019697	9/13/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	Rescheduling the Benefits Update	John Fry, Arizona Attorney General's Office	Email chain discussing legal advice provided by Mr. Fry
197	EML00019698	EML00019698	9/13/2016	Ryan Curtis	Nicolette Schultz	Erwin Kratz	Attorney-Client Communication	RE: Rescheduling Of Transgender Benefits Update [FC-Email.FID7081187]	Erwin Kratz, Fennemore Craig, P.C.; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
198	EML00019699	EML00019699	9/13/2016	Nicolette A Schultz	Ryan Curtis		Attorney-Client Communication	Rescheduling Of Transgender Benefits Update	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
199	EML00019718	EML00019718	9/8/2016	Ryan Curtis	Nicolette A Schultz		Attorney-Client Communication	RE: Scheduling 9/21_Benefits [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
200	EML00019719	EML00019719	9/7/2016	Nicolette A Schultz	Ryan Curtis; Erwin Kratz		Attorney-Client Communication	RE: Scheduling 9/21_Benefits [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.; Erwin Kratz, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
201	EML00019745	EML00019745	9/2/2016	Nicolette A Schultz	Ryan Curtis		Attorney-Client Communication	RE: Scheduling 9/21_Benefits [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
202	EML00019746	EML00019746	9/2/2016	Ryan Curtis	Nicolette A Schultz		Attorney-Client Communication	RE: Scheduling 9/21_Benefits [FC-Email.FID7081187]	Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
203	EML00019748	EML00019748	9/2/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	Scheduling 9/21 at 3pm_Benefits	John Fry, Arizona Attorney General's Office	Email chain requesting legal advice from Mr. Fry
204	EML00019757	EML00019757	9/1/2016	Christina Corieri	Nicolette A Schultz; Jill Metzinger		Deliberative Process Privilege	RE: Update ACA § 1557	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain discussing legal advice provided by Mr. Curtis regarding transgender benefits in advance of finalization of 2017 Plan documents
205	EML00019758	EML00019758	9/1/2016	Nicolette A Schultz	Jill Metzinger; Christina Corieri		Deliberative Process Privilege	RE: Update ACA § 1557	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain discussing legal advice provided by Mr. Curtis regarding transgender benefits in advance of finalization of 2017 Plan documents
206	EML00019759	EML00019759	9/1/2016	Jill Metzinger	Nicolette A Schultz; Nicole Ong; Christina Corieri		Deliberative Process Privilege	RE: Update ACA § 1557	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain discussing legal advice provided by Mr. Curtis regarding transgender benefits in advance of finalization of 2017 Plan documents
207	EML00019761	EML00019761	9/1/2016	Nicolette A Schultz	Nicole Ong		Attorney-Client Communication; Deliberative Process Privilege	RE: Update ACA § 1557	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain discussing legal advice provided by Mr. Curtis regarding transgender benefits in advance of finalization of 2017 Plan documents
208	EML00019762	EML00019762	9/1/2016	Nicole Ong	Nicolette A Schultz; Christina Corieri	Jill Metzinger	Deliberative Process Privilege	RE: Update ACA § 1557	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain discussing legal advice provided by Mr. Curtis regarding transgender benefits in advance of finalization of 2017 Plan documents
209	EML00019763	EML00019763	9/1/2016	Nicolette A Schultz	Nicole Ong; Christina Corieri	Jill Metzinger	Deliberative Process Privilege	Update ACA § 1557	Ryan Curtis, Fennemore Craig, P.C.; John Fry, Arizona Attorney General's Office; Nicole Ong, ADOA General Counsel	Email chain discussing legal advice provided by Mr. Curtis regarding transgender benefits in advance of finalization of 2017 Plan documents
210	EML00019764	EML00019764	9/1/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	RE: ACA § 1557 - Short update call	John Fry, Arizona Attorney General's Office; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis and requesting legal advice from Mr. Fry
211	EML00019765	EML00019765	8/31/2016	John Fry	Nicolette A Schultz		Attorney-Client Communication	RE: ACA § 1557 - Short update call	John Fry, Arizona Attorney General's Office; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis and requesting legal advice from Mr. Fry
212	EML00019766	EML00019766	8/31/2016	Nicolette A Schultz	Ryan Curtis		Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	John Fry, Arizona Attorney General's Office; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
213	EML00019767	EML00019767	8/31/2016	Nicolette A Schultz	John Fry		Attorney-Client Communication	RE: ACA § 1557 - Short update call	John Fry, Arizona Attorney General's Office; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis and requesting legal advice from Mr. Fry
214	EML00019768	EML00019768	8/31/2016	Ryan Curtis	Nicolette A Schultz		Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	John Fry, Arizona Attorney General's Office; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis
215	EML00019769	EML00019769	8/31/2016	Nicolette Schultz	Ryan Curtis		Attorney-Client Communication	RE: ACA § 1557 - Short update call [FC-Email.FID7081187]	John Fry, Arizona Attorney General's Office; Ryan Curtis, Fennemore Craig, P.C.	Email chain discussing legal advice provided by Mr. Curtis

State of Arizona Privilege/Redaction Log

No.	DocID/ Beg Bates No.	DocID/ End Bates No.	Date	From/ Author	To	CC	Privilege Type	Subject/ Description	Attorney Involved	Summary of Content
216	EML00026959	EML00026959	5/24/2018	Vicki Moss	Gayl Zambo; Donna Pedrera; Leslie Dewar; Meg Blankenship; Janice Ashley; Scott Bender; Lauran Beebe; Yvette Medina; Carol Osterhaus; Kristen Venditte; Lynna Soller; Tammy Milhon; Anita Hart	Kristen Drew	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
217	EML00026961	EML00026961	5/23/2018	Scott Bender	Donna Pedrera	Vicki Moss; Leslie Dewar; Meg Blankenship; Gayl Zambo; Janice Ashley; Lauran Beebe; Yvette Medina; Carol Osterhaus; Kristen Venditte; Lynna Soller; Tammy Milhon; Anita Hart; Kristen Drew	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
218	EML00026962	EML00026962	5/23/2018	Gayl Zambo	Donna Pedrera; Vicki Moss; Leslie Dewar; Meg Blankenship; Janice Ashley; Scott Bender; Lauran Beebe; Yvette Medina; Carol Osterhaus; Kristen Venditte; Lynna Soller; Tammy Milhon; Anita Hart	Kristen Drew	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
219	EML00026963	EML00026963	5/23/2018	Lynna Soller	Donna Pedrera	Anita Hart; Meg Blankenship; Carol Osterhaus; Gayl Zambo; Janice Ashley; Kristen Drew; Kristen Venditte; Lauran Beebe; Leslie Dewar; Scott Bender; Tammy Milhon; Vicki Moss; Yvette Medina	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
220	EML00026964	EML00026965	5/23/2018	Tammy Milhon	Donna Pedrera; Vicki Moss; Leslie Dewar; Meg Blankenship; Gayl Zambo; Janice Ashley; Scott Bender; Lauran Beebe; Yvette Medina; Carol Osterhaus; Kristen Venditte; Lynna Soller; Anita Hart	Kristen Drew	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
221	EML00026966	EML00026966	5/23/2018	Lauran Beebe	Donna Pedrera; Vicki Moss; Leslie Dewar; Meg Blankenship; Gayl Zambo; Janice Ashley; Scott Bender; Yvette Medina; Carol Osterhaus; Kristen Venditte; Lynna Soller; Tammy Milhon; Anita Hart	Kristen Drew	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
222	EML00026967	EML00026967	5/23/2018	Anita Hart	Scott Bender; Yvette Medina; Carol Osterhaus; Lynna Soller; Donna Pedrera; Vicki Moss; Meg Blankenship; Janice Ashley; Kristen Venditte; Leslie Dewar; Gayl Zambo; Lauran Beebe; Tammy Milhon	Kristen Drew	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
223	EML00026968	EML00026968	5/23/2018	Leslie Dewar	Donna Pedrera; Vicki Moss; Meg Blankenship; Gayl Zambo; Janice Ashley; Scott Bender; Lauran Beebe; Yvette Medina; Carol Osterhaus; Kristen Venditte; Lynna Soller; Tammy Milhon; Anita Hart	Kristen Drew	Deliberative Process Privilege	RE: Domestic Partners and Trans Gender Benefits		Email between various Arizona cities, counties, and agencies discussing proposed transgender benefits in advance of finalization of City of Gilbert healthplan documents
224	EML00028376	EML00028376	6/8/2016	Scott Bender	Elizabeth Schafer		Attorney-Client Communication	FW: Transgender Benefits	Dawn Northup, Arizona Attorney General	Email chain discussing legal advice provided by Ms. Northup
225	EML00029576	EML00029576	12/16/2016	Scott Bender	Yvette Medina		Deliberative Process Privilege	FW: ACA § 1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
226	ESI00000697	ESI00000697	11/25/2016	Marie Isaacson	Christina Corieri	Nicole Ong	Deliberative Process Privilege	ACA § 1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
227	ESI00000699	ESI00000699	11/25/2016	Marie Isaacson	Christina Corieri	Nicole Ong	Deliberative Process Privilege	ACA § 1557 Non-Discrimination		Correspondence between Ms. Isaacson, Department of Administration, and Ms. Corieri, Arizona Governor's Office, regarding recommended proposed revisions to transgender benefits in advance of finalization of 2017 Plan documents
228	FECR0050e00002433	FECR0050e00002433	6/16/2020	Scott Bender	Paul Shannon		Attorney-Client Communication	Re: Trump Administration ruling	Kimberly Suci, ADOA Associate General Counsel; Nicole Sornsin, ADOA Associate General Counsel	Email chain discussing requesting legal advice from Ms. Suci and Ms. Sornsin
229	FECR0050e00002434	FECR0050e00002434	6/16/2020	Paul Shannon	Scott Bender		Attorney-Client Communication	Re: Trump Administration ruling	Kimberly Suci, ADOA Associate General Counsel; Nicole Sornsin, ADOA Associate General Counsel; Peter Prynkwicz, Litle Mendelson, P.C.	Email chain discussing legal advice provided by Mr. Prynkwicz, Ms. Suci, and Ms. Sornsin
230	FECR0050e00002436	FECR0050e00002436	6/16/2020	Paul Shannon	Nicole Sornsin		Attorney-Client Communication	Re: Trump Administration ruling	Nicole Sornsin, ADOA Associate General Counsel	Email chain requesting legal advice from Ms. Sornsin
231	FECR0050e00002782	FECR0050e00002783	1/14/2020	Scott Bender	Washington Covena	Yvette Medina	Work-Product	Medical coverage guidelines - Transgender		Email discussing documents requested by Ms. Kate King relating to Toomey litigation

EXHIBIT 10

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March 17, 2021

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Re: *Toomey v. State of Arizona, et al.*
Clawback of Privileged Documents

Counsel:

It has come to our attention that documents containing attorney-client privileged communications and communications protected by the deliberative process privilege were inadvertently produced in this matter. Pursuant to Federal Rule of Civil Procedure 26(b)(5)(B), the State Defendants provide notice that the following documents are subject to the attorney-client and/or deliberative process privilege:

- AZSTATE.005551–AZSTATE.005554
- AZSTATE.095605–AZSTATE.095608
- AZSTATE.083937–AZSTATE.083940
- AZSTATE.083941–AZSTATE.083944

FENNEMORE.

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Page 2

The applicable privilege for each document, and the basis therefor, is articulated on the State Defendants' privilege log, which was transmitted to your offices via email on March 9, 2021.

Pursuant to Rule 26(b)(5)(B), you must (1) promptly return, sequester, or destroy the specified information and any copies in your possession, (2) not use or disclose the information, and (3) take reasonable steps to retrieve the information if you disclosed it before being notified of the inadvertent disclosure. For your convenience, we have provided concurrently with this letter an overlay which will replace any copies of the documents at issue with slipsheets in any document review platform. Thank you for your cooperation.

Sincerely,

FENNEMORE CRAIG, P.C.

Shannon Cohan

Shannon Cohan

EXHIBIT 11

Message

From: Yvette Medina [Yvette.Medina@azdoa.gov]
on behalf of Yvette Medina <Yvette.Medina@azdoa.gov> [Yvette.Medina@azdoa.gov]
Sent: 12/8/2016 1:41:48 PM
To: Emmons, Erica 654 [Erica.Emmons@Cigna.com]; Scott Bender [Scott.Bender@azdoa.gov]
CC: Gillum, Alicia M HHHH [Alicia.Gillum@Cigna.com]
Subject: RE: Transgender benefits

Erica,
We will be covering the counseling and hormonal therapy but not the surgery.

From: Emmons, Erica 654 [mailto:Erica.Emmons@Cigna.com]
Sent: Monday, October 17, 2016 2:26 PM
To: Scott Bender <Scott.Bender@azdoa.gov>; Yvette Medina <Yvette.Medina@azdoa.gov>
Cc: Gillum, Alicia M HHHH <Alicia.Gillum@Cigna.com>
Subject: Transgender benefits

Hi Scott and Yvette –
Has ADOA decided whether transgender benefits will be covered under your plans beginning 1/1/17? My last notes were that this was a pending item. We are in need of confirmation as soon as possible in order to get our systems set up correctly.

I wanted to provide you an update to Cigna's stance on this topic. Beginning 1/1/17, all insured AND self-insured plans will remove the exclusion for transgender benefits to comply with Section 1557. Self-insured plans may provide in writing to Cigna their decision to not remove the exclusion from the plan. In the case that confirmation is provided in writing, Cigna will administer the plans with those benefits excluded.

Please let me know where this stands for your plans.

Thanks!

Erica Emmons | Strategic Account Executive | Government and Education | Cigna | 5310 East High Street, Suite 200 | Phoenix, AZ 85054 | Direct: 480.426.6761 | Mobile: 480.622.0899 | erica.emmons@cigna.com



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EXHIBIT 12

1 **Victoria Lopez- 330042**
2 **Christine K Wee- 028535**
3 **ACLU FOUNDATION OF ARIZONA**
4 3707 North 7th Street, Suite 235
5 Phoenix, Arizona 85014
6 Telephone: (602) 650-1854
7 Email: vlopez@acluaz.org
8 Email: cwee@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 **Wesley R. Powell***
19 **Matthew S. Freimuth***
20 **Nicholas Reddick***
21 **WILLKIE FARR & GALLAGHER LLP**
22 787 Seventh Avenue
23 New York, New York 10019
24 Telephone: (212) 728-8000
25 Facsimile: (212) 728-8111
26 E-Mail: wpowell@willkie.com
27 E-Mail: mfreimuth@willkie.com
28 E-Mail: nreddick@willkie.com
*Admitted Pro hac vice

Attorneys for Plaintiff Russell B. Toomey

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF ARIZONA
5

6 **Russell B. Toomey,**

7 Plaintiff,

8
9 v.

10 **State of Arizona; Arizona Board of Regents,**
11 **d/b/a University of Arizona,** a governmental
12 body of the State of Arizona; **Ron Shoopman,** in
13 his official capacity as chair of the Arizona Board
14 Of Regents; **Larry Penley,** in his official capacity
15 as Member of the Arizona Board of Regents;
16 **Ram Krishna,** in his official capacity as
17 Secretary of the Arizona Board of Regents; **Bill**
18 **Ridenour,** in his official capacity as Treasurer of
19 the Arizona Board of Regents; **Lyndel Manson,**
20 in her official capacity as Member of the Arizona
21 Board of Regents; **Karrin Taylor Robson,** in her
22 official capacity as Member of the Arizona Board
23 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,

24 Defendants.

4:19-cv-00035-TUC-RM (LCK)

**PLAINTIFF'S
SUPPLEMENTAL INITIAL
DISCOVERY RESPONSES**

1 Plaintiff Russell B. Toomey, by and through counsel undersigned, hereby
2 submits his Supplemental Mandatory Initial Discovery Responses.

3 **SUPPLEMENTAL RESPONSE FEBRUARY 13, 2021**

4 **1. State the names and, if known, the addresses and telephone numbers**
5 **of all persons who you believe have given written or recorded statements relevant**
6 **to any party’s claims or defenses. Unless you assert a privilege or work product**
7 **protection against disclosure under applicable law, attach a copy of each such**
8 **statement if it is in your possession, custody, or control. If not in your possession,**
9 **custody, or control, state the name and, if known, the address and telephone**
10 **number of each person who you believe has custody of a copy.**

13 Christina Corieri

14 c/o Fennemore Craig, P.C.

15 2394 East Camelback Road, Suite 600

16 Phoenix, AZ 85016

17 (602) 916-5426

18 Ms. Corieri posted the following statement on Twitter on April 29, 2013:
19 “advocates now demanding taxpayer dollars for gender reassignment surgery under
20 Medicare – bet Medicaid is next.”

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1 Dated this 13th day of February, 2021

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3 ACLU FOUNDATION OF ARIZONA

4 By /s/Christine K. Wee

5 Victoria Lopez

6 Christine K. Wee

3707 North 7th Street, Suite 235

Phoenix, Arizona 85014

7 AMERICAN CIVIL LIBERTIES UNION
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12 Wesley R. Powell

13 Matthew S. Freimuth

14 Nicholas Reddick

787 Seventh Avenue

New York, New York 10019

15
16 *Attorneys for Plaintiff Russell B. Toomey*

17
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on February 13, 2021, I emailed the attached document to:

20
21 Timothy J. Berg

22 Amy Abdo

23 Ryan Curtis

Shannon Cohan

Fennemore Craig, P.C.

2394 E Camelback Rd., Ste. 600

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tberg@fennemorelaw.com

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27 rcurtis@fennemorelaw.com

scohan@fennemorelaw.com

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*Attorneys for Defendants State of Arizona,
Andy Tobin and Paul Shannon*

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Phoenix, Arizona 85012-2788
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AYost@perkinscoie.com
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*Attorneys for Defendants Arizona Board of Regents,
d/b/a University of Arizona; Ron Shoopman; Larry Penley;
Ram Krishna; Bill Ridenour; Lyndel Manson; Karrin
Taylor Robson; Jay Heiler; and Fred Duval*

/s/ Christine K. Wee
Christine K. Wee

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**UNITED STATES DISTRICT COURT
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)

[PROPOSED] ORDER

1 This matter is before the Court on Plaintiff, Russell B. Toomey’s Motion For
2 Entry Of Order Compelling the Production of Documents (Doc. _____).

3 **IT IS ORDERED:**

4 1. Plaintiff’s Motion is GRANTED.

5 2. State of Arizona, Andy Tobin, and Paul Shannon (“State Defendants”) are
6 hereby compelled to produce all the documents currently withheld on the basis of
7 Deliberative Process Privilege and listed on their most recent privilege log.

8 3. State Defendants shall produce the documents above within 14 days of the
9 date of this Order.

10 Dated this ____ day of _____, 2021.

11
12 _____
13 Leslie A. Bowman
14 United States Magistrate Judge
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