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8 *State of Arizona, Andy Tobin, and Paul Shannon*

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 Russell B. Toomey,
12 Plaintiff,

13 v.

14 State of Arizona, *et al.*
15 Defendants.

No. 4:19-cv-00035

DECLARATION OF PAUL SHANNON IN SUPPORT OF DEFENDANTS STATE OF ARIZONA’S, ANDY TOBIN’S, AND PAUL SHANNON’S RESPONSE TO PLAINTIFF’S MOTION TO COMPEL

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18 I, Paul Shannon, submit this declaration under penalty of perjury pursuant to 28
19 U.S.C. § 1746 and declare as follows:

20 1. I am the Assistant Director of the Benefit Services Division of the Arizona
21 Department of Administration (“ADOA”).

22 2. I submit this declaration in support of the State of Arizona’s, Andy Tobin’s,
23 and Paul Shannon’s Response to Plaintiff’s Motion to Compel, filed concurrently.

24 3. I base this declaration on my personal knowledge.

25 4. I have personally reviewed the documents discussed in this declaration. The
26 documents discussed below each contain information for which the State of Arizona and

1 ADOA has asserted protection pursuant to the deliberative process privilege.

2 5. Privilege Log Entry Nos. 6, 7, 50, 76, 125, 170–175, and 225–227 are the
3 same email chain. These documents consist of an email chain between Marie Isaacson,
4 former Assistant Director of the Benefit Services Division of ADOA, and Christina Corieri,
5 Senior Policy Advisor for the Arizona Governor’s Office. In this communication, Ms.
6 Isaacson and Ms. Corieri discuss ADOA’s and the Governor’s office recommendations
7 regarding the exclusion for gender reassignment surgery (the “Exclusion”) in ADOA’s
8 health plans. Specifically, Ms. Isaacson and Ms. Corieri exchange a redlined version of
9 exclusion, and discuss further recommendations and revisions to the proposed language
10 changing the Exclusion in the Plan. These communications were exchanged prior to the
11 adoption of the final language for the Exclusion by ADOA and are deliberative in nature.

12 6. Privilege Log Entry Nos. 6–7, 50, and 125 also contain communications
13 exchanged on January 13, 2017. On January 13, 2017, employees of the ADOA forwarded
14 the prior, protected communications and discussed whether the revised language had yet
15 been posted on ADOA’s website. The January 13, 2017 exchange is non-substantive and
16 immaterial but it relays the privileged discussion set forth in the paragraph above.

17 7. Privilege Log Entry Nos. 70–71 are the same email. The email forwards the
18 email chain noted in Privilege Log Entry Nos. 6, 7, 50, 76, 170–175, and 225–227. The
19 October 25, 2018 email merely forwarded the privileged December 2016 email chain,
20 without any cover or additional language. The October 25, 2018 communication is non-
21 substantive and immaterial.

22 8. Privilege Log Entry No. 67 is an email forwarding the email chain noted in
23 Privilege Log Entry Nos. 6, 7, 50, 70–71, 76, 170–175, and 225–227. As noted above, the
24 October 25, 2018 email merely forwarded the prior, privileged email chain, without any
25 cover or additional language. The February 19, 2019 transmission forwarded the prior
26 email chain for my records. The February 19, 2019 communication is non-substantive and

1 immaterial.

2 9. Privilege Log Entry Nos. 20–21 and 75 are emails attaching a memorandum
3 from Ms. Isaacson to Mr. Mike Liburdi, General Counsel for the Arizona Governor’s
4 Office. The memorandum discusses legal advice received by the ADOA regarding Rule
5 1557, the effect that the Rule may have on ADOA’s healthcare plan, and ADOA’s
6 considerations, opinions, and recommendations for further consideration regarding the
7 Exclusion. The emails contain no substantive content. The email and memorandum were
8 exchanged prior to ADOA’s final decision regarding the Exclusion and are deliberative in
9 nature.

10 10. Privilege Log Entry No. 153 is a set of handwritten notes from Ms. Isaacson.
11 The notes were produced, but a small portion was redacted pursuant to the deliberative
12 process privilege. The redacted portion consists of notes from a July 11, 2016 telephone
13 discussion between Ms. Isaacson and Mr. Matt Devlin, Assistant Director and General
14 Counsel for the Arizona Health Care Cost Containment System. The notes contain Ms.
15 Isaacson’s and Mr. Devlin’s recommendations and opinions regarding whether state-related
16 healthcare plans were required to follow Affordable Care Act (“ACA”) § 1557 and what
17 proposed revisions might be necessary to the State’s plans in light of the proposed rule.
18 This telephone call occurred prior to ADOA’s final decision regarding the Exclusion and
19 are deliberative in nature.

20 11. Privilege Log Entry No. 204–209 are the same email chain. These documents
21 consist of an email chain between representatives of the ADOA and representatives of the
22 Governor’s Office regarding legal advice that the ADOA received regarding ACA § 1557,
23 lawsuits challenging § 1557, and the effect upon ADOA’s health plan and the Exclusion.
24 The email discusses opinions, considerations, and recommendations from ADOA based on
25 the legal advice so that such opinions, considerations, and opinions could be further
26 discussed and deliberated. These communications were exchanged prior to ADOA’s final

1 decision regarding the Exclusion and are deliberative in nature.

2 12. Privilege Log Entry No. 216–223 are a related email chain. These documents
3 consist of emails between the Town of Gilbert, Arizona and various other Arizona
4 municipalities, counties, and agencies. In these communications, the Town of Gilbert
5 requests information from the other entities regarding whether those entities provide
6 transgender healthcare benefits. These communications were exchanged prior to the Town
7 of Gilbert’s decision regarding transgender healthcare benefits and are deliberative in
8 nature.

9 13. I have also reviewed the Protective Order entered in this matter. The
10 Protective Order is inadequate to address the potential harm resulting from production of
11 the above documents.

12 14. Based on my years of work for the State of Arizona and for ADOA, it is
13 important that the State and ADOA be able to engage in protected and privileged
14 communications within ADOA and between other governmental entities when deliberating
15 and considering important policy decisions such as coverage issues for gender transition
16 services. Not being able to do so would prevent a full and frank discussion of important
17 matters and prevent full and careful consideration, be bad public policy, and not result in
18 the best decision possible for ADOA and its health plans.

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

DATED this 30th day of March, 2021.

By: 
Paul Shannon

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