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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

**DEFENDANTS STATE OF  
 ARIZONA’S, ANDY TOBIN’S, AND  
 PAUL SHANNON’S REPLY IN  
 SUPPORT OF MOTION TO STAY  
 ORDER**

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 17  
 18 Defendants State of Arizona (the “State”), Andy Tobin, and Paul Shannon  
 19 (collectively, the “State Defendants”) hereby submit this Reply in support of their Motion  
 20 to Stay enforcement of this Court’s Order dated September 21, 2021 (the “September 21  
 21 Order”).

22 **I. THE COURT SHOULD STAY ENFORCEMENT OF THE SEPTEMBER 21**  
 23 **ORDER.**

24 **A. The Requested Stay Will Not Delay Resolution Of This Matter.**

25 Plaintiff argues that he will be “substantially harmed” by a stay because he will  
 26 purportedly be unable to obtain needed medical care. (Memorandum Of Points And

1 Authorities In Support Of Opposition To State Defendants’ Motion To Stay An Order  
2 Compelling Production of Documents (“Opposition” or “Opp.”), filed October 5, 2021, at  
3 3-5.) Initially, the cases cited by Plaintiff do not support his argument that a non-  
4 discriminatory healthcare exclusion constitutes *de facto* irreparable harm. In *Beltran v.*  
5 *Myers*, 677 F.2d 1317 (9th Cir. 1982), the Ninth Circuit considered a California rule that  
6 denied Medicaid benefits to elderly, blind, and disabled individuals. The court, upon those  
7 facts and in a single sentence, stated that there was a “sufficient showing” of harm because  
8 the rule may deny plaintiffs needed medical care. *Id.* at 1322. The court provided no  
9 explanation, support, or citation for this finding. *Id.* *Newton-Nations v. Rogers*, 316 F.  
10 Supp. 2d 883, 888 (D. Ariz. 2004), also provides no explanation for its finding that plaintiffs  
11 would suffer irreparable injury and, instead, cites only to *Beltran*. Similarly, *Alday v.*  
12 *Raytheon Co.*, CV 06-32 TUC DCB, 2008 WL 11441997, at \*5 (D. Ariz. Oct. 2, 2008),  
13 merely summarizes both *Beltran* and *Newton-Nations*.<sup>1</sup>

14 Moreover, Plaintiff’s purported harm argument mischaracterizes the scope of the  
15 requested stay and the potential impact that such a stay will have on the case overall. The  
16 requested stay will not delay resolution of this matter.<sup>2</sup> No case deadlines will be affected.  
17 The State Defendants filed their Petition for Writ of Mandamus on October 4, 2021 and  
18 expect a timely response from the Ninth Circuit. In the event that the State Defendants’  
19 Petition is unsuccessful, staying the September 21 Order will merely stay production of the

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20 <sup>1</sup> Plaintiff’s argument is further misplaced for two additional reasons. First, unlike the  
21 plaintiff in *Beltran*, there is no evidence that Dr. Toomey was reliant upon the State  
22 Defendants for his healthcare and, indeed, the evidence suggests that there may have been  
23 other health plans available to him. (Declaration of Ryan Curtis, concurrently filed, at  
24 **Exhibit 3**.) Second, Plaintiff’s argument also ignores evidence that Plaintiff was aware that  
25 the health plan excluded coverage for gender reassignment surgery when he accepted his  
26 position at the University of Arizona, that Plaintiff delayed getting a hysterectomy in order  
to participate in this lawsuit, and that Plaintiff could obtain a hysterectomy under the Plan.  
(*Id.*)

<sup>2</sup> Plaintiff incorrectly states that “[t]he State Defendants admit that a stay will delay further  
prosecution of this case.” (Opp. at 4.) Plaintiff is wrong. As outlined in the Motion and  
herein, a stay of the September 21 Order will not otherwise delay resolution of this matter.

1 privileged documents to Plaintiff for a brief period. In addition, the only discovery  
 2 remaining in the matter could not proceed even if the privileged documents had been  
 3 disclosed on October 5. The remaining depositions will not occur prior to final rulings on  
 4 **both** Plaintiff’s motion to compel the privileged documents **and** Plaintiff’s motion to  
 5 compel documents from the Governor’s Office (which is currently pending). Indeed, one  
 6 of the outstanding depositions is that of Ms. Christina Corieri, a Senior Policy Advisor and  
 7 former Health and Human Services Policy Advisor in the Governor’s Office. (Declaration  
 8 of Ryan Curtis (“Curtis Decl.”), concurrently filed, ¶ 14.) Plaintiff cannot proceed on the  
 9 remaining depositions without a ruling on the motion to compel documents from the  
 10 Governor’s Office. Furthermore, Plaintiff has issued several subpoenas to third-parties and  
 11 the State Defendants understand that at least four of those subpoenas remain outstanding.<sup>3</sup>  
 12 It is unclear when (or if) Plaintiff will receive documents responsive to those subpoenas.  
 13 Needing to receive documents from the Governor’s Office and from third parties is one of  
 14 the reasons that Plaintiff purportedly required the prior discovery extensions. (*See* Docs.  
 15 191 & 233.) As such, the requested stay—delaying the production of only one category of  
 16 documents—will not delay overall resolution of this matter.<sup>4</sup>

17 The State Defendants further object to Plaintiff’s attempts to frame the State  
 18 Defendants’ actions as purposefully delaying discovery. Such a characterization is patently  
 19 false and unfair. The State Defendants have steadfastly cooperated in the discovery process,  
 20 even in the face of Plaintiff’s increasing demands. For example, the State Defendants  
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22 <sup>3</sup> Plaintiff has not produced either documents or subpoena responses from the U.S.  
 23 Department of Veterans Affairs (*see* Doc. 220), the Arizona Health Care Cost Containment  
 System (*see* Doc. 219), Arizona Senator David M. Gowan (*see* Doc. 217), or Arizona  
 Representative Regina E. Cobb (*see* Doc. 216).

24 <sup>4</sup> Moreover, it is unclear from Plaintiff’s Opposition that he even needs the privileged  
 25 documents to proceed with prosecuting his case. For example, Plaintiff suggests that the  
 26 documents “should not reveal content that [he] is not already generally aware of from  
 [deposition] testimony.” *Opp.* at 7. If that is so, it is unclear how the documents could be  
 so “vital” that Plaintiff cannot move the case forward without them.

1 timely produced thousands of documents, including searching for additional documents  
2 upon Plaintiff's demand without a formal request for production and reviewing thousands  
3 of non-relevant documents in response to Plaintiff's demanded search terms. (Curtis Decl.,  
4 ¶¶ 9-11.) In addition, the State Defendants timely produced documents protected by the  
5 deliberative process privilege in response to Magistrate Judge Bowman's April 20, 2021  
6 Order. (*Id.*, ¶ 12.) Furthermore, the State Defendants have already produced eight  
7 witnesses for depositions and agreed that each of those witnesses would sit for more than  
8 the presumptive 7-hour deposition limit. (*Id.*, ¶ 13.) The State Defendants have also agreed  
9 to produce two witnesses for a second deposition in this matter. (*Id.*, ¶ 14.)

10 The State Defendants' decision to seek review of a uniquely important and  
11 prejudicial ruling is not a purposeful effort to delay this matter. And compliance with the  
12 applicable deadlines does not constitute "consistently last minute efforts to delay discovery  
13 further." Indeed, in seeking review of the September 21 Order, the State Defendants  
14 complied with all timeframes set by the Court and the Federal Rules of Civil Procedure.  
15 Rule 72(a) permits a party to file objections to a non-dispositive ruling from a magistrate  
16 judge within 14 days. Fed. R. Civ. P. 72(a). As Plaintiff acknowledges, State Defendants  
17 filed their objections to Magistrate Judge Bowman's June 28, 2021 Order within 14 days.  
18 (*See Opp.* at 2.) Similarly, the State Defendants sought to stay the September 21 Order  
19 before the deadline to produce the documents at issue and within a reasonable timeframe  
20 (approximately 10 days after the September 21 Order was entered). It was reasonable for  
21 the State Defendants to take some time to review the September 21 Order, conduct research,  
22 and make the decision to seek a Writ from the Ninth Circuit prior to seeking a stay from  
23 this Court. Plaintiff's suggestions otherwise are unpersuasive.<sup>5</sup> Finally, the State

24 \_\_\_\_\_  
25 <sup>5</sup> Also unpersuasive is Plaintiff's argument that the State Defendants failed to conduct a  
26 meet and confer prior to filing the Motion. The instant Motion is not a "discovery motion"  
as referenced in Local Rule 7.2(j). *See Rogers v. Brauer Law Offices, PLC, CV-10-1693-  
PHX-LOA, 2011 WL 3665346, at \*4 (D. Ariz. Aug. 22, 2011)* (characterizing motions to

1 Defendants filed their Petition for Writ of Mandamus with the Ninth Circuit on October 4,  
2 2021—less than two weeks after the September 21 Order. The procedural history of this  
3 matter makes it clear that the State Defendants acted in a timely and reasonable manner and  
4 without any undue delay.

5 Any alleged harm to Plaintiff is mitigated by the fact that Plaintiff sought three  
6 extensions to the scheduling order in this matter. The original Scheduling Order in this  
7 matter set discovery to close on May 3, 2021 and set the deadline for dispositive motions  
8 as June 7, 2021. (Doc. 130 at 2.) Plaintiff requested his first extension in January 2021. In  
9 December 2020, the State Defendants requested a three-week extension to respond to  
10 Plaintiff's Requests for Production. (Doc. 152 at ¶ 4.) This was because the State  
11 Defendants required additional time to review and process the several-thousand responsive  
12 documents. (*See id.* at ¶ 5) In response, Plaintiff demanded a 30-day extension to all dates  
13 in the then-current Scheduling Order. The State Defendants acceded to Plaintiff's request  
14 and the parties jointly requested a discovery extension. (*See* Doc. 152.) The newly  
15 extended discovery deadline was June 2, 2021 and the new deadline for dispositive motions  
16 was July 7, 2021. (Doc. 156.) In April 2021, Plaintiff requested a second extension to the  
17 scheduling order, which would extend the discovery deadline approximately six weeks.  
18 (Curtis Decl., ¶ 4 & **Exhibit 1**.) The State Defendants suggested a shorter extension in  
19 order to keep the matter moving towards a resolution. (*Id.*) However, Plaintiff refused to  
20 agree to any shorter extension. (*Id.*) Ultimately, the State Defendants again acceded to  
21 Plaintiff's request and the parties submitted a joint request (*see* Doc. 191), which was  
22 granted by the Court (Doc. 192). This second extension request set the discovery deadline

23 \_\_\_\_\_  
24 compel discovery as “discovery motions”); *Pinson v. Estrada*, CV 18-00535-TUC-RM,  
25 2020 WL 2308484, at \*3 (D. Ariz. May 8, 2020) (same). Furthermore, any meet and confer  
26 effort would have been fruitless in this instance as it is clear that Plaintiff opposes the  
requested stay and clearly opposes State Defendants' position that it should not be required  
to produce the documents at issue. This issue cannot be resolved without the Court's  
intervention.

1 as July 16, 2021 and set the deadline for dispositive motions as August 28, 2021. (*Id.*)  
 2 Then, in August 2021, Plaintiff requested a third extension to the scheduling order.<sup>6</sup> (Curtis  
 3 Decl., ¶ 6 & **Exhibit 2.**) Again, the State Defendants agreed to Plaintiff's request and the  
 4 parties filed a joint motion to extend the dispositive motion deadline. (*See* Doc. 233.) This  
 5 most recent extension set the current dispositive motion deadline of November 12, 2021.  
 6 (*Id.*) Plainly, any delay in resolution of this matter is the result of Plaintiff's own actions,  
 7 not those of the State Defendants.

8 **B. Courts Routinely Recognize That Production Of Privileged Documents**  
 9 **Is A Unique Harm.**

10 There can be no legitimate dispute that the State Defendants will be prejudiced by  
 11 the production of documents protected by the attorney-client privilege. Plaintiff does not  
 12 refute that this prejudice cannot be remedied on appeal from a final judgment. (*See* Opp. at  
 13 5-7.) Instead, Plaintiff attempts to minimize this clear harm with presumptions and  
 14 inaccurate characterizations. These attempts should be disregarded.

15 Plaintiff's first argument effectively boils down to one sentence: because the State  
 16 Defendants allegedly waived the privilege, they will not be harmed by disclosure. (*See*  
 17 Opp. at 5-7.) This argument assumes, however, that the State Defendants waived the  
 18 privilege by asserting an advice of counsel defense—which they did not. The State  
 19 Defendants have consistently and continuously maintained that they did not assert an  
 20 advice-of-counsel defense. (*See* Docs. 201, 223.) A review of the Interrogatory Responses  
 21 does not change this conclusion.<sup>7</sup> The State Defendants never asserted an advice of counsel  
 22

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23 <sup>6</sup> The State Defendants initially broached the idea of a third extension due to the logic  
 24 Plaintiff employed for the prior extensions. (Curtis Decl., ¶ 8 & **Ex. 2.**) However, Plaintiff  
 25 initially declined the State Defendants' suggestion and the State Defendants were ready and  
 26 able to proceed with defending the case on the then-set timeline.

<sup>7</sup> Plaintiff's reference to deposition testimony in the Opposition (*see* Opp. at 6-7) should be  
 disregarded because the Court did not rely on Plaintiff's arguments relating to deposition  
 testimony in reaching the September 21 Order (*see* Doc. 241).

1 defense and compelling production of attorney-client privileged documents in the absence  
2 of a well-defined waiver would be a grave injustice. *See Mohawk Indus.*, 558 U.S. at 108  
3 (“[w]e readily acknowledge the importance of the attorney-client privilege”).

4 Plaintiff then argues that a stay would not maintain the status quo. (Opp. at 6.) The  
5 State Defendants struggle to understand Plaintiff’s argument. It cannot be disputed that a  
6 stay would maintain the status quo of not only the status of the litigation but also the  
7 positions between the parties. In addition, maintaining the status quo for the limited  
8 duration of the requested stay will not cause Plaintiff harm. As established above, Plaintiff  
9 has not established any “irreparable harm” and granting the requested stay will not delay  
10 resolution of this matter. (*See supra*, § I.A.)

11 On the other hand, if a stay is not granted, the State Defendants will be required to  
12 produce their confidential, attorney-client privileged documents to opposing parties in  
13 litigation. Once this production is made, the harm cannot be undone even if Plaintiff is  
14 precluded from using the documents. Thus, maintaining the status quo is appropriate and  
15 warranted.

16 **C. The State Defendants Are Likely To Succeed On Their Petition.**

17 Plaintiff misstates the standard for obtaining a writ of mandamus in the Ninth Circuit.  
18 A writ of mandamus is available when: (1) the party seeking issuance of the writ has no  
19 other adequate means to obtain the desired relief; (2) the petitioner’s right to issuance of the  
20 writ is “clear and indisputable;” and (3) the issuing court is satisfied that the writ is  
21 appropriate under the circumstances.” *In re U.S.*, 791 F.3d 945, 954–55 (9th Cir. 2015).  
22 “Mandamus is appropriate to review discovery orders when particularly important interests  
23 are at stake.” *Hernandez v. Tanninen*, 604 F.3d 1095, 1099 (9th Cir. 2010) (*citing Perry v.*  
24 *Schwarzenegger*, 591 F.3d 1147, 1156–57 (9th Cir. 2010)); *see also Mohawk Indus., Inc. v.*  
25 *Carpenter*, 558 U.S. 100, 111, 130 S. Ct. 599, 607, 175 L. Ed. 2d 458 (2009) (identifying  
26 mandamus review as a possible remedy for a particularly injurious attorney-client privilege

1 ruling). The Ninth Circuit utilizes the *Bauman* factors to determine whether to issue a writ:

2 (1) The party seeking the writ has no other adequate means, such as a direct  
 3 appeal, to attain the relief he or she desires. (2) The petitioner will be damaged  
 4 or prejudiced in a way not correctable on appeal. (This guideline is closely  
 5 related to the first.) (3) The district court's order is clearly erroneous as a  
 matter of law. (4) The district court's order is an oft-repeated error, or  
 manifests a persistent disregard of the federal rules. (5) The district court's  
 order raises new and important problems, or issues of law of first impression.

6 *In re U.S.*, 791 F.3d at 955 (citing *Bauman v. U.S. District Court*, 557 F.2d 650, 654–55  
 7 (9th Cir. 1977)); *see also In re Orange*, 818 F.3d 956, 961 (9th Cir. 2016). No single  
 8 *Bauman* factor is determinative and all five factors need not be established at the same time  
 9 for a writ to properly issue. *Id.*; *see also In re U.S.*, 791 F.3d at 955; *Credit Suisse v. U.S.*  
 10 *Dist. Court for Cent. Dist. of California*, 130 F.3d 1342, 1345 (9th Cir. 1997) (granting a  
 11 petition for writ of mandamus where only three guidelines were present and stating “rarely  
 12 will a case arise where all these guidelines point in the same direction or where each  
 13 guideline is even relevant or applicable”).

14 Moreover, the State Defendants need not show that they are certain to succeed on  
 15 their Petition. They must only show that they have “at least a fair chance of success.”  
 16 *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988). In addition,  
 17 courts apply a sliding scale analysis to the stay factors, where “[a]t one end of the  
 18 continuum, the moving party is required to show both a probability of success on the merits  
 19 and the possibility of irreparable injury. . . . [and a]t the other end of the continuum, the  
 20 moving party must demonstrate that serious legal questions are raised and that the balance  
 21 of hardships tips sharply in its favor.” *Golden Gate Restaurant Ass’n v. City & Cnty. of San*  
 22 *Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008) (internal citations and quotations omitted);  
 23 *see also Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (a  
 24 movant can obtain a stay by showing that there are “serious questions going to the merits”  
 25 and the balance of hardships that favors the movant).

26 The State Defendants have more than a “fair chance of success” on mandamus. The

1 State Defendants have consistently and continuously maintained that they did not assert an  
2 advice-of-counsel defense, throughout their Answer, discovery responses, deposition  
3 testimony, and briefing. (See Docs. 201, 223.) In addition, the writ petition raises “serious  
4 questions” about Plaintiff’s contentions, the impact of the State Defendants’ Interrogatory  
5 Responses, and the Court’s determination that “fairness” requires disclosure of the  
6 documents.<sup>8</sup> It is crucial that the Ninth Circuit be given the opportunity to review and rule  
7 upon State Defendants’ Petition before they are required to produce the privileged  
8 documents to Plaintiff.

9 **D. Public Interest Favors Granting A Stay.**

10 Plaintiff asserts that Arizona’s open meetings law demonstrates a purported public  
11 interest in disclosing government documents protected by the attorney-client privilege.  
12 (Opp. at 8-9.) Plaintiff’s argument mischaracterizes the state of the law in Arizona, this  
13 Court’s decision in *Arizona Dream Act Coal. v. Brewer*, CV-12-02546-PHX-DGC, 2014  
14 WL 171923, at \*3 (D. Ariz. Jan. 15, 2014), the scope of the September 21 Order, and the  
15 nature of the documents being compelled.

16 In general, Arizona has a policy favoring full disclosure of public records and  
17 information. See *Arizona Dream Act Coal.*, 2014 WL 171923, at \*3. This policy is  
18 memorialized in Arizona’s open meetings laws, A.R.S. §§ 38-431, *et seq.* However, the  
19 open meetings laws recognize that some matters are sensitive and are not appropriate for  
20 public discussion. As a result, the open meetings laws specifically provide government  
21 entities the right to enter confidential executive sessions on enumerated topics. A.R.S. § 38-  
22 431.03. One such topic is “[d]iscussion or consultation for legal advice with the attorney  
23 or attorneys of the public body.” *Id.* at § 38-431.03(A)(3). To say that Arizona favors  
24 disclosure of attorney-client privileged documents as a matter of policy is simply wrong.

25  
26 <sup>8</sup> Plaintiff does not dispute that the Petition raises “serious legal questions.” (Opp. at 6-7.)

1 *See, e.g., Arizona Dept. of Econ. Sec. v. O’Neil*, 183 Ariz. 196, 198 (App. 1995) (requiring  
2 in camera review and redaction of privileged information prior to production of public  
3 records); *Stuart v. Lane*, 1 CA-CV 15-0746, 2017 WL 3765499, at \*9 (Ariz. App. Aug. 31,  
4 2017) (“[R]ecords of any advice given by the Scottsdale City Attorney regarding the Anti-  
5 Subsidy Clause are public records, but they are protected by the attorney–client privilege  
6 and thus are not subject to inspection.”).

7 The discussion of Arizona’s open meetings law in *Arizona Dream Act Coal.* does  
8 not change this conclusion. In *Arizona Dream Act Coal.*, this Court considered whether  
9 documents withheld pursuant to the deliberative process privilege and attorney-client  
10 privilege could be compelled to be produced. 2014 WL 171923, at \*1. Addressing the  
11 ***deliberative process privilege***, the Court stated that because (1) Arizona has a policy of full  
12 disclosure and (2) Arizona has not recognized the deliberative process privilege under state  
13 law, “Arizona state government officials” could reasonably expect that their deliberations  
14 would be open to the public. 2014 WL 171923, at \*3. Nowhere in *Arizona Dream Act*  
15 *Coal.* did the Court state, or even suggest, that advisors to the State should assume their  
16 confidential and privileged discussions and advice with their counsel would be  
17 discoverable. *See generally* 2014 WL 171923. Moreover, the *Arizona Dream Act Coal.*  
18 court **did not** compel the production of the attorney-client privileged documents at issue.  
19 2014 WL 171923, at \*4-6. *Arizona Dream Act Coal.* does not stand for the proposition that  
20 the State’s attorney-client privileged communications are discoverable or that attorneys  
21 advising the State should be on notice that their communications are not confidential or  
22 privileged.

23 Finally, Plaintiff’s argument mischaracterizes both the September 21 Order and the  
24 nature of the documents being compelled. First, Plaintiff states that “this Court determined  
25 the public is entitled to see” the documents. (Opp. at 9.) Plaintiff includes no citation for  
26 his statement, likely because nothing in the September 21 Order or Magistrate Judge

1 Bowman’s Order supports such a conclusion. Both orders discuss *Plaintiff’s* right to see  
 2 the documents at issue, not the public in general. (*See* Docs. 213, 241.) Neither order  
 3 changes the confidential or sensitive nature of the documents or the information contained  
 4 therein. (*See id.*) Instead, the orders discuss that *Plaintiff* is entitled to see the documents  
 5 as a matter of “fairness,” regardless of their confidential and privileged nature. (*See* Doc.  
 6 241 at 7.) Second, Plaintiff asserts that the documents at issue “directly address the Arizona  
 7 public’s access to healthcare.” (Opp. at 9.) That is also inaccurate. The healthcare plan at  
 8 issue provides coverage to *employees* of Arizona government entities and their families (if  
 9 family coverage is selected). (*See* Doc. 86, at ¶ 1.) Arizona provides healthcare to the  
 10 *public* through other, different mechanisms, such as the healthcare plan operated by Arizona  
 11 Health Care Cost Containment System. The documents at issue do not address or reference  
 12 those publicly accessible health plans. As a result, any interest of the Arizona public  
 13 generally has no weight here.

14 **II. CONCLUSION**

15 For the foregoing reasons, the State Defendants respectfully request that this Court  
 16 stay enforcement of the September 21 Order until the Ninth Circuit rules on their Petition  
 17 for a Writ of Mandamus. If the Ninth Circuit denies the State Defendant’s Petition, the  
 18 State Defendants will produce the documents at issue within 5 court days of the Ninth  
 19 Circuit’s order.

20 DATED this 8th day of October, 2021.

21 FENNEMORE CRAIG, P.C.

22 By: s/ Ryan Curtis

23 Timothy J. Berg

24 Amy Abdo

Ryan Curtis

Shannon Cohan

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Arizona, Andy Tobin, and Paul

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

No. 4:19-cv-00035

**DECLARATION OF RYAN CURTIS  
 IN SUPPORT OF DEFENDANTS  
 STATE OF ARIZONA’S, ANDY  
 TOBIN’S, AND PAUL SHANNON’S  
 REPLY IN SUPPORT OF MOTION  
 TO STAY ORDER**

16  
 17  
 18 I, Ryan Curtis, submit this declaration under penalty of perjury pursuant to 28 U.S.C.  
 19 § 1746 and declare as follows:

20 1. I am a Director at Fennemore Craig, P.C., am licensed to practice law in the  
 21 State of Arizona, and am lead counsel for Defendants State of Arizona, Andy Tobin, and  
 22 Paul Shannon (collectively, the “State Defendants”).

23 2. I submit this declaration in support of the State Defendants’ Reply in Support  
 24 of Motion to Stay Order, filed concurrently.

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

1           4.     In April 2021, Plaintiff requested a second extension to the scheduling order,  
2 which would extend the discovery deadline approximately six weeks. The State Defendants  
3 suggested a shorter extension in order to keep the matter moving towards a resolution.  
4 However, Plaintiff refused to agree to any shorter extension.

5           5.     Attached as **Exhibit 1** is a true and correct copy of email correspondence  
6 between counsel for the parties.

7           6.     In August 2021, Plaintiff requested a third extension to the scheduling order.

8           7.     Attached as **Exhibit 2** is a true and correct copy of email correspondence  
9 between counsel for the parties.

10          8.     The State Defendants had initially raised the idea of a third extension due to  
11 the fact that Plaintiff had not yet received the documents he sought and claimed he needed  
12 to prosecute his claims. This was the reason employed by Plaintiff in seeking the second  
13 extension. Plaintiff initially declined an extension. As a result, the State Defendants  
14 prepared to move forward with the case on the then-set schedule. The State Defendants  
15 were ready and able to proceed with defending the case at that time.

16          9.     The State Defendants have produced over 8,500 total documents in this  
17 matter, consisting of nearly 250,000 pages.

18          10.    ADOA produced all of its internal communications and analyses regarding  
19 transgender benefits and the Exclusion, and its communications with each of its four  
20 insurance vendors regarding transgender benefits and with several healthcare consulting  
21 firms. ADOA also produced meeting minutes from its meetings with insurance vendors  
22 and from internal meetings.

23          11.    The State Defendants also agreed to search for additional electronically stored  
24 information utilizing search terms proposed by Plaintiff. These search terms resulted in the  
25 State Defendants reviewing approximately 8,000 documents, of which 361 were relevant to  
26 the subject matter of this action.

1           12. On May 10, 2020, the State Defendants also produced documents protected  
2 by the deliberative process privilege in response to Magistrate Judge Bowman’s April 20,  
3 2021 Order.

4           13. In addition, the State Defendants have produced eight ADOA witnesses for  
5 depositions and have agreed that each of those witnesses would sit for more than the  
6 presumptive 7-hour deposition limit.

7           14. The parties have postponed four depositions in this matter pending resolution  
8 of Plaintiff’s motion to compel privileged documents from the State Defendants and  
9 Plaintiff’s motion to compel documents from the Governor’s Office. Those depositions  
10 include:

- 11                   a. A second deposition of Ms. Marie Isaacson;
- 12                   b. A second deposition of Mr. Paul Shannon;
- 13                   c. A deposition of Mr. Andy Tobin; and
- 14                   d. A deposition of Ms. Christina Corieri.

15           15. Attached as **Exhibit 3** is a true and correct copy of excerpts of Dr. Russell  
16 Toomey’s Deposition Transcript, dated May 26, 2021.

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

18           EXECUTED this 8th day of October, 2021.

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By:   
\_\_\_\_\_  
Ryan Curtis

18907519

# **EXHIBIT 1**

**Cohan, Shannon**

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**From:** Wall, Jordan <JWall@willkie.com>  
**Sent:** Tuesday, April 27, 2021 1:46 PM  
**To:** Curtis, Ryan; 'Yost, Austin C. (Perkins Coie)'  
**Cc:** Eckstein, Paul (Perkins Coie); Wendt, Clair (Perkins Coie); Nyberg, Gina (Perkins Coie); Cohan, Shannon; Abdo, Amy; Berg, Tim; 'Joshua Block'; 'Christine Wee'; Powell, Wesley; Freimuth, Matthew; Sheets, Victoria; Garbacz, Justin; Abdalla, Gabriela  
**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

Ryan,

Thanks for getting back to us.

On depositions, Ms. Barrett is currently available on Friday, May 21st or Monday, May 24th. Please let us know additional dates for Mr. Shannon when you can, as well as dates for Mr. Craig Brown, if State Defendants will be coordinating his deposition.

On the schedule, we appreciate your consideration here, but believe July 16th makes sense for several reasons. First, State Defendants are still in the process of producing documents, including in response to the "governor(!)" search, as well as the deliberative process privilege documents. It would be helpful to know when State Defendants plan on producing these materials, or if they anticipate further motion practice involving the latter set, as all these documents impact our ability to take depositions and our proposal on the schedule. Second, we will be circulating a letter to State Defendants concerning other privileged materials and testimony that have been withheld, and anticipate that our request could lead to further motion practice between the parties. If so, this will obviously take some time for the court to resolve. Third, it is not clear the parties will be able to schedule certain depositions, including those held open, before your counterproposal of a June 16th cutoff. (Although the sooner we receive the documents to be produced, the sooner we can evaluate whether we need to re-notice anyone.) Fourth, we received notice that State Defendants have just today sought additional third-party discovery.

Given these considerations, we think June 16th is too short a period to reasonably accomplish the remaining discovery. Is there any reason why State Defendants will not consent to an extension of the deadline to July 16th beyond thinking it is too long?

On the dispositive motion date, we do not think August 6 works as a cutoff for the reasons set forth above. Subject to your responses to our points however, we are open to discussing a compromise between each of our proposed dates.

Thanks,  
Jordan

**Jordan C. Wall**  
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Pronouns: he, him, his

**From:** Curtis, Ryan <RCurtis@fennemorelaw.com>

**Sent:** Friday, April 23, 2021 7:27 PM

**To:** Wall, Jordan <JWall@willkie.com>; 'Yost, Austin C. (Perkins Coie)' <AYost@perkinscoie.com>

**Cc:** Eckstein, Paul (Perkins Coie) <PEckstein@perkinscoie.com>; Wendt, Clair (Perkins Coie) <CWendt@perkinscoie.com>; Nyberg, Gina (Perkins Coie) <GNyberg@perkinscoie.com>; Cohan, Shannon <scohan@fennemorelaw.com>; Abdo, Amy <amy@fennemorelaw.com>; Berg, Tim <TBerg@fennemorelaw.com>; 'Joshua Block' <jblock@aclu.org>; 'Christine Wee' <CWee@acluaz.org>; Powell, Wesley <wpowell@willkie.com>; Freimuth, Matthew <mfreimuth@willkie.com>; Sheets, Victoria <VSheets@willkie.com>; Garbacz, Justin <JGarbacz@willkie.com>; Abdalla, Gabriela <GAbdalla@willkie.com>

**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

\*\*\* EXTERNAL EMAIL \*\*\*

Jordan,

We are compiling the documents based on the agreed search terms for "governor(!)" as clarified and agreed to below.

Regarding depositions, thank you for clarifying they would be available for eight hours. Please have Dr. Schechter and Dr. Toomey hold those dates open for now. We will confirm early next week regarding those dates and the logistics but I acknowledge your other email clarifying that Dr. Toomey would be available in Tucson rather than Phoenix. Please let us know when you have available dates for Ms. Barrett. I will likewise provide additional dates for Paul Shannon for the end of May and early June.

While we are open to some extension for discovery, we disagree with extending it by over six weeks (from June 2 to July 16). We could agree to extend discovery to June 16—a two week extension. We would also be agreeable to a longer period for dispositive motions. Thus, if we could agree on extending discovery to June 16 (rather than July 16), we would also agree to extend the dispositive motion deadline for a longer period from July 7 to August 6.

-Ryan

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

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**From:** Wall, Jordan <JWall@willkie.com>

**Sent:** Thursday, April 22, 2021 1:43 PM

**To:** 'Yost, Austin C. (Perkins Coie)' <AYost@perkinscoie.com>; Curtis, Ryan <RCurtis@fennemorelaw.com>

**Cc:** Eckstein, Paul (Perkins Coie) <PEckstein@perkinscoie.com>; Wendt, Clair (Perkins Coie) <CWendt@perkinscoie.com>; Nyberg, Gina (Perkins Coie) <GNyberg@perkinscoie.com>; Cohan, Shannon <scohan@fennemorelaw.com>; Abdo, Amy <amy@fennemorelaw.com>; Berg, Tim <TBerg@fennemorelaw.com>; 'Joshua Block' <jblock@aclu.org>; 'Christine Wee' <CWee@acluaz.org>; Powell, Wesley <wpowell@willkie.com>; Freimuth, Matthew <mfreimuth@willkie.com>; Sheets, Victoria <VSheets@willkie.com>; Garbacz, Justin <JGarbacz@willkie.com>; Abdalla, Gabriela <GAbdalla@willkie.com>

**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

Thank you Austin. Both Dr. Schechter and Dr. Toomey can be available for the additional hour you request.

-Jordan

**Jordan C. Wall**

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Pronouns: he, him, his

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**From:** Yost, Austin C. (Perkins Coie) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>

**Sent:** Thursday, April 22, 2021 3:49 PM

**To:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>; 'Curtis, Ryan' <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>

**Cc:** Eckstein, Paul (Perkins Coie) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; Wendt, Clair (Perkins Coie)

<[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; Nyberg, Gina (Perkins Coie) <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon

<[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy <[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>;

'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>;

Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin

<[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>

**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

\*\*\* EXTERNAL EMAIL \*\*\*

Hi Jordan,

We are fine with the proposed adjustments to the current case deadlines. We are also available on May 18 and May 26 for the depositions of Dr. Schechter and Dr. Toomey. We plan on cross-noticing those depositions and, although we haven't yet prepared for the depositions, we anticipate asking no more than one hour of questions in each of them.. Please let us know if Dr. Schechter and Dr. Toomey will agree to make themselves available for a maximum of eight hours on those dates. Thanks.

Best regards,

Austin

**Austin Yost | Perkins Coie LLP**

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**From:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>

**Sent:** Tuesday, April 20, 2021 2:56 PM

**To:** 'Curtis, Ryan' <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>; Yost, Austin C. (PHX) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>

**Cc:** Eckstein, Paul (PHX) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; Wendt, Clair (PHX) <[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; Nyberg, Gina

(PHX) <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy

<[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee'

<[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets,

Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>

**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

Ryan and Austin,

Thank you for the clarification on the "governor(!)" search term Ryan. We are fine with this revised proposal, but reserve our right to comeback on this once we have seen the documents and determined if any follow up is need.

On the case calendar, attached is a proposal for adjustments to the current dates. Let us know if Defendants will agree to a joint submission here.

On depositions, as with State Defendants' witnesses, we can only tentatively provide the availability of Dr. Toomey and Dr. Schechter until Defendants provide more details on the logistics for each deposition, i.e., the time required, location, etc. Pending that information, our witnesses are available as follows:

- Dr. Toomey is currently available on Wednesday, May 26th, and could appear locally at the offices of the ACLU in Phoenix.
- Dr. Schechter is currently available on Tuesday, May 18th, and could appear remotely or locally in Chicago.
- We are still awaiting dates from Ms. Barrett.

Each of Dr. Toomey and Dr. Schechter are available on those dates for the seven hours allotted.

As for Plaintiff's next set of depositions, please let us know additional dates for Mr. Shannon towards the end of May and June. We will follow up with Ms. Lamm regarding Ms. Corieri's deposition, but are currently not available on any of the dates provided, and will seek additional dates in June for her.

Thanks,  
Jordan

**Jordan C. Wall**  
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Pronouns: he, him, his

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**From:** Curtis, Ryan <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>  
**Sent:** Friday, April 16, 2021 3:55 PM  
**To:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>  
**Cc:** 'Yost, Austin C. (Perkins Coie)' <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>; 'Eckstein, Paul (Perkins Coie)' <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; 'Wendt, Clair (Perkins Coie)' <[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; 'Nyberg, Gina (Perkins Coie)' <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy <[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>  
**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

\*\*\* EXTERNAL EMAIL \*\*\*

Jordan,

Regarding the search terms related to "governor(!)" and your summary, I wanted to clarify a bit more. The 1,322 figure is for a hit count for parent documents with "governor(!)" w/10 of these terms:

- Gender reassignment
- Transgender
- Transsexual
- Gender transition
- Sex change

This hit count did *not* exclude prior search terms, so we expect there will be some duplicates to remove.

The 1,544 hit figure was for parent documents with “governor(!)” w/10 of “transition” and the terms “gender” or “sex” or “male” or “female” appearing anywhere. This hit count did exclude prior search terms to prevent duplicates.

Thus, in total, there are 2,866 parent hits. That is what we are proposing to review and produce.

Regarding extending discovery, could you let us know what exactly you are proposing? We will take a look and respond after we are able to consider what you are proposing.

Regarding the time we would take for any particular deposition, we are in the early stages of preparing so we could not commit to any time limitation other than what is set forth in the rules. Likewise, regarding rebuttal experts, we are reserving all of our rights at this point and have not made final determinations.

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**From:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>  
**Sent:** Thursday, April 15, 2021 6:10 PM  
**To:** Curtis, Ryan <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>  
**Cc:** 'Yost, Austin C. (Perkins Coie)' <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>; 'Eckstein, Paul (Perkins Coie)' <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; 'Wendt, Clair (Perkins Coie)' <[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; 'Nyberg, Gina (Perkins Coie)' <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy <[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>  
**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

Ryan,

Thanks for the update.

On depositions, State Defendants' position on the additional depositions is noted. We disagree, and think these depositions are necessary, but can bring this to the Court for consideration. Paul and Austin, does ABOR have a position? Relatedly, do either State Defendants or ABOR anticipate putting in rebuttal expert testimony? This may obviously impact the number of additional depositions we need.

We will inquire with Dr. Toomey, Dr. Schechter, and Ms. Barrett about their availability. Do State Defendants intend to take the full 7 hours with each of them? Paul and Austin, does ABOR intend on cross-notice these depositions, and if so, how long do you expect you would need?

On “governor(!),” if I am understanding correctly, searching “governor(!) within 10 of “transition” along with “sex” “gender” “male” or “female” anywhere in the document yields a total of 2,866 hits (1,322 + 1,544), and this is what State Defendants are committing to searching? If so, we will get back to you on whether this is sufficient.

Finally, we think it makes sense for the parties to consider an extension of the schedule. Between our remaining depositions (including the additional ones we seek) and the depositions State Defendants/ABOR intend on taking, the parties will likely be hard pressed to complete everything by June 2. We will circulate a revised calendar for your considerations if you are amenable.

- Jordan

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Pronouns: he, him, his

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**From:** Curtis, Ryan <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>  
**Sent:** Thursday, April 15, 2021 7:22 PM  
**To:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>  
**Cc:** 'Yost, Austin C. (Perkins Coie)' <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>; 'Eckstein, Paul (Perkins Coie)' <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; 'Wendt, Clair (Perkins Coie)' <[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; 'Nyberg, Gina (Perkins Coie)' <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy <[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>  
**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

\*\*\* EXTERNAL EMAIL \*\*\*

Jordan –

The search I outlined in my email below (“governor(!)” within 10 words of “transition” and in which “sex” or “gender” or “male” or “female” appear anywhere in the document) resulted in 1,544 hits, in addition to the 1,322 documents we are currently reviewing. If Plaintiff is in agreement, we will likewise start reviewing those.

**Ryan C. Curtis**, Chair - ERISA & Employee Benefits Practice Group  
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**From:** Curtis, Ryan  
**Sent:** Wednesday, April 14, 2021 5:45 PM  
**To:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>  
**Cc:** Yost, Austin C. (Perkins Coie) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>; Eckstein, Paul (Perkins Coie) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; Wendt, Clair (Perkins Coie) <[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; Nyberg, Gina (Perkins Coie) <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy <[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>  
**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

Jordan,

I am writing regarding a few items.

We would like available dates for Dr. Schechter's deposition in early May and Dr. Toomey's deposition in late May. Regarding Dr. Toomey, we understand from a prior email exchange that Dr. Toomey is generally free on Tuesdays and Wednesdays. Would you check on the availability for Dr. Toomey's deposition to be on May 18, 19, 25 or 26 or other days when we could schedule that deposition in late May? We would also like dates for the deposition of Joan Barrett in May.

We cannot agree to allow Plaintiffs to exceed ten depositions as set forth in rule. We don't find the list of potential additional deponents you shared persuasive on that issue. In particular, Plaintiff will soon have deposed seven current and former ADOA employees and it is unclear what would be gained by deposing ADOA as an entity, two former directors (Brown and Davidson, who do not appear to have had any involvement in the decision to expand coverage for the 2017 Plan Year), or the Governor's Office as an entity when you have yet to depose Ms. Corieri.

Regarding Plaintiff's insistence that the State Defendants produce 4,555 documents based on a search for "transition," we stand by our position set forth in our letter dated April 9. That is, we don't agree to review 4,555 that have a common word such as "transition" without some other qualifiers. We never proposed producing these documents. We only proposed a more limited search to get it down from Plaintiff's proposal that resulted in nearly 113,000 hits when "governor(!)" was searched independently. As noted in our letter from April 9, we are open to other suggestions as we have tried to discuss on various occasions. For example, a search for "governor(!)" within 10 words of "transition" and in which "sex" or "gender" or "male" or "female" appears anywhere would more narrowly tailor this. We are awaiting a hit count on such a search. In the meantime, we have begun collecting and reviewing the 1,322 documents referenced in our letter. We believe the resolution on other documents is for the parties to come to an agreement on reasonable qualifiers for the term "transition." Given the time it takes to review and produce numerous documents to date, we do not believe it is feasible to produce all the documents at issue by April 23. However, the sooner we come to an agreement about the additional documents, the sooner we can begin the process for those additional hits.

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**From:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>

**Sent:** Monday, April 12, 2021 5:22 PM

**To:** Curtis, Ryan <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>

**Cc:** Yost, Austin C. (Perkins Coie) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>; Eckstein, Paul (Perkins Coie) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>;

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<[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley

<[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>;

Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>

**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

Ryan,

Attached are the two attachments referenced in the preceding letter (along with that letter again, for your convenience).

-Jordan

**Jordan C. Wall**  
**Willkie Farr & Gallagher LLP**

787 Seventh Avenue | New York, NY 10019-6099  
Direct: [+1 212 728 8465](tel:+12127288465) | Fax: +1 212 728 9465  
[jwall@willkie.com](mailto:jwall@willkie.com) | [vCard](#) | [www.willkie.com bio](http://www.willkie.com/bio)  
Pronouns: he, him, his

---

**From:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>  
**Sent:** Monday, April 12, 2021 7:41 PM  
**To:** 'Curtis, Ryan' <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>  
**Cc:** Yost, Austin C. (Perkins Coie) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>; Eckstein, Paul (Perkins Coie) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; Wendt, Clair (Perkins Coie) <[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; Nyberg, Gina (Perkins Coie) <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy <[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>  
**Subject:** RE: Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

Ryan,

Please see the attached correspondence.

-Jordan

**Jordan C. Wall**  
**Willkie Farr & Gallagher LLP**  
787 Seventh Avenue | New York, NY 10019-6099  
Direct: [+1 212 728 8465](tel:+12127288465) | Fax: +1 212 728 9465  
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Pronouns: he, him, his

---

**From:** Curtis, Ryan <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>  
**Sent:** Friday, April 9, 2021 10:40 PM  
**To:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>  
**Cc:** Yost, Austin C. (Perkins Coie) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>; Eckstein, Paul (Perkins Coie) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; 'Joshua Block' <[jblock@aclu.org](mailto:jblock@aclu.org)>; 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; Abdalla, Gabriela <[GAbdalla@willkie.com](mailto:GAbdalla@willkie.com)>; Wendt, Clair (Perkins Coie) <[CWendt@perkinscoie.com](mailto:CWendt@perkinscoie.com)>; Nyberg, Gina (Perkins Coie) <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Abdo, Amy <[amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)>; Berg, Tim <[TBerg@fennemorelaw.com](mailto:TBerg@fennemorelaw.com)>  
**Subject:** Toomey v. Arizona - Document Searches / Prior Productions [FC-Email.FID11439673]

\*\*\* EXTERNAL EMAIL \*\*\*

Jordan –

Please see the attached letter addressing document searches we have discussed and inaccurate statements made in Plaintiff's Reply in Support of its Motion to Compel filed late last night regarding prior productions.

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

# FENNEMORE.

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](mailto:rcurtis@fennemorelaw.com) | [View Bio](#)  
Admitted in Arizona and Nevada



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

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# **EXHIBIT 2**

## Cohan, Shannon

---

**From:** Wall, Jordan <JWall@willkie.com>  
**Sent:** Wednesday, August 4, 2021 4:49 PM  
**To:** 'Yost, Austin C. (Perkins Coie)'; Curtis, Ryan; Eckstein, Paul (Perkins Coie)  
**Cc:** Powell, Wesley; Freimuth, Matthew; Sheets, Victoria; Garbacz, Justin; jblock@aclu.org; 'Christine Wee'; Cohan, Shannon; Nyberg, Gina (Perkins Coie)  
**Subject:** RE: Toomey v. State of Arizona: Schedule [FC-Email.FID11439673]

Plaintiff is also fine with State Defendants' counterproposal. Our team will prepare a draft joint motion and circulate it for review.

**Jordan C. Wall**  
**Willkie Farr & Gallagher LLP**  
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[jwall@willkie.com](mailto:jwall@willkie.com) | [vCard](#) | [www.willkie.com/bio](http://www.willkie.com/bio)  
Pronouns: he, him, his

---

**From:** Yost, Austin C. (Perkins Coie) <AYost@perkinscoie.com>  
**Sent:** Wednesday, August 4, 2021 7:23 PM  
**To:** Curtis, Ryan <RCurtis@fennemorelaw.com>; Eckstein, Paul (Perkins Coie) <PEckstein@perkinscoie.com>; Wall, Jordan <JWall@willkie.com>  
**Cc:** Powell, Wesley <wpowell@willkie.com>; Freimuth, Matthew <mfreimuth@willkie.com>; Sheets, Victoria <VSheets@willkie.com>; Garbacz, Justin <JGarbacz@willkie.com>; jblock@aclu.org; 'Christine Wee' <CWee@acluaz.org>; Cohan, Shannon <scohan@fennemorelaw.com>; Nyberg, Gina (Perkins Coie) <GNyberg@perkinscoie.com>  
**Subject:** RE: Toomey v. State of Arizona: Schedule [FC-Email.FID11439673]

\*\*\* EXTERNAL EMAIL \*\*\*

The University Defendants are fine with the State Defendants' proposal.

**Austin Yost | Perkins Coie LLP**  
ASSOCIATE  
2901 North Central Avenue Suite 2000  
Phoenix, AZ 85012-2788  
D. +1.602.351.8460  
E. [AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)

---

**From:** Curtis, Ryan <RCurtis@fennemorelaw.com>  
**Sent:** Wednesday, August 4, 2021 4:17 PM  
**To:** Eckstein, Paul (PHX) <PEckstein@perkinscoie.com>; Wall, Jordan <JWall@willkie.com>; Yost, Austin C. (PHX) <AYost@perkinscoie.com>  
**Cc:** Powell, Wesley <wpowell@willkie.com>; Freimuth, Matthew <mfreimuth@willkie.com>; Sheets, Victoria <VSheets@willkie.com>; Garbacz, Justin <JGarbacz@willkie.com>; jblock@aclu.org; 'Christine Wee' <CWee@acluaz.org>; Cohan, Shannon <scohan@fennemorelaw.com>; Nyberg, Gina (PHX) <GNyberg@perkinscoie.com>  
**Subject:** RE: Toomey v. State of Arizona: Schedule [FC-Email.FID11439673]

Counsel,

We are in agreement to an appropriate extensions to the dispositive motion briefing schedule based on the unresolved issues and the depositions that will still take place. We likewise have some commitments that would affect the schedule including a trial scheduled for the first three weeks in October. There is also some uncertainty as to when the Court will rule on pending issues that may affect the timing of the remaining depositions. Thus, we would propose adjustments to the schedule Jordan set forth in his email. We propose the following, which would also be subject to scheduling the remaining depositions:

	<u>Plaintiff Proposal</u>	<u>State Defendants' Proposal</u>
<b>Dispositive Motions:</b> 12	Friday, October 22	Friday, November
<b>Responses to Dispositive Motions:</b>	Friday, November 19	Friday, December 10
<b>Replies in support of Dispositive Motions:</b>	Friday, December 17	Friday, January 14

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

## FENNEMORE.

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**From:** Eckstein, Paul (Perkins Coie) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>

**Sent:** Wednesday, August 4, 2021 10:17 AM

**To:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>; Curtis, Ryan <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>; Yost, Austin C. (Perkins Coie) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>

**Cc:** Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; [jblock@aclu.org](mailto:jblock@aclu.org); 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Nyberg, Gina (Perkins Coie) <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>

**Subject:** RE: Toomey v. State of Arizona: Schedule

Jordan---your proposal is fine with ABOR---paul

Paul Eckstein | **Perkins Coie LLP**

**PARTNER**

2901 North Central Avenue Suite 2000  
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D. +1.602.351.8222  
F. +1.602.648.7122  
E. [PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)

---

**From:** Wall, Jordan <[JWall@willkie.com](mailto:JWall@willkie.com)>  
**Sent:** Wednesday, August 04, 2021 9:49 AM  
**To:** 'Curtis, Ryan' <[RCurtis@fennemorelaw.com](mailto:RCurtis@fennemorelaw.com)>; Yost, Austin C. (PHX) <[AYost@perkinscoie.com](mailto:AYost@perkinscoie.com)>  
**Cc:** Powell, Wesley <[wpowell@willkie.com](mailto:wpowell@willkie.com)>; Freimuth, Matthew <[mfreimuth@willkie.com](mailto:mfreimuth@willkie.com)>; Sheets, Victoria <[VSheets@willkie.com](mailto:VSheets@willkie.com)>; Garbacz, Justin <[JGarbacz@willkie.com](mailto:JGarbacz@willkie.com)>; [jblock@aclu.org](mailto:jblock@aclu.org); 'Christine Wee' <[CWee@acluaz.org](mailto:CWee@acluaz.org)>; Cohan, Shannon <[scohan@fennemorelaw.com](mailto:scohan@fennemorelaw.com)>; Eckstein, Paul (PHX) <[PEckstein@perkinscoie.com](mailto:PEckstein@perkinscoie.com)>; Nyberg, Gina (PHX) <[GNyberg@perkinscoie.com](mailto:GNyberg@perkinscoie.com)>  
**Subject:** Toomey v. State of Arizona: Schedule

Ryan and Austin,

In light of the current circumstances of the case, Plaintiff proposes revisiting our prior discussion about adjustments to the case calendar from a few weeks ago.

Given the pendency of State Defendants' objections before Judge Márquez and oral argument before Magistrate Judge Bowman on Plaintiff's motion to compel the Governor's Office, we agree that the current schedule requiring the submission of dispositive motions by the end of August is unfeasible. As these matters may not resolve themselves for several more weeks, and are to be followed by the depositions of Mr. Tobin and Ms. Corieri, as well as the re-noticed depositions of Ms. Isaacson and Mr. Shannon, we think pushing the timeline for dispositive motions back by several weeks into October makes sense. I am also largely unavailable in the mid to latter half of September due to an arbitration the week of September 20.

Subject to the scheduling of the above depositions, we propose the following deadlines:

- **Dispositive Motions:** Friday, October 22
- **Responses to Dispositive Motions:** Friday, November 19
- **Replies in support of Dispositive Motions:** Friday, December 17

Let us know your thoughts.

Thanks,  
Jordan

**Jordan C. Wall**  
**Willkie Farr & Gallagher LLP**  
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Direct: [+1 212 728 8465](tel:+12127288465) | Fax: +1 212 728 9465

[jwall@willkie.com](mailto:jwall@willkie.com) | [vCard](#) | [www.willkie.com bio](http://www.willkie.com/bio)

Pronouns: he, him, his

---

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# **EXHIBIT 3**

**In The Matter Of:**

*Toomey v.  
State of Arizona*

---

*Russell B. Toomey, Ph.D.  
May 26, 2021*

---



**G R I F F I N   G R O U P  
I N T E R N A T I O N A L**

---

3200 East Camelback Road, Suite 177  
Phoenix, Arizona 85018

*Original File RT052621.TXT*

*Min-U-Script® with Word Index*

1 me ask you this first. I understand the first time that  
2 one of your medical providers recommended a hysterectomy  
3 was in 2003; is that correct?

4 A. Yes.

5 Q. Had you ever treated with a physician for  
6 purposes of moving forward with a hysterectomy?

7 A. Can I clarify? You asked have I ever?

8 Q. Yes.

9 A. Yes.

10 Q. And when was the first time that you did?

11 A. 2018.

12 Q. And why did you move forward in 2018 for  
13 purposes of seeking a hysterectomy -- seeking a  
14 physician who would perform a hysterectomy on you?

15 A. Because I wanted to proceed with the procedure  
16 and, you know, file a claim for that procedure.

17 Q. And when you refer to "file a claim," do you  
18 mean a claim with an insurance carrier or are you  
19 talking about like an EEOC claim or a lawsuit?

20 A. Initially file an insurance claim.

21 Q. And why did you want to file an insurance claim  
22 for that procedure?

23 A. To receive a formal notice. At that time, I  
24 knew it would be denied.

25 Q. And did you want to do that for purposes of

1 this lawsuit?

2 A. Yes.

3 Q. And at the time that you sought the claim and  
4 were expecting the denial, you had already engaged  
5 counsel; is that right?

6 A. Yes.

7 Q. Why didn't you seek approval for a hysterectomy  
8 between 2003 and 2018?

9 A. Because I knew that it would be denied through  
10 all of those years and in 2018, I finally felt like I  
11 had good stability in my career.

12 Q. Who was the physician that you went to for  
13 purposes of having a hysterectomy performed?

14 A. Dr. Tiffany Karsten.

15 Q. And is she the only medical doctor that you've  
16 seen for that purpose?

17 A. Can you clarify the purpose?

18 Q. Have you gone to any other medical doctors for  
19 purposes of performing a hysterectomy?

20 A. No.

21 Q. To date, have you had a hysterectomy?

22 A. I have not.

23 Q. Do you intend to have a hysterectomy?

24 A. Yes.

25 Q. When did you first decide that you would

1 Q. Is it your understanding that with certain  
2 indications -- well, let me just ask this. And I  
3 apologize if I asked this before. I'm not trying to ask  
4 you again. Is it your understanding that a hysterectomy  
5 would be covered under the plan, for example, if you had  
6 cancer in some of the organs involved with a  
7 hysterectomy?

8 A. Yes.

9 Q. And is it your understanding that there are  
10 other indications for which a hysterectomy would be  
11 covered under the plan if they were present for you?  
12 What I'm referring to is other medical indications, for  
13 example, perhaps excessive bleeding or other problems  
14 that were being experienced with the organs involved in  
15 a hysterectomy.

16 A. Yes.

17 Q. And as I understand, you've had a physician  
18 tell you that you're at higher risk for cervical cancer  
19 due to the hormones that you have been taking; correct?

20 A. No.

21 Q. Have you had a physician tell you that one of  
22 the potential risks of the hormones that you take is a  
23 higher incidence of cervical cancer?

24 A. It was not specified which type of cancer.

25 Q. Was it your understanding, though, that it was

1 A. Can you clarify what you mean?

2 Q. Sure. Did you ever look for health benefits  
3 through a different provider that might provide more  
4 expansive coverage in that area?

5 A. No.

6 Q. How come?

7 A. Because it's my understanding that as an  
8 employee of the University of Arizona, unless I was  
9 covered under a spouse's plan, I had to enroll in one of  
10 the coverages that is offered to employees.

11 Q. In order for it to be paid by your employer?

12 A. Yes.

13 Q. Okay. Did you seek any type of coverage that  
14 would not be paid by your employer for yourself?

15 A. No.

16 Q. Have you ever explored other coverage outside  
17 of your employer?

18 A. No.

19 Q. So would it be fair to say, then, you do not  
20 know whether you could find another plan that would  
21 provide coverage for gender reassignment surgery?

22 A. Can you repeat the question, please.

23 MS. ABDO: Can you read the question,  
24 please.

25 (Question read.)

1 the ACLU website and pull up the blog, perhaps it  
2 identifies your name. Do you know?

3 A. I do not know.

4 Q. Okay. So this blog was authored or was written  
5 as though you were the author; correct? In other words,  
6 it's written in the first person referring to you as  
7 "I"?

8 A. Yes.

9 Q. And the title says Arizona Provides Me Unequal  
10 Healthcare Because I'm Transgender. Do you see that?

11 A. Yes.

12 Q. Did you write the title?

13 A. I can't remember.

14 Q. Have you told me today all the reasons you  
15 believe the State provides you unequal healthcare  
16 because you're transgender?

17 A. Yes.

18 Q. And you knew before you began working for the  
19 U of A that healthcare plan did not cover  
20 transition-related services; correct?

21 A. Yes.

22 Q. So when it says in the last sentence of the  
23 first paragraph, "So it came as a disappointment when I  
24 learned that the State university where I work does not  
25 cover transition-related healthcare for its employees or

1 that you've treated with?

2 A. Yes.

3 Q. When you were married, was your spouse  
4 employed?

5 A. Yes.

6 Q. And was your spouse eligible for coverage under  
7 that employer's plan?

8 A. Yes.

9 Q. Did your spouse have benefits through their  
10 employer?

11 A. No.

12 Q. Do you know whether the plan that your spouse  
13 was eligible for provided coverage for gender-affirming  
14 surgery?

15 A. I do not know.

16 Q. Did you ever look into it?

17 A. No.

18 Q. Why not?

19 A. The benefits offered by the University of  
20 Arizona were substantially better and the cost was  
21 significantly less.

22 Q. And who was -- if you know, who was the carrier  
23 on her plan?

24 A. I do not.

25 Q. Who was the employer?

1 STATE OF ARIZONA )  
 ) ss.  
 2 COUNTY OF MARICOPA )

3 BE IT KNOWN that the foregoing proceedings were  
 4 taken before me; that the witness before testifying was  
 5 duly sworn by me to testify to the whole truth; that the  
 6 foregoing pages are a full, true and accurate record of  
 7 the proceedings, all done to the best of my skill and  
 8 ability; that the proceedings were taken down by me in  
 9 shorthand and thereafter reduced to print under my  
 10 direction.

11 I CERTIFY that I am in no way related to any of  
 12 the parties hereto nor am I in any way interested in  
 13 the outcome hereof.

14 [X] Review and signature was requested.  
 15 [] Review and signature was waived/not  
 16 requested.

17 I CERTIFY that I have complied with the ethical  
 18 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206  
 19 J(1)(g)(1) and (2). Dated at Phoenix, Arizona, this 7th  
 20 of June, 2021.

21 /s/ Jennifer Hanssen

22 Jennifer Hanssen, RPR  
 23 Certified Reporter  
 24 Arizona CR No. 50165

\* \* \* \*

25 I CERTIFY that GRIFFIN GROUP INTERNATIONAL has  
 26 complied with the ethical obligations set forth in ACJA  
 27 7-206 (J)(1)(g)(1) through (6).

28 \_\_\_\_\_  
 29 GRIFFIN GROUP INTERNATIONAL  
 30 Registered Reporting Firm  
 31 Arizona RRF No. R1005