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13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF ARIZONA

15 D.H., by and through his mother, Janice  
16 Hennessy-Waller; and John Doe, by his  
17 guardian and next friend, Susan Doe, on  
18 behalf of themselves and all others  
19 similarly situated,

20 Plaintiffs,

21 vs.

22 Jami Snyder, Director of the Arizona  
23 Health Care Cost Containment System,  
24 in her official capacity,

25 Defendant.

No. 4:20-cv-00335-TUC-SHR

**PLAINTIFFS' REPLY IN  
SUPPORT OF MOTION TO  
TRANSFER CASE TO JUDGE  
ROSEMARY MÁRQUEZ**

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1 Pursuant to Local Rule of Civil Procedure 42.1(c), Plaintiffs D.H. and John Doe  
2 (“Plaintiffs”) file this reply brief in support of their motion to transfer this matter to the Honorable  
3 Rosemary Márquez.

4  
5 **I. ARGUMENT**

6 **A. The Claims in *D.H.* and *Toomey* are Substantially Identical.**

7 Defendant asserts without citation that the claims raised in the two cases are “completely  
8 different.” Def. Opp. to Mtn. to Transfer, Doc. 13 at 3. That argument has no merit. Both cases  
9 allege an Equal Protection claim and a sex-discrimination claim under federal anti-discrimination  
10 law arising from the unequal treatment of transgender individuals in government health insurance  
11 programs. Consideration of the Equal Protection claim in *D.H.* will involve the same set of cases  
12 and arguments presented in *Toomey*. In addition, as discussed in Plaintiffs’ motion, courts rely  
13 on Title VII caselaw to interpret the scope of protections available under Section 1557 of the  
14 Affordable Care Act. Pltfs. Mtn. to Transfer, Doc. 10 at 4. Courts have interpreted the two laws  
15 to be coterminous, consistently concluding that Section 1557 prohibits discrimination against  
16 transgender people as form of sex discrimination just as courts have under Title VII. *See id.*  
17 None of the factual issues or legal claims in either case would warrant departing from this  
18 uniform approach to federal sex-discrimination laws.

19 Defendant also notes that *D.H.* and *Toomey* involve two different state plans, but the  
20 language of both exclusions is identical, and both are categorical in scope. For this reason, the  
21 governmental defendants in both cases likely will assert the same, or many of the same,  
22 justifications and defenses in support of both.

23 Finally, Defendant’s alleged differences in the parties and proposed classes between *D.H.*  
24 and *Toomey* are inaccurate. The scope of the second certified class in *Toomey* includes the  
25 dependents of state employees, R&R on Class Cert., Doc. 105 at 2, 9, many of whom will be  
26 under twenty-one years old and could seek coverage for male chest reconstruction surgery, the  
27 precise identity of the parties and class in *D.H.*, *see* Compl., Doc. 1 at 20, ¶ 106. Likewise, the  
28 proposed class in *D.H.* includes transgender adolescents and young adults, requiring

1 consideration of the WPATH standards applicable to each age group, just as in *Toomey*. This is  
2 in addition to the other similarities previously noted in Plaintiffs’ motion. Doc. 10 at 4.

3 Thus, there is no basis for suggesting that granting Plaintiffs’ motion will cause the Court  
4 to confuse or conflate the factual issues, legal standards, or the applicable standards of care.  
5 Instead, transferring this case to Judge Márquez will further judicial economy by having the same  
6 judge address those substantially identical questions while avoiding unnecessary duplication of  
7 efforts.

8 **B. Transferring this Case Would Promote Judicial Efficiency and Integrity.**

9 In addition to substantially advancing judicial efficiency as detailed above and in  
10 Plaintiff’s motion, transferring this case would also further the integrity and confidence in the  
11 judiciary by avoiding the possibility of inconsistent judicial opinions on the same legal issues, a  
12 concern repeatedly mentioned as a factor favoring a transfer under LRCiv 42.1. *See, e.g., Glass*  
13 *v. Intel Corp.*, No. CV 06-1404-PHX-MHM, 2008 WL 11338487, at \*2 (D. Ariz. Feb. 22, 2008);  
14 *see also, e.g., Venus Med. Inc. v. Skin Cancer & Cosmetic Dermatology Ctr. PC*, No. 15-  
15 00062MC, 2016 WL 159952, at \*3 (D. Ariz. Jan. 14, 2016) (citation omitted) (noting, in  
16 considering motion for transfer under local rule 45, that “[t]he potential for inconsistent rulings  
17 should be avoided and weighs in favor of a single judicial officer deciding all of the disputes”);  
18 *but see, Pangerl v. Ehrlich*, No. CV06-1464 PHXMHM, 2007 WL 686703, at \*3 (D. Ariz. Mar.  
19 2, 2007) (denying transfer as rulings would not likely be inconsistent on the merits of each case).

20 The law review article cited by Defendant further supports granting Plaintiffs’ motion to  
21 transfer. As noted in the excerpt quoted in Defendant’s opposition, Professor Macfarlane was  
22 concerned with use of the related-cases doctrine to “steer[ cases] to a particular judge’s docket  
23 for reasons having *nothing to do with efficiency or practicality.*” Def. Opp. to Mtn. to Transfer,  
24 Doc. 13 at 2 (quoting Katherine A. Macfarlane, *The Danger of Nonrandom Case Assignment: How the Southern District of New York’s “Related Cases” Rule Shaped Stop-and-Frisk Rulings*,  
25 19 Mich. J. Race & L. 199 (2014) (emphasis added)). Here, however, a transfer would further  
26 the goals of efficiency and practicality enshrined in LRCiv 42.1(a) and (e). Also, the stop-and-  
27 frisk cases—the related cases at the heart of Professor Macfarlane’s article—were four separate  
28

1 cases filed over the span of nearly fifteen years, during which the judge presiding over those  
2 cases allegedly suggested that counsel in one of the subsequently filed cases should indicate that  
3 the cases were related so it could be assigned to the judge, which had the effect of circumventing  
4 the district' random-assignment policy and raising questions about the impartiality of the judicial  
5 process. Macfarlane, *supra*, 19 Mich. J. Race & L. at 219–226. None of those facts or concerns  
6 are present here, nor does Defendant suggest otherwise.

7 **II. CONCLUSION**

8 For the reasons above, and in Plaintiffs' motion, Plaintiffs respectfully request that the  
9 Court grant their motion to transfer and reassign the case to Judge Márquez.

10 Respectfully submitted,

11 DATED: August 26, 2020

**PERKINS COIE LLP**

12  
13 /s/ Daniel C. Barr

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2020, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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