

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s)

Case Name

Counsel submitting this form

Represented party/parties

Briefly describe the dispute that gave rise to this lawsuit.

D.H. and John Doe are two transgender teenagers who receive their health insurance through Arizona Medicaid. Both are experiencing significant gender dysphoria and other limitations on their health and ability to function due to the appearance of their chest. D.H.'s and John's respective mental health providers determined that male chest reconstruction surgery is necessary to treat their gender dysphoria. Each received a referral letter to consult with a surgeon to determine whether male chest reconstruction surgery was medically appropriate. Despite covering similar procedures to treat other conditions, Arizona's Medicaid regulations exclude coverage for surgical care to treat gender dysphoria.

D.H. and John filed a lawsuit on behalf of themselves and a putative class of transgender Medicaid recipients. The complaint alleges four causes of action: violations of two provisions of the Medicaid Act—EPSDT and the Comparability Requirement—and violations to two federal sex-discrimination laws—Section 1557 of the ACA and the Equal Protection Clause. D.H. and John also sought preliminary injunctive relief to require Arizona Medicaid to consider their prior authorization requests without the coverage exclusion.

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Briefly describe the result below and the main issues on appeal.

The District Court denied D.H. and John's motion for preliminary injunction. The court concluded *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731 (2020), did not apply beyond Title VII and that plaintiffs were unlikely to succeed on the merits of their claims because transgender people are not protected from discrimination based on sex under Section 1557 of the Affordable Care Act and the Equal Protection Clause of the Fourteenth Amendment.

D.H. and John are appealing the Court's decision that that they are not likely to prevail on their sex-discrimination claims under the Affordable Care Act and the Equal Protection Clause.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Several matters remain before the District Court during the pendency of this appeal. The parties submitted their joint Rule 26(f) report and have begun discovery while awaiting the Court's scheduling order. D.H. and John Doe intend to proceed with discovery on the two Medicaid Act claims while the Ninth Circuit considers this appeal. Additionally, D.H. and John filed a motion for class certification, which is fully briefed. The parties recently filed a joint request for a status conference with the Court.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

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