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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 D.T., a minor, by and through his parent and
next friend Lizette Trujillo; Jane Doe, a
16 minor, by and through her parent and next
friend Susan Doe; Helen Roe, a minor, by
17 and through her parent and next friend
Megan Roe; James Poe, a minor by and
18 though his parent and next friend Laura Poe;
and Carl Voe, a minor by and though his
19 parent and next friend Rachel Voe,

20 Plaintiffs,

21 v.

22 Dr. Cara M. Christ, in her official capacity
as State Registrar of Vital Records and
23 Director of the Arizona Department of
Health Services; Thomas Salow, in his
24 official capacity as Branch Chief of the
Division of Public Health Licensing
25 Services at the Arizona Department of
Health Services; and Krystal Colburn, in
26 her official capacity as Bureau Chief and
Assistant State Registrar of the Bureau of
27 Vital Records at the Arizona Department of
Health Services,

28 Defendants.

Case No. 4:20-cv-484-JAS

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Judge: Hon. James A. Soto

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1 Plaintiffs respectfully state and allege as follows:

2 **INTRODUCTION**

3 1. Plaintiffs are transgender children who were born in Arizona and seek to
4 change the sex listed on their birth certificates to protect their privacy and safety. They
5 wish to have accurate birth certificates they can use without being forced to disclose their
6 transgender status, which causes Plaintiffs significant emotional harm and puts them at risk
7 of discrimination, harassment, and violence.

8 2. Plaintiffs D.T., James Poe, and Carl Voe are transgender boys, but their
9 Arizona birth certificates identify them as female. Plaintiff Helen Roe is a transgender girl,
10 but her Arizona birth certificate identifies her as male. Plaintiff Jane Doe is a transgender
11 girl whose Arizona birth certificate identified her as male until very recently when it was
12 changed to female by order of this Court, (Doc. 41), following Jane Doe's motion for
13 preliminary injunction filed in this lawsuit, (Doc. 3).

14 3. Possessing identity documents that accurately reflect who they are is essential
15 to Plaintiffs' well-being. A birth certificate is a critical and ubiquitous identity document
16 used in many settings to verify an individual's identity. This is particularly true for children
17 and adolescents for whom a birth certificate is often their only form of government-issued
18 identification. School enrollment, recreational sports registrations, and camp signups,
19 among many others, hinge on having proper identity documents. Not only are birth
20 certificates themselves commonly required for such purposes, but they are often needed for
21 obtaining other essential identity documents.

22 4. For transgender people, the sex listed on their initial birth certificate does not
23 match who they are. For a young person who has undergone gender transition, having a
24 birth certificate that fails to reflect who they are puts them at risk of exposure,
25 discrimination, harassment, and even violence. Changing the sex marker on their birth
26 certificate is thus critically important for transgender young people.

27 5. Arizona law allows for individuals born in Arizona to amend the sex marker
28 on their birth certificates through a private administrative process codified at A.R.S. § 36-

1 337(A)(3). Obtaining an amendment under Subsection (A)(3) requires filing an application,
2 including a letter from a treating physician, with the Arizona Department of Health Services
3 (“ADHS”) and paying an administrative fee. However, Arizona prevents transgender
4 minors from changing their sex marker through that process because Subsection (A)(3) is
5 limited to transgender people who have undergone a “sex change operation.” A.R.S. § 36-
6 337(A)(3); *see also* A.A.C. R9-19-208(O).¹ Transgender young people cannot use this
7 direct and private administrative process because, in most cases, minors do not undergo any
8 type of surgery to treat their gender dysphoria. Further, many transgender people,
9 especially those who transitioned at a young age, may never require surgery as part of their
10 gender transition, rendering the private administrative process in Subsection (A)(3) entirely
11 unavailable to them for their lifetimes.

12 6. Unlike other youth, transgender youth in Arizona have only one option open
13 to them that is more expensive, confusing, and time-consuming than the Subsection (A)(3)
14 process, and does not guarantee that they will receive a corrected birth certificate at the end.
15 Specifically, they must incur additional fees and shoulder extra risk by filing a public
16 petition in their local superior court seeking an order amending the sex on their birth
17 certificate. Because of the surgical requirement in Subsection (A)(3), Arizona courts
18 regularly deny that relief to transgender young people who have not undergone surgery as
19 part of their transition. Additionally, forcing transgender young people to seek a court order
20 vastly increases the risk that their transgender status will be made public, denying them the
21 very privacy they seek to safeguard by correcting their identity documents. And Arizonans
22 who move out of state and are no longer under the jurisdiction of Arizona courts face a
23 patchwork of differing state laws, several of which deny them the ability to obtain a court
24 order to change the sex listed on their birth certificates. For many transgender people and
25 their families, the court-order process is thus entirely unavailable or presents such

26 ¹ The term “sex change operation” as used in Subsection (A)(3) is not widely recognized in
27 the medical community, which instead refers to a surgical operation for the treatment of
28 gender dysphoria as a “gender-confirmation surgery” or a “gender-affirming surgery.”
Plaintiffs use the term “sex change operation” in this Amended Complaint only to avoid
any doubt about what part of Subsection (A)(3) they challenge as unconstitutional.

1 insurmountable hurdles that it is no option at all.

2 7. As a result, transgender young people must too often navigate the world with
3 a birth certificate that does not match their sex. By establishing a private administrative
4 process for applicants to change the sex listed on their Arizona birth certificates, and then
5 effectively barring transgender youth from using it, Arizona law forces them to disclose
6 their transgender status, which invades their privacy and exposes them to discrimination,
7 harassment, and violence. Accordingly, the current law violates the United States
8 Constitution's guarantees of equal protection of the laws and the fundamental rights to
9 privacy, liberty, and autonomy.

10 8. No compelling, important, or even legitimate governmental justification
11 supports Arizona's current refusal to provide transgender young people with the same
12 opportunity to obtain accurate birth certificates as any other person.

13 **JURISDICTION AND VENUE**

14 9. This action arises under 42 U.S.C. §§ 1983 and 1988 to redress the
15 deprivation, under color of state law, of rights secured by the United States Constitution.

16 10. This Court has original jurisdiction over the subject matter of this action
17 pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the
18 laws and the Constitution of the United States.

19 11. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b) because
20 all Defendants reside within the district, Defendants reside and have offices within the
21 district, and/or a substantial part of the events that gave rise to Plaintiffs' claims occurred,
22 and will continue to occur, within the district.

23 12. This Court has the authority to enter a declaratory judgment and to provide
24 preliminary and permanent injunctive relief pursuant to Federal Rules of Civil Procedure 57
25 and 65, and 28 U.S.C. §§ 2201 and 2202.

26 13. This Court has personal jurisdiction over Defendants because they are
27 domiciled in Arizona and/or have otherwise made and established contacts with Arizona
28 sufficient to permit the exercise of personal jurisdiction over them.

PARTIES

A. The Plaintiffs

14. Plaintiff D.T. is a thirteen-year-old transgender boy who was born in Pima County, Arizona and currently resides in Arizona. Because D.T. is a minor, this action is brought on his behalf by and through his parent and next friend Lizette Trujillo.

15. Plaintiff Jane Doe is a ten-year-old transgender girl who was born in Maricopa County, Arizona and currently resides in Arizona. Because Jane Doe is a minor, this action is brought on her behalf by and through her parent and next friend Susan Doe.

16. Plaintiff Helen Roe is a six-year-old transgender girl who was born in Pima County, Arizona and currently resides in Arizona. Because Helen Roe is a minor, this action is brought on her behalf by and through her parent and next friend Megan Roe.

17. Plaintiff James Poe is a five-year-old transgender boy who was born in Pima County, Arizona and currently resides in Arizona. Because James Poe is a minor, this action is brought on his behalf by and through his parent and next friend Laura Poe.

18. Plaintiff Carl Voe is a nine-year-old transgender boy who was born in Pima County, Arizona and currently resides in Maryland. Because Carl Voe is a minor, this action is brought on his behalf by and through his parent and next friend Rachel Voe.

B. The Defendants

19. Defendant Dr. Cara M. Christ (“Director Christ”) is sued in her official capacity as State Registrar of Vital Records and Director of the Department of Health Services for the State of Arizona. Director Christ has general supervision of vital statistics in the state and is charged with the execution of the vital statistics laws of Arizona, including the provision of the necessary instructions and forms for obtaining and preserving records of births. Director Christ also has supervisory authority over the assistant state registrars and deputy local registrars throughout Arizona. Director Christ has knowingly encouraged, condoned, and acquiesced in the acts barring Plaintiffs from correcting or amending their birth certificates to be consistent with their gender identity. Director Christ’s administration and enforcement of the vital statistics laws are actions under the color of state law. Director

1 Christ is a person within the meaning of 42 U.S.C. § 1983 and has acted under color of state
2 law at all times relevant to this Amended Complaint.

3 20. Defendant Thomas Salow (“Chief Salow”) is sued in his official capacity as
4 Branch Chief of the Division of Public Health Licensing Services within the Department of
5 Health Services for the State of Arizona. As Branch Chief of the Division of Public Health
6 Licensing Services, Chief Salow has supervisory authority over Chief Colburn and deputy
7 local registrars throughout Arizona. Chief Salow has knowingly encouraged, condoned,
8 and acquiesced in the acts barring Plaintiffs from correcting or amending their birth
9 certificates to be consistent with their gender identity. Chief Salow’s administration and
10 enforcement of the vital statistics laws are actions under the color of state law. Chief Salow
11 is a person within the meaning of 42 U.S.C. § 1983 and has acted under color of state law
12 at all times relevant to this Amended Complaint.

13 21. Defendant Krystal Colburn (“Chief Colburn”) is sued in her official capacity
14 as Assistant State Registrar and Bureau Chief of the Bureau of Vital Records within the
15 Department of Health Services for the State of Arizona. Chief Colburn has supervisory
16 authority over deputy local registrars throughout Arizona. Chief Colburn has knowingly
17 encouraged, condoned, and acquiesced in the acts barring Plaintiffs from correcting or
18 amending their birth certificates to be consistent with their gender identity. Chief Colburn’s
19 administration and enforcement of the vital statistics laws are actions under the color of
20 state law. Chief Colburn is a person within the meaning of 42 U.S.C. § 1983 and has acted
21 under color of state law at all times relevant to this Amended Complaint.

22 **STATEMENT OF FACTS**

23 **Gender identity development and treatment for gender dysphoria**

24 22. Each person’s sex is comprised of multiple components, including internal
25 reproductive organs, external genitalia, chromosomes, hormones, gender identity, and
26 secondary-sex characteristics. For most people, each of these components align with one
27 another as either male or female. That is not the case, however, for transgender people.

28 23. Research indicates that being transgender has a biological component and

1 cannot be changed. As such, efforts to change a transgender person’s identity are unethical
2 and harmful to a person’s health and well-being.

3 24. Children typically become aware of their gender identity between the ages of
4 two and five years old. Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental*
5 *Disorders* 455 (5th ed. 2013) (“DSM-5”). Around this age, transgender children often begin
6 to express their cross-gender identification to their family members and caregivers through
7 statements and actions. Transgender children exhibit a strong cross-gender identification
8 that is insistent, persistent, and consistent. Research has found the gender identities of
9 transgender and nontransgender children to be indistinguishable—that is, a transgender boy
10 identifies himself as male just as strongly and consistently as a non-transgender boy, and a
11 transgender girl identifies herself as female just as strongly and consistently as a
12 non-transgender girl.

13 25. Living in a manner consistent with one’s gender identity is critical to the
14 health and well-being of any person, including transgender people.

15 26. The incongruence between a transgender person’s gender identity and
16 assigned sex can cause significant psychological distress. That distress is commonly
17 referred to as gender dysphoria.

18 27. Gender dysphoria is a serious health condition recognized in the DSM-5, as
19 well as by other leading medical and mental health professional groups, including the
20 American Medical Association and the American Psychological Association. If left
21 untreated, gender dysphoria may result in severe psychological distress, anxiety,
22 depression, suicidal ideation, and even self-harm.

23 28. Gender dysphoria is highly treatable. As with other health conditions, health
24 care providers follow a well-established standard of care when working with patients with
25 gender dysphoria. The World Professional Association for Transgender Health
26 (“WPATH”) has set those standards for over four decades.

27 29. WPATH is an international, multidisciplinary, professional association of
28 medical providers, mental health providers, researchers, and others, with a mission of

1 promoting evidence-based care and research for transgender health, including the treatment
2 of gender dysphoria. WPATH published the seventh and most recent edition of the
3 Standards of Care in 2011.

4 30. Building on those standards and incorporating the most current research and
5 clinical experience, the Endocrine Society released the *Endocrine Treatment of Gender-*
6 *Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*
7 in September 2017. These guidelines reaffirm the WPATH Standards of Care and offer
8 medical providers practical guidance on providing transition-related care to patients with
9 gender dysphoria, including young people.

10 31. The WPATH and the Endocrine Society standards have been adopted by
11 many major associations of healthcare professionals, including the American Medical
12 Association, American Psychiatric Association, and American Psychological Association,
13 as well as associations of healthcare professionals focused on youth and adolescents, such
14 as the American Academy of Pediatrics, American Association of Child and Adolescent
15 Psychiatrists, and the Pediatric Endocrine Society. Federal courts across the country have
16 also recognized the standards of these medical societies as setting the prevailing standard
17 of care for the treatment of gender dysphoria.

18 32. Treatment for gender dysphoria seeks to bring a transgender person's life into
19 alignment with their gender identity. The process of undertaking these treatments is often
20 referred to as a gender transition or simply as transition. The typical components of gender
21 transition consist of social transition, hormone-replacement therapy, and, for some
22 transgender people, surgery. Surgery is not medically required to complete gender
23 transition and is not medically necessary for every transgender person.

24 33. Typically, transgender people start their transition with a social transition,
25 which includes changing their name, using different pronouns, wearing clothing and
26 adopting grooming habits typically associated with their peers of the same gender identity,
27 and using the corresponding sex-specific facilities such as restrooms. Making these changes
28 enable a transgender person to live their life consistent with who they are and helps ensure

1 that they are treated as such by family, peers, and others in the community.

2 34. Social transition can significantly alleviate a transgender person's gender
3 dysphoria. Having identity documents that reflect a transgender person's assigned sex
4 rather than their gender identity increases the likelihood that a person's transgender status
5 will be disclosed to others, exposes them to a significant risk of mistreatment, and
6 undermines the health benefits of their social transition.

7 35. For transgender youth, research has shown that being accepted and supported
8 as who they are is enormously beneficial to their health and well-being. Conversely, being
9 denied recognition and support can cause significant harm, in addition to exposing them to
10 the risk of discrimination and harassment.

11 36. At the onset of puberty, transgender young people may also start taking
12 puberty-delaying medication to prevent their bodies from being flooded with the incorrect
13 sex hormone and the attendant development of unwanted secondary-sex characteristics that
14 conflict with their sex. Without these medications, transgender young people would
15 experience debilitating psychological distress because their changing bodies would be a
16 constant reminder of the disjunction between their bodies and their sex. The psychological
17 distress is heightened by the reality that some of these physical changes may be irreversible,
18 permanently constricting a transgender young person's future treatment options and
19 negatively affecting their quality of life.

20 37. In addition to puberty-delaying medications, transgender young people may
21 also undergo hormone-replacement therapy. That treatment causes their bodies to develop
22 the secondary-sex characteristics associated with their gender identity, such as facial and
23 body hair for transgender boys and breasts for transgender girls.

24 38. The prevailing standards of care recognize that, under limited circumstances,
25 it may be medically necessary for some transgender young people to undergo surgical
26 treatment for their gender dysphoria while they are minors. The most common surgical
27 procedure that is medically necessary for transgender young people is male chest
28 reconstruction surgery. That procedure is specifically for transgender males. However,

1 because of the increasing availability of puberty-delaying medication, an increasing number
2 of transgender boys never develop breasts and therefore never need that surgery.

3 39. There are other surgical procedures that may be medically necessary to treat
4 a transgender person's gender dysphoria in adulthood. Early treatment for gender dysphoria
5 may also obviate the need for those procedures as well. For example, a transgender girl
6 who never experiences a male puberty is unlikely to need facial feminization surgery, a
7 series of procedures designed to improve the functionality of a transgender woman's facial
8 features by making them more typically feminine. Whether surgery is medically necessary
9 is based on an individualized assessment conducted in consultation with qualified
10 healthcare providers.

11 40. Even when medically necessary, a transgender person's ability to access any
12 of those treatments—particularly surgery—may also be limited by financial resources,
13 insurance coverage, and provider availability, in addition to many other barriers to health
14 care access.

15 **The need for accurate birth certificates matching one's identity**

16 41. The use of birth certificates is ubiquitous in our society. A person's birth
17 certificate is a trusted and essential government-issued document that serves as proof of a
18 person's identity. That document also reflects the government's recognition of a person's
19 identity, including the person's sex.

20 42. Birth certificates are commonly used in a wide variety of contexts, especially
21 for young people who do not have any other form of government-issued identification,
22 including enrolling in school and recreational sports, and obtaining other important identity
23 documents (such as driver licenses, state identification cards, and passports).

24 43. Depriving transgender young people of birth certificates that accurately
25 reflect who they are forces them to disclose their transgender status—information that is
26 private and sensitive—without their consent whenever they need to rely on birth certificates
27 to establish their identity. That disclosure causes several distinct and significant harms: it
28 creates barriers to full participation in school and other activities that are critical to a young

1 person's health and well-being, circumvents that young person's ability to control the
2 disclosure of their transgender status, undermines the effectiveness of a transgender young
3 person's treatment for gender dysphoria, and exposes a transgender young person to an
4 increased risk of harassment, discrimination, and potentially bodily harm.

5 44. A national survey conducted by the National Center for Transgender Equality
6 in 2015 revealed that nearly one-third of respondents who had shown an identity document
7 with a name or sex that did not match their gender presentation were verbally harassed,
8 denied benefits or service, asked to leave, or assaulted.

9 45. Barring transgender youth from obtaining corrected birth certificates places
10 them in a disfavored class. Unlike other youth, whose birth certificates match who they are,
11 transgender youth are forced to use birth certificates that do not match their sex.

12 **The process for changing the sex listed on an Arizona birth certificate**

13 46. ADHS, through the Bureau of Vital Records, exercises responsibility for the
14 registration, issuance, correction, and maintenance of Arizona birth certificates. A.R.S.
15 § 36-302.

16 47. Recognizing birth certificates may be inaccurate or require updating, A.R.S.
17 § 36-337 provides for the issuance of an updated birth certificate in a variety of
18 circumstances, including to reflect a declaration of paternity or adoption or to correct the
19 sex of a transgender or intersex person.

20 48. Under Subsection (A)(3) of that statute, a transgender person may change the
21 sex listed on a person's birth certificate by submitting "[a] written request for an amended
22 birth certificate" accompanied by "a written statement by a physician that verifies the
23 [applicant or applicant's child has undergone a] sex change operation." A.R.S. § 36-
24 337(A)(3). ADHS has promulgated a regulation that details the information, in addition to
25 a letter from a physician, that a transgender person is required to provide in order to change
26 the sex listed on their birth certificate under Subsection (A)(3). *See* A.A.C. R9-19-208(O).

27 49. These requirements—both statutory and regulatory—deny transgender young
28 people the ability to correct their birth certificates under Subsection (A)(3) because most

1 transgender youth cannot undergo or may never require surgery. This ban deprives
2 Plaintiffs of equal treatment, violates fundamental constitutional rights to privacy and
3 liberty, and subjects Plaintiffs and other transgender young people to serious irreparable
4 harm to their safety, health, and well-being.

5 50. The only other potential option available to transgender young people seeking
6 to amend the sex listed on their birth certificate is to obtain a court order mandating that
7 change pursuant to A.R.S. § 36-337(A)(4). Subsection (A)(4) is a catchall provision that
8 requires ADHS to accept “[a] court order ordering an amendment to a birth certificate.”
9 The statute is silent beyond that.

10 51. Arizona courts interpreting Subsection (A)(4) have required families
11 petitioning for amendments to the sex listed on a transgender minor’s birth certificate to
12 comply with the surgical requirement of Subsection (A)(3), which those families cannot do
13 because their children are not eligible for surgery. Based on information and belief, courts
14 have imposed that requirement due, at least in part, to the language of Subsection (A)(3)
15 and ADHS’s prior publicly-stated position that Arizona courts lack the authority under
16 Subsection (A)(4) to issue orders amending the sex listed on an Arizona birth certificate.

17 52. Arizona courts are not available to transgender young people who were born
18 in Arizona but have since moved to another state. Under Subsection (A)(4), those families
19 must petition a court in their current state for an order correcting or amending their child’s
20 birth certificate. While some states have established court-order processes that allow their
21 courts to grant such petitions, others do not allow for correcting or amending the birth
22 certificates of transgender young people.

23 53. For those reasons, many transgender young people are prevented from
24 obtaining court orders changing the sex listed on their birth certificates. Because these
25 youth are also barred from the private administrative process under Subsection (A)(3), they
26 are thus entirely prevented from changing the sex listed on their Arizona birth certificates.

27 54. That is not the only significant hurdle that transgender young people and their
28 families face when petitioning a court for an order amending the sex listed on a birth

1 certificate. The court-order process in Arizona requires additional fees, a significant
2 expenditure of time and thus further and unnecessary delay, filing a petition and therefore
3 creating an easily accessible public record about the requested change, and appearing at a
4 public hearing where they must persuade a court that they or their child needs a corrected
5 or amended birth certificate, all of which strip transgender young people of the very privacy
6 and rights they are trying to secure. While petitioners in court may seek to protect their
7 privacy by filing other motions, such as motions to proceed under a pseudonym and to seal
8 the records, those are yet more documents that must be prepared and filed, again with an
9 uncertain outcome. And these procedures vary from state to state, creating additional
10 expenses, uncertainties, risks, and burdens for families who have moved away from
11 Arizona. To ensure that these multiple court submissions are completed correctly,
12 transgender people and their families would likely require the assistance of an attorney,
13 which is an additional and significant expense. And, even if successful, transgender young
14 people must still apply to ADHS for the amended birth certificate, adding yet another step
15 to the process and imposing further expense and delay.

16 55. These numerous and substantial barriers are often insurmountable for
17 transgender young people and their families, and render the court-order process unequal as
18 compared to the minimal requirements for amending the sex listed on a birth certificate
19 using the direct and private administrative process under Subsection (A)(3). Under that
20 administrative process, a transgender person need only complete an application, attach a
21 letter from a physician, and pay the required fee. Provided the application meets the
22 requirements of A.A.C. R9-19-208(O), the transgender person will receive an amended
23 birth certificate. Furthermore, all the paperwork the applicant submitted to ADHS to
24 request the amendment, including the transgender person's prior birth certificate, will be
25 sealed and cannot be released without court order. *See* A.R.S. § 36-322(A).

26 56. Based on information and belief, ADHS does not impose the burdens of
27 seeking a court order on nontransgender people when correcting or amending an inaccurate
28 sex marker on a birth certificate. Relying on its broad statutory authority, ADHS developed

1 a policy permitting it to change sex markers on Arizona birth certificates with a physician's
2 letter attesting to the error.

3 57. Despite the substantial and unjustified burdens imposed by the surgical
4 requirement in Subsection (A)(3) and ADHS's authority to create an equitable process for
5 transgender people to change the sex marker on their birth certificates, Defendants continue
6 to enforce Subsection (A)(3) to the detriment of transgender people.

7 *Plaintiff D.T.*

8 58. Plaintiff D.T. is a thirteen-year-old transgender boy in Pima County, Arizona.
9 Like many kids his age, he loves to skateboard, play basketball, draw, and play Minecraft.
10 He also hopes to learn to play the drums.

11 59. D.T. began expressing himself as a boy at around two years old. As a toddler,
12 D.T. gravitated to more masculine clothing options and actively resisted girls' clothing. He
13 would regularly wear his father's fedora and necktie around the house.

14 60. His parents still sent him to school in girls' clothing. But every afternoon
15 D.T. immediately removed the clothes when he returned home, and then often spent hours
16 crying in his room afterwards.

17 61. D.T. expressed he was a boy in other ways too. On several occasions D.T.
18 cut—increasingly larger—chunks of his long hair, leaving his parents to discover the newly
19 missing bits of hair. D.T. also tried to use the boys' restroom when he could and would not
20 line up with the girls at school when teachers divided the class by sex.

21 62. During that time, D.T. rarely smiled and was almost always quiet and anxious.
22 He developed breathing tics and fidgeted nervously. D.T. initially struggled to tell his
23 parents how he felt and, on several occasions, told them he was afraid of dying and that he
24 had a secret that he could not tell them.

25 63. The day before D.T. began third grade, he and Lizette stopped by his
26 classroom to drop off some supplies. D.T.'s best friend was also there with her mother.
27 His friend pointed to D.T. and asked her mother: "Can he and I go play?" The mother
28 replied: "No, that's a she." Later, while driving D.T. home, Lizette asked D.T. about that

1 moment. “Your friend called you ‘him.’ Is that what you are?” D.T. was silent for a
2 moment, then said: “I know my body is wrong. But in my insides, I’m a boy. My mind
3 tells me I’m a boy.” He also shared that he was worried that his parents would stop loving
4 him if he ever shared this piece of himself.

5 64. After several long and difficult conversations, D.T.’s parents decided to treat
6 him as their son and subsequently started using male pronouns when referring to him. They
7 also cut his hair short, like a boy, and bought him boys’ clothing. And over time, D.T.’s
8 parents called D.T. by his chosen, traditionally male name.

9 65. D.T. became a different person. He transformed from a reserved child who
10 rarely smiled and was constantly anxious to a gregarious child who was interested in music
11 and sports. His anxiety also decreased significantly, and his behavioral tics disappeared.
12 In the years since, D.T. has continued to flourish in every aspect of his life.

13 66. Last summer, D.T. began showing the first signs of puberty. Consistent with
14 the standards of care, D.T. began taking puberty-delaying medication. More recently, he
15 began taking testosterone as part of his medical treatment. Those medications prevent
16 D.T.’s body from undergoing physical changes associated with female puberty and instead
17 induce male puberty. As a result of these treatments, D.T. may never need surgical care to
18 treat his gender dysphoria.

19 67. While D.T.’s parents and close friends have accepted and affirmed his
20 identity, others have not. Last year, D.T. was harassed and assaulted at school for being
21 transgender. A student bullied and threatened D.T., escalating from verbal harassment to
22 physical aggression. Being the target of bullying was very scary for D.T. and his parents.
23 D.T. is still recovering emotionally from the experience. Although D.T. is currently
24 planning to remain at that school, he and his parents may revisit that decision if the bullying
25 continues, a decision that will be unduly influenced by the fact that D.T.’s birth certificate
26 wrongly identifies him as female.

27 68. Because of that experience, and other similar experiences, D.T. has
28 significant anxiety and worry about not being accepted by others and being mistreated if he

1 is forced to disclose that he is transgender. The fact that D.T.'s current birth certificate does
2 not match his sex exacerbates these fears; that fear is constraining. For example, D.T.
3 started playing basketball a few years ago and is currently playing on his school's boys'
4 basketball team. D.T. wants to play recreational basketball in the off-season, both because
5 he loves the sport and wants to improve his skill and be good enough to play for the school
6 team when he enters high school. But he has not pursued this interest because he is worried
7 that he will be required to play on the girls' team because of his birth certificate.

8 69. D.T.'s parents started the process of correcting his identity documents. They
9 obtained a state court order changing D.T.'s name. In their petition, they also requested an
10 order changing the sex listed on D.T.'s birth certificate. The judge informed D.T.'s parents
11 that ADHS would require proof that D.T. underwent surgical treatment for his gender
12 dysphoria before complying with the court order. Thus, the judge's order included language
13 noting that it was subject to ADHS's rules and regulations regarding the amendment of the
14 sex listed on a transgender person's birth certificate.

15 70. D.T.'s parents used the court order to correct his social security record and
16 health insurance information. His school also allowed his parents to use the court order to
17 correct D.T.'s school records. However, D.T.'s experience with bullying at school this past
18 year and his hesitance to enroll in a recreational basketball league underscore that changing
19 the sex listed on his birth certificate remains a critical need. Having an inaccurate birth
20 certificate is causing D.T. to exclude himself from activities that are important to child
21 development and putting him at risk of harassment by forcing him to reveal that he is
22 transgender.

23 71. D.T.'s parents seek to change the sex listed on D.T.'s birth certificate through
24 the administrative process but are precluded from doing so because D.T. cannot meet the
25 surgical requirement.

26 72. Despite the judge's statement in court to D.T.'s parents and the court order's
27 language subjecting D.T. to the surgical requirement, Defendants represented to Plaintiffs
28 that the court order that D.T. obtained is sufficient for him to apply for an amended birth

1 certificate. In reliance on Defendants' representation, on or about December 21, 2020,
2 Lizette submitted an application to ADHS to change the sex listed on D.T.'s birth certificate.
3 However, even if D.T. obtains an amended birth certificate in this way, his ability to make
4 that change has been significantly delayed due to Defendants' interpretation and
5 enforcement of Subsection (A)(3). That delay has required him to disclose his transgender
6 status in situations that he would have preferred to keep that information private and caused
7 him to forgo participating in certain activities to avoid disclosing his transgender status.

8 ***Plaintiff Jane Doe***

9 73. Plaintiff Jane Doe is a transgender ten-year-old girl in Maricopa County,
10 Arizona. Like many other girls of her age, Jane loves dressing up and trying on make-up.

11 74. Jane began expressing herself as a girl when she was about two-and-a-half
12 years old. She gravitated toward girls' clothing, wearing her mother's clothes and shoes.
13 When her parents took her shopping, Jane attempted to pick clothes and shoes from the
14 girls' section.

15 75. Initially, Jane's parents intentionally introduced her to boy-themed toys,
16 which Jane categorically refused in favor of girls' toys. For example, for Jane's fourth
17 birthday, her mother, Susan, baked her a Batman-themed cake, despite Jane previously
18 asking for a Minnie Mouse cake. Jane appreciated the cake but told her mother that she
19 "just wanted Minnie Mouse."

20 76. Jane's parents initially thought this was a phase, but Jane persisted.
21 Eventually, they brought her to a child psychologist specializing in care for young children
22 with some prior experience with transgender youth, Dr. Beth Onufrak. Dr. Onufrak
23 evaluated Jane over several sessions and concluded that Jane would meet the diagnostic
24 criteria for gender dysphoria. Based on the recommendation of Dr. Onufrak, Jane's parents
25 and siblings started treating her as a girl, including using her new feminine name and
26 allowing her to wear girls' clothing.

27 77. At Dr. Onufrak's recommendation, Susan took Jane to Dr. Veenod Chulani,
28 a physician specializing in treating transgender youth and the Medical Director of the

1 Gender Support Program at Phoenix Children’s Hospital. Dr. Chulani agreed with
2 Dr. Onufrak’s assessment and diagnosed Jane with gender dysphoria. He has since
3 provided Jane with primary care and supported Jane and her family through Jane’s social
4 transition.

5 78. Before Jane started the second grade, her parents asked her school if she could
6 start the year as a girl. The school agreed and worked with Jane and her family to prepare
7 for her transition at school. However, several students in Jane’s class recognized her from
8 the prior year and repeatedly teased her for being transgender. The incidents caused Jane
9 significant psychological distress.

10 79. Students continued to bully and harass Jane throughout the second and third
11 grade. In fourth grade the bullying intensified when a student found Jane’s class roster in
12 the cafeteria and saw Jane’s name with the letter “M” next to it. That student shared the
13 class roster and the information he learned from it with many classmates before the school
14 could intervene. After that, the taunting and teasing became relentless. In response, Jane’s
15 anxiety about attending school increased significantly. She was unable to concentrate in
16 class or focus on her schoolwork. Jane’s education was further disrupted by her frequent
17 anxiety-induced stomachaches, which brought her to the school nurse nearly every day.
18 Jane’s only respite has been distance-learning, which has deprived her classmates the
19 opportunity to continue bullying and harassing her.

20 80. Since moving to distance learning due to the novel Coronavirus Disease 2019
21 (COVID-19) pandemic, Jane’s situation has improved dramatically. Free from the bullying
22 and anxiety she faced at school, Jane is much happier and eager to participate in class and
23 attend to her schoolwork. But even distance learning has not been worry free for Jane or
24 her family. Because Jane’s school records still list her as male, one of her teachers used
25 male pronouns when e-mailing Susan about Jane’s missing assignments in the class. Jane’s
26 school records not only disclosed her transgender status to her teacher, they risked her being
27 mistreated by her teacher for that reason.

28 81. Nevertheless, given the significant improvement in Jane’s well-being during

1 distance learning, her parents decided to use this opportunity to enroll Jane in a different
2 school where students do not know she is transgender. The new school where they would
3 like to enroll her, however, will not enroll Jane as female without a corrected birth
4 certificate.

5 82. Susan previously explored options for changing the sex listed on Jane's birth
6 certificate. Through that research, Susan learned that ADHS required evidence of surgery
7 prior to changing the sex on a transgender person's birth certificate and that she would need
8 to present proof of surgery to obtain a court order as well. Susan visited ADHS to inquire
9 about what she needed to provide to amend the sex listed on Jane's birth certificate and an
10 ADHS employee confirmed to her that Jane would need to provide a letter from a doctor as
11 required by Arizona law. Due to Jane's age, it would be inappropriate and inconsistent with
12 the standards of care for her to undergo any surgical treatment for gender dysphoria. The
13 medical necessity of those treatments will be assessed by Jane and her team of healthcare
14 providers at an appropriate time and consistent with the prevailing standards of care.

15 83. Without a corrected birth certificate, Jane would have been required to reveal
16 that she is transgender to this new school. That would have prevented her from safely
17 moving to another school where she is free from pervasive harassment and bullying that
18 impede her learning and cause her further significant emotional harm.

19 84. Given Jane's urgent need for an amended birth certificate, her parents filed a
20 Motion for Preliminary Injunction concurrently with Plaintiffs' first Complaint.
21 (Docs. 1, 3.) By joint stipulation, and in reliance on the extensive evidence, expert opinion,
22 and legal authority filed by Jane in support of her Motion for Preliminary Injunction, Jane
23 obtained an order from this Court instructing ADHS to amend the sex listed on her birth
24 certificate to female, which ADHS processed under Subsection (A)(4). The significant
25 expense and effort required for Jane to obtain that relief underscores the enormous and
26 unnecessary hurdles, and therefore the inherent discrimination, in excluding transgender
27 young people from utilizing the direct and private administrative process created in
28 Subsection (A)(3).

1 85. Jane is currently enrolled in her new school. Although she is still adjusting
2 to her new learning environment, she is excited to get to know her classmates and teachers
3 and the relief she feels that none of them know she is transgender is incalculable.

4 ***Plaintiff Helen Roe***

5 86. Plaintiff Helen Roe is a six-year-old transgender girl in Pima County,
6 Arizona. Helen enjoys time with her girlfriends, whether playing “princess” or “house,” or
7 with her girls’ toys. She likes roller skating, singing, and dancing.

8 87. Helen began expressing that she is a girl at a young age. As early as one-and-
9 a-half years old, Helen started playing with girls’ toys (*e.g.*, baby dolls, toy strollers, toys
10 for playing “house”) while at friends’ houses. During one of her playdates, Helen put on
11 her friend’s Disney princess costume, which was a purple dress. Helen refused to take the
12 dress off and ended up taking it home with her that day.

13 88. Helen continued to play like other little girls, such as playing house with pink
14 plates and cutlery, pushing a stroller, and playing with her many Barbie dolls. For her fourth
15 birthday, Helen requested a party with unicorn decorations and permission to wear a Disney
16 princess costume to the party. Her parents agreed. Most of Helen’s friends were (and are)
17 girls, and they also wore brightly colored dresses and accessories. Helen was as happy as
18 her parents had ever seen her that day. The party made them fully appreciate that Helen’s
19 behavior was not a phase. Their daughter expressed herself as, and indeed was, a girl.

20 89. Shortly thereafter, Helen’s parents brought Helen to Alison VanDyke, a
21 therapist specializing in working with transgender children. Ms. VanDyke evaluated Helen
22 and diagnosed her with gender dysphoria. In addition to working with Helen to improve
23 her self-confidence, Ms. VanDyke supported Helen’s parents as they worked through their
24 initial concerns about allowing Helen to live as a girl in every aspect of her life.

25 90. Helen has exhibited a marked improvement since her transition.

26 91. Although Helen’s family has accepted her as female, Helen has still
27 experienced prejudice because she is transgender. Towards the beginning of Helen’s
28 transition, her mother shared that Helen is transgender with several parents in Helen’s small

1 pre-school community. One family reacted negatively to this information, distancing
2 themselves from Helen and called the director of Helen's pre-school to allege that Helen
3 was a threat to their children's security.

4 92. Helen's parents also fear for Helen's safety because, as a transgender girl of
5 color, she is in a particularly vulnerable population. Having an accurate birth certificate
6 will not only give her control over who learns that she is transgender, but it will also reduce
7 the risk that Helen will be singled out or targeted for violence because she is transgender.
8 Currently, the information on Helen's birth certificate is used to generate many other
9 records that are part of her life, including school and healthcare records, exacerbating her
10 parents' fears.

11 93. Earlier this year, Helen's parents filed a petition to change Helen's name and
12 the sex listed on her birth certificate. The court granted the requested name change, but did
13 not rule on the request to change the sex listed on Helen's birth certificate from male to
14 female. Instead, the court provided Helen's parents with a printout of A.R.S. § 36-337. The
15 court also deferred ruling on their request to seal Helen's name-change petition, making
16 that petition available to public. Given their concerns for Helen's safety, Helen's parents
17 seek to correct Helen's birth certificate administratively to protect her private medical
18 information and prevent her from being forced to reveal that she is transgender.

19 ***Plaintiff James Poe***

20 94. Plaintiff James Poe is a five-year-old transgender boy in Pima County,
21 Arizona. James likes to play with his Etch A Sketch, climb trees, ride his bike, and explore
22 outdoors. He also loves to wear bow ties of all different colors and designs.

23 95. By the time that James was around a year-and-a-half old, he was expressing
24 through his actions that he is a boy. He resisted his parents' attempts to dress him in
25 feminine dresses and other girls' clothing. For example, at school one day, while playing
26 dress-up, he put on a boys' blazer and used a discarded girls' hair bow as a bow tie.

27 96. Around the time that he turned two, James began to refer to himself as a boy.
28 He would point at his mother, Laura, and say "girl," point at his father and say "boy," and

1 point to himself and say “boy.” Faced with his continuing refusal to wear girls’ clothing,
2 James’s parents started buying him boys’ clothing in the summer of 2018. James has never
3 switched back and, when offered a choice, James always selects boys’ clothes.

4 97. James’ parents grew increasingly convinced that this was more than just a
5 phase for James. They sought guidance from James’s pediatrician, who referred them to
6 Dr. Tracey Kurtzman, a pediatrician with expertise working with transgender youth.
7 Around that same time, James and his family started to see Dr. Richard Muszynski, a
8 clinical psychologist. James sees Dr. Muszynski regularly for therapy sessions to treat his
9 gender dysphoria.

10 98. Based in part on the counseling from these medical professionals, James’s
11 parents socially transitioned him from female to male. James immediately adopted male
12 pronouns and the name “James.” Days later, James’s family went out to dinner, and his
13 father asked Laura if she would like to try some lemonade. James mistakenly believed that
14 his father was referring to him as “she” and immediately corrected his father to use the
15 pronoun “he.”

16 99. Although his family has accepted him for who he is, James has been
17 mistreated by some of his peers. During fall break in 2019, James attended a program at
18 his school with children of different class levels and ages. James reported that an older
19 student repeatedly told him that he was a girl, not a boy. Laura sought to educate the
20 program administrators, but realized that the only way to do that would have been to
21 disclose that her son is transgender. To avoid disclosing that private information about
22 James, Laura removed him from the remainder of the program in order to keep him safe
23 and did not send him back in subsequent years.

24 100. Despite the fact that Laura works in a public school district, James’ parents
25 enrolled him in private school in order to avoid the public school’s requirement that he
26 provide a birth certificate to enroll. They do not want their son’s transgender status
27 disclosed publicly and view private school as a smaller and safer environment, even though
28 that choice came at a significant additional cost. For example, James has a learning

1 disability that requires specialized services, which would have been provided by a public
2 school at no cost to his family. Instead, James's parents have to cover those services through
3 their health insurance, paying the applicable co-pays, deductibles, and, in some cases,
4 covering the entire cost out-of-pocket. They have even delayed starting those needed
5 services out of a concern that the service provider will mistreat James because he is
6 transgender, a fact that is obvious from his birth certificate.

7 101. James has also expressed interest in joining sports programs, such as a youth
8 soccer league. However, the local soccer league requires James' birth certificate to register
9 him. Therefore, Laura has resisted signing him up, not wanting to disclose his transgender
10 status to the league, including the parents who are coaches and referees, and out of a concern
11 that he would be required to play on the girls' team.

12 102. In March 2020, James's parents sought a court order to change his name,
13 which the court granted. They also sought an order to correct the sex listed on James's birth
14 certificate, but the court did not rule on that request. Instead, the judge informed them that,
15 while she would have been willing to order a change to the sex listed on James's school and
16 health records, ADHS would require more in order to change the sex listed on his birth
17 certificate. She then handed them a printed copy of A.R.S. § 36-337. Despite having
18 corrected some of James's identity documents, his parents have not corrected his birth
19 certificate because they could not change the sex listed on that document. They seek to
20 change the sex listed on his birth certificate through the private administrative process in
21 order to maintain his privacy.

22 ***Plaintiff Carl Voe***

23 103. Plaintiff Carl Voe is a nine-year-old transgender boy who was born in Arizona
24 but currently lives in Maryland. Carl loves to draw comics and 3-D doodle, and is always
25 inventing new things. He also reads, writes, and assemble puzzles at every opportunity.

26 104. Carl began expressing his gender identity just before he turned two years old.
27 For example, Carl would ask his parents when he was going to get a boy's body. When
28 strangers would complement his long, curly hair, Carl told his parents that he hated his hair

1 and soon insisted that they cut it short like a boy's. When Carl was four, his mother, Rachel,
2 cut his hair in a Mohawk. Following that haircut, strangers would say "what a cute boy,"
3 and Carl instructed his parents that he did not want them to correct the strangers.

4 105. Around the same time, Carl's parents noticed that he was becoming
5 increasingly angry and defiant at home for reasons they could not immediately determine.
6 In addition to fits of rage, Carl would also attempt to harm himself, such as by shutting his
7 hand in cabinets. He also informed his parents that he hated girls and wished he was a boy.
8 Concerned for his health and safety, Carl's parents began taking him to Dr. Muszynski for
9 therapy in late 2017.

10 106. When Carl was in kindergarten, his parents learned that other children were
11 asking him whether he was a boy or a girl and would not believe him regardless of how he
12 answered. With the support of his parents, Carl addressed his class to tell them that he did
13 not like their questions. The environment improved for a few weeks, but then the questions
14 returned. Carl's parents also later learned that Carl was not eating his lunch and refusing to
15 use the restroom during the school day out of fear—a common behavior among transgender
16 youth due to the distress they experience using a restroom that does not match their gender
17 identity. At the end of kindergarten, Carl told his parents "I am a boy."

18 107. Carl adopted male pronouns and the name "Carl." His anger eased during
19 camp in the summer following kindergarten, but renewed when he entered first grade. In
20 his new grade, he faced continued questions about his gender, and was constantly referred
21 to as a girl by other students and even school staff. Despite many attempts to educate the
22 school staff and administrators, Carl's parents were unsuccessful, and Carl's anger and
23 defiance at home once again returned.

24 108. Carl's parents moved him to a new school for second grade and Carl insisted
25 that no one at his new school be told about his transgender status. Unfortunately, a few
26 other students from Carl's old school moved to the new school as well, and Carl's anger
27 was replaced by anxiety and fear that he would soon be outed and again face the questions
28 and mistreatment by his peers and school staff.

1 109. Mid-way through second grade, Carl moved to distance learning because of
2 the COVID-19 pandemic. Remote learning exacerbated Carl’s gender dysphoria, resulting
3 in him experiencing significant anxiety about this appearance and the sound of his voice.
4 As result, Rachel has home-schooled him since October 2020.

5 110. Carl expressed interest in participating in sports programs when he lived in
6 Arizona, including a local cross-country running program and a swim team. Both programs
7 have boys’ and girls’ divisions and required Carl to provide his birth certificate to sign up.
8 Carl also wanted to participate in a ballet program as a boy dancer. Carl’s parents did not
9 enroll him in any of these activities because they understood from other parents that he
10 would not be well received without corrected identity documents.

11 111. Late last year, Carl’s family moved to Maryland. Prior to the move, Carl’s
12 parents petitioned an Arizona court for a name and gender-marker change, but due to
13 delays associated with the COVID-19 pandemic, the Superior Court did not rule on the
14 petition before they left the state. Because he now lives in Maryland, Carl is no longer
15 within the jurisdiction of Arizona courts. Carl’s parents have been advised that
16 transgender young people in Maryland face many hurdles to obtaining court orders
17 correcting or amending the sex listed on their birth certificates. Instead, to protect Carl’s
18 privacy and health, his parents wish to use the private administrative process under
19 Subsection (A)(3) to correct Carl’s Arizona birth certificate.

20 **Class action allegations**

21 112. Plaintiffs, on behalf of themselves and all similarly situated individuals, bring
22 their claims for declaratory and injunctive relief as a class action under Federal Rules of
23 Civil Procedure 23(a) and 23(b)(2).

24 113. Plaintiffs request that the Court certify the following class (“Class”) under
25 Rule 23(b)(2):

26 All transgender individuals born in Arizona, now and in the
27 future, who seek to change the sex listed on their birth
28 certificates but have not undergone a “sex change operation”

1 as treatment for their gender dysphoria.

2 114. Plaintiffs are adequate representatives of the Class. Plaintiffs are transgender
3 individuals who seek to change the sex listed on their birth certificates and have not
4 undergone surgical treatment to treat their gender dysphoria and may never require such
5 treatment.

6 115. The Class satisfies the requirements of Rule 23(a)(1) because the class is so
7 numerous that joinder of all members is impracticable. Studies estimate that the population
8 of transgender adults in Arizona exceeds 30,000. Based on population studies, there are
9 approximately 2,000-5,000 transgender young people under eighteen years old in Arizona.
10 Of that population, approximately one-third will undergo surgery to treat their gender
11 dysphoria. That percentage will be significantly smaller among transgender young people
12 who, with limited exception, cannot undergo surgery due to their age. That leaves a large
13 proportion of transgender young people and adults—whether surgery is not medically
14 necessary for them or they face other barriers to accessing surgical care—who are denied
15 the opportunity to amend the sex listed on their birth certificate through the private
16 administrative process created by Subsection (A)(3) and it would be impractical to join all
17 of them as named plaintiffs. In addition to the potential size of the class, it would also be
18 impractical to join them all because there may be transgender people who were born in
19 Arizona, but currently live in another state.

20 116. The Class satisfies the commonality requirements of Rule 23(a)(2) because
21 there are questions of law and fact common to the Class. Pursuant to Subsection (A)(3),
22 Defendants have acted or refused to act on grounds generally applicable to the Class. This
23 action raises questions of law common to all members of the Class, including: (a) whether
24 Subsection (A)(3), facially and as applied to members of the Class, violates the Equal
25 Protection Clause of the Fourteenth Amendment to the U.S. Constitution; (b) whether
26 Subsection (A)(3), facially and as applied to members of the Class, violates the Substantive
27 Due Process Right to Privacy secured by the Due Process Clause of the Fourteenth
28 Amendment to the U.S. Constitution; (c) whether Subsection (A)(3), facially and as applied

1 to members of the Class, violates the Substantive Due Process Right to Individual Liberty
2 and Autonomy of the Fourteenth Amendment to the U.S. Constitution; and (d) whether
3 Subsection (A)(3), facially and as applied to members of the Class, violates the Substantive
4 Due Process Right to Choose whether to undergo a particular medical treatment secured by
5 the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. All
6 members of the Class share at least one common question of fact: Whether the purported
7 justification(s) for excluding transgender people who do not meet the surgical requirement
8 for changing their birth certificate via the private administrative process created by
9 Subsection (A)(3) are pretext(s) for impermissible discrimination?

10 117. The Class satisfies the typicality requirements of Rule 23(a)(3) because the
11 named Plaintiffs' claims are typical of the claims of the Class. Plaintiffs are members of
12 the Class, are individuals who have been unable and will be unable to amend the sex listed
13 on their birth certificates through the private administrative process set forth in Subsection
14 (A)(3). Plaintiffs and members of the Class share the same legal claims under the Equal
15 Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution.

16 118. The Class satisfies the adequacy requirements of Rule 23(a)(4) because the
17 class representatives will fairly and adequately represent the interests of the Class. The
18 named Plaintiffs seek the same declaratory and injunctive relief as the other members of the
19 Class: (1) a declaratory judgment that A.R.S. § 36-337(A)(3) and A.A.C. R9-19-208(O) are
20 unconstitutional; (2) permanent injunctions enjoining Defendants from enforcing that
21 statute and regulation; and (3) an order for Defendants to create a constitutionally sound
22 process for amending the sex listed on the birth certificates of transgender people born in
23 Arizona. The named Plaintiffs seek this relief to benefit themselves and to protect other
24 transgender people born in Arizona. In asserting their own rights, the named Plaintiffs will
25 vindicate the rights of all members of the Class fairly and adequately. The class
26 representatives have no interests that are antagonistic to the interests of other members of
27 the Class.

28 119. The Class further satisfies the requirements of Rule 23(a)(4) because counsel

1 for the Class will fairly and adequately represent the interests of the Class. The Class is
2 represented by counsel from Cooley LLP and Osborn Maledon, P.A., two large law firms,
3 and the National Center for Lesbian Rights (“NCLR”), a non-profit legal organization
4 dedicated to advancing the civil and human rights of the LGBTQ community. Collectively,
5 counsel has significant experience litigating civil rights cases, including transgender rights
6 cases and complex class actions in federal court.

7 120. The Class also satisfies the requirements of Rule 23(b)(2) because Defendants
8 have acted or refused to act on grounds that apply generally to the Class, so that final
9 injunctive or corresponding declaratory relief is appropriate respecting the class as a whole.
10 The Class exhibits sufficient cohesiveness because its members have suffered group, as
11 opposed to individual, injuries; namely, the categorical exclusion of transgender people who
12 have not undergone surgery to treat their gender dysphoria from amending their birth
13 certificate through the private administrative process created by Subsection (A)(3).
14 Members of the Class are bound together by the significant common traits that they are all
15 transgender, they have gender dysphoria, they need to amend the sex listed on their birth
16 certificates, and they have not undergone surgical treatment to alleviate their gender
17 dysphoria.

18 COUNT I

19 **(Violation of the Equal Protection Clause of the 20 Fourteenth Amendment of the United States Constitution)**

21 121. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 to 120 of
22 this Amended Complaint.

23 122. The Fourteenth Amendment to the United States Constitution, enforceable
24 pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its
25 jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

26 123. Defendants are persons for the purposes of § 1983.

27 124. Defendants act under color of law in enforcing A.R.S. § 36-337(A)(3) and its
28 implementing regulation A.A.C. R9-19-208(O).

125. Arizona’s current statutory and regulatory scheme, which prevents Plaintiffs

1 and the Class from obtaining amended birth certificates through the process created by
2 Subsection (A)(3), impermissibly discriminates against transgender people on the basis of
3 sex and transgender status, in violation of their right to equal protection of the laws under
4 the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
5 Unlike their nontransgender peers and other Arizonans who can have accurate birth
6 certificates and correct their birth certificates when necessary, transgender people are
7 denied accurate birth certificates.

8 126. Excluding transgender people who have not undergone surgery to treat their
9 gender dysphoria from obtaining corrected or amended birth certificates using the private
10 administrative process in Section 36-337(A)(3) does not serve any rational, legitimate,
11 important, or compelling state interest.

12 **COUNT II**
13 **(Violation of the Substantive Due Process Right to Privacy**
14 **under the United States Constitution)**

15 127. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through
16 126 of this Amended Complaint as though fully set forth herein.

17 128. The Fourteenth Amendment to the United States Constitution, enforceable
18 against Defendants pursuant to 42 U.S.C. § 1983, provides that no state shall “deprive any
19 person of life, liberty, or property, without due process of law.” U.S. Const. amend.
20 XIV, § 1.

21 129. The constitutional right to privacy protects information that is highly personal
22 and intimate, including sensitive medical information and information that could lead to
23 bodily harm upon disclosure.

24 130. Involuntary disclosure of a person’s transgender status violates that person’s
25 fundamental right to privacy. A person’s transgender status constitutes highly personal and
26 intimate information, including private medical information.

27 131. The involuntary disclosure of one’s transgender status can also cause
28 significant harm, including placing one’s personal safety and bodily integrity at risk.

132. Section 36-337(A)(3) and A.A.C. R9-19-208(O) violate the right to privacy

1 of transgender people, including Plaintiffs and the Class, in that denying them a birth
2 certificate that matches their sex requires them to disclose their transgender status and
3 deprives them of significant control over the circumstances around such disclosure.

4 133. There are no adequate safeguards to prevent the harm caused by the
5 involuntary disclosure of one's transgender status through a birth certificate. For example,
6 a person may need to disclose their birth certificate directly to third parties, without any of
7 the privacy safeguards that may exist where the government discloses information to third
8 parties.

9 134. The government has no compelling, important, or legitimate interest in
10 disclosing a person's transgender status on state-issued birth certificates.

11 **COUNT III**

12 **(Violation of the Substantive Due Process Right to Individual Liberty and 13 Autonomy under the United States Constitution)**

14 135. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through
15 134 of this Amended Complaint as though fully set forth herein.

16 136. The substantive protections of the Due Process Clause also protect the right
17 of every person to the possession and control of their own person, and to define and express
18 their identity. "The Constitution promises liberty to all within its reach, a liberty that
19 includes certain specific rights that allow persons . . . to define and express their identity."
20 *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593 (2015).

21 137. The fundamental protections of an individual's autonomy include a right to
22 live consistent with one's sex, which is a fundamental aspect of personal identity. Arizona
23 law impermissibly burdens that right by preventing transgender people from obtaining
24 amended birth certificates that reflect who they are, thereby subjecting them to the risk of
25 exposure, stigma, discrimination, harassment, and violence. That burden is amplified by
26 the fact that the government itself, as well as many third parties, often requires the use of a
27 birth certificate to demonstrate a person's sex.

28 138. The government's refusal to permit transgender people who have not
undergone surgery to treat their gender dysphoria to obtain amended birth certificates

1 through the private administrative process created by Subsection (A)(3) additionally
2 burdens their right to autonomy by inviting and encouraging other public and private entities
3 to similarly discriminate against them.

4 139. Arizona has no compelling, important, or even legitimate government interest
5 in burdening the ability of transgender people to live consistent with their sex.

6 **COUNT IV**

7 **(Violation of the Substantive Due Process Right to choose whether to undergo a
8 particular medical treatment under the United States Constitution)**

9 140. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through
10 139 of this Amended Complaint as though fully set forth herein.

11 141. The substantive protections of the Due Process Clause safeguard the right of
12 every person to bodily integrity. Encompassed in that right is the right to choose whether
13 to undergo a particular medical treatment. *See Washington v. Glucksberg*, 521 U.S. 702,
14 720 (1997); *Washington v. Harper*, 494 U.S. 210, 221 (1990); *Parham v. J.R.*, 442 U.S. 584,
15 600 (1979).

16 142. Arizona law interferes with this fundamental constitutional right by imposing
17 a surgical requirement on transgender people to correct their birth certificate via the private
18 administrative process created under Subsection (A)(3). Decisions regarding medical
19 treatment should be made based on the advice of medical and mental health professionals,
20 and consistent with the prevailing standards of care. However, the importance of the birth
21 certificate as an identity document impermissibly pressures transgender people into
22 undergoing surgeries that may be medically unnecessary simply to correct their birth
23 certificates.

24 143. Denying transgender people the ability to correct their birth certificate using
25 the private administrative process in Section 36-337(A)(3) because they do not undergo
26 surgery infringes on their right to choose whether to undergo a particular treatment.

27 144. Arizona has no compelling, important, or even legitimate government interest
28 to justify curtailing this fundamental constitutional right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter an order declaring that this action is a proper class action and certifying Plaintiffs D.T., Helen Roe, James Poe, and Carl Voe as class representatives under Rule 23 of the Federal Rules of Civil Procedure.

B. Enter a declaratory judgment that continuing to enforce the surgical requirement in A.R.S. § 36-337(A)(3) and A.A.C. R9-19-208(O) to deny Plaintiffs D.T., Helen Roe, James Poe, and Carl Voe, and the Class, the ability to change the sex markers on their birth certificates:

1. Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by discriminating on the basis of sex and transgender status;
2. Violates the Due Process Right to Privacy under the United States Constitution;
3. Violates the Due Process Right to Individual Liberty and Autonomy under the United States Constitution;
4. Violates the Due Process Right to Choose Whether to Undergo a Particular Medical Treatment;

C. Permanently enjoin Defendants, their agents, employees, representatives, and successors, and any other person acting directly or indirectly in concert with them, from enforcing the surgical requirement in A.R.S. § 36-337(A)(3) and A.A.C. R9-19-208(O) to deny an amendment to the sex listed on the birth certificates of transgender people who have undergone clinically appropriate treatment for the purpose of a gender transition;

D. Order Defendants to issue amended birth certificates to Plaintiffs D.T., Helen Roe, James Poe, and Carl Voe;

E. Award Plaintiffs D.T. and Jane Doe nominal damages;

F. Award Plaintiffs the costs and disbursements of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable laws; and

1 G. Grant such other and further relief in favor of Plaintiffs and the Class as this
2 Court deems just, equitable and proper.

3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs respectfully
5 demand a trial by jury of all issues triable by jury.

6 Respectfully submitted,

7 Dated: January 8, 2021

OSBORN MALEDON, P.A.

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