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12  
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  
19 his 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

**PLAINTIFFS’ OPPOSITION TO  
DEFENDANTS’ MOTION TO DISMISS**

**\*ORAL ARGUMENT REQUESTED\***

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1 **I. INTRODUCTION**

2 Plaintiffs are transgender girls and boys who seek to amend their birth certificates  
3 through the state-created administrative process that is available to all other Arizonans.  
4 Plaintiffs’ birth certificates either list—or, before this case began, did list—the wrong sex  
5 marker, disclosing to anyone who sees these critical and ubiquitous identity documents that  
6 they are transgender and, as a result, exposing them to discrimination, harassment, and  
7 violence. Arizona law provides an administrative pathway to correct the sex listed on a  
8 birth certificate, but contrary to well-established medical standards of care, that process  
9 requires transgender applicants to have “undergone a sex change operation.” A.R.S. § 36-  
10 337(A)(3). Surgery is not medically appropriate or available for transgender children and  
11 may never be necessary for transgender people who are able to transition as minors because  
12 of advances in non-surgical treatment techniques. Because of the surgical requirement,  
13 Plaintiffs and other transgender minors are barred from using the administrative process in  
14 Subsection (A)(3). Like all children, they need accurate birth certificates to participate in a  
15 wide range of activities that are critical to their growth and development. By barring  
16 transgender minors from obtaining accurate birth certificates, the surgical requirement  
17 violates Plaintiffs’ constitutional rights to equal protection and due process under the  
18 Fourteenth Amendment.

19 Defendants do not dispute that Plaintiffs have stated a valid claim that the surgical  
20 requirement in Subsection (A)(3) violates their right to privacy by preventing them from  
21 obtaining accurate birth certificates and thus depriving them of the right to determine when,  
22 whether, and to whom to disclose their transgender status. Defendants also do not appear  
23 to dispute that transgender young people are harmed by inaccurate identity documents and  
24 that amending their birth certificates is “vital to their mental and physical well-being.”  
25 (Order, Doc. 28, at 2–3.) Nevertheless, Defendants move to dismiss several of Plaintiffs’  
26 claims based on a hodgepodge of inapt jurisdictional, abstention, and venue arguments.  
27 None of Defendants’ scattershot arguments hit the mark. The Court should deny the  
28 motion.

1 **II. FACTUAL BACKGROUND**

2 **A. The medical standards of care for transgender minors are well-**  
 3 **established and generally exclude surgery.**

4 Arizona’s surgery requirement conflicts with the medical standards of care for  
 5 treating gender dysphoria in minors, which are well-established and supported by every  
 6 leading medical professional organization, including the American Academy of Pediatrics  
 7 and the American Medical Association. (Compl. ¶ 31.)<sup>1</sup> Those standards enable  
 8 transgender minors to live in accord with their gender identity through social transition and,  
 9 where medically appropriate, puberty blockers or hormone therapy. (*Id.* ¶¶ 32–39.)  
 10 “Surgery is not medically required to complete gender transition” and, under the prevailing  
 11 standards of care and in light of modern treatments like hormone-replacement therapy,  
 12 “most transgender youth cannot undergo or may never require surgery.” (*Id.* ¶¶ 32, 49.)

13 Correcting identity documents is an important step in a young person’s gender  
 14 transition and plays a critical role in their healthy development and well-being. (*Id.* ¶¶ 34,  
 15 43.) When transgender youth are barred from updating those documents, it “increases the  
 16 likelihood that a person’s transgender status will be disclosed to others, exposes them to a  
 17 significant risk of mistreatment, and undermines the health benefits of their social  
 18 transition.” (*Id.* ¶ 43; *see also id.* ¶¶ 41–45.)

19 **B. The Parties.**

20 Plaintiffs are five transgender people, all younger than age eighteen, who were born  
 21 in Arizona. (Compl. ¶¶ 14–18.)<sup>2</sup> Plaintiffs Helen Roe, James Poe, and Carl Voe also bring  
 22 their claims on behalf of a class of similarly situated transgender individuals. (*Id.* ¶¶ 112–  
 23 20.) Defendants are officials at the Arizona Department of Health Services who administer  
 24 and otherwise have authority over vital statistics records, including the process for  
 25 correcting or amending birth certificates. (*Id.* ¶¶ 19–21.)

26 <sup>1</sup> Citations to “Compl.” refer to the amended complaint. (Doc. 47.)

27 <sup>2</sup> Plaintiffs use the word “correct” to mean what it does in common language: to put right,  
 28 or to rectify an error or inaccuracy. It is immaterial for purposes of deciding this motion—  
 or this case—whether, as Defendants insist, the terms “correct” and “amend” may have  
 different meanings in some other contexts under Arizona law.

1           **C. Arizona vital statistics records laws.**

2           Arizona law creates an administrative process that permits transgender people to  
3 change the sex marker on their birth certificate by submitting a letter to ADHS from a  
4 physician attesting that they have undergone a “sex change operation.” A.R.S.  
5 § 36-337(A)(3).<sup>3</sup> This process does not create a public record and, once approved, the  
6 documents are sealed, making them inaccessible without a court order. (*Id.* ¶ 55.)

7           Arizonans can also petition a court for changes to their birth certificate. This process,  
8 established in Subsection (A)(4), is not specifically designed for transgender persons  
9 seeking to update their birth certificates; instead, it is a general provision that authorizes  
10 Arizona courts to order ADHS to change *any* information on a birth certificate.  
11 Subsection (A)(4) does not contain specific standards for when a court may order such a  
12 change. (*Id.* ¶ 50.) In practice, when a transgender person seeks to use this provision to  
13 obtain a corrected sex marker, Arizona courts have imposed the same surgical requirement  
14 as in Subsection (A)(3), based in part on “ADHS’s prior publicly-stated position that  
15 Arizona courts lack the authority under Subsection (A)(4) to issue orders amending the sex  
16 listed on an Arizona birth certificate.” (*Id.* ¶ 51.)

17           The judicial process in Subsection (A)(4) is much more burdensome and expensive  
18 than the administrative process, and it is impossible to use without publicly disclosing a  
19 person’s transgender status. Those burdens are compounded for transgender Arizonans  
20 who live in other states, who may be legally or practically unable to file a petition in Arizona  
21 state court.

22           **D. Current proceedings.**

23           On November 5, 2020, Plaintiffs filed a complaint challenging the constitutionality  
24 of the surgical requirement in Subsection (A)(3). (Doc. 1.) Along with the complaint,  
25 Plaintiff Jane Doe filed a motion for preliminary injunction. (Doc. 3.) Defendants opposed  
26 but, as the Court observed, they did not “dispute that best medical and psychological

27 \_\_\_\_\_  
28 <sup>3</sup> Plaintiffs also challenge the surgical requirement in ADHS’s implementing regulation, A.A.C. R9-19-208(O). (Compl. ¶ 48.) For simplicity, when this motion refers to the deficiencies in Subsection (A)(3), Plaintiffs also intend to refer to that regulation.

1 practices reflect”:

2 (1) gender reassignment surgery is not required or recommended for young  
3 transgender kids (i.e., 6, 10, and 13 in this case) diagnosed with gender  
4 dysphoria;

5 (2) gender reassignment surgery may never be necessary or recommended for  
6 those with gender dysphoria (i.e., there are many factors that come into play  
7 that vary for each individual’s circumstances);

8 (3) amending important identity-related documents (such as birth certificates)  
9 to coincide with a transgender minor’s gender identity (as opposed to their  
10 external genitalia) is vital to their mental and physical well-being; and

11 (4) that failure to amend such documents (such as birth certificates)  
12 improperly reveals a transgender minor’s transgender status to school  
13 officials and classmates, which results in discrimination and harassment  
14 based on their transgender status, and this is detrimental to a transgender  
15 minor’s mental and physical health.

16 (Doc. 28 at 2–3.) Defendants also did “not dispute that the ultimate relief Plaintiffs seek  
17 (amending their birth certificates) is warranted,” instead arguing that it “is already  
18 available . . . under Arizona’s current laws, regulations, and practices.” (*Id.* at 3.) The  
19 parties resolved that motion by joint stipulation on November 27, 2020, resulting in the  
20 Court issuing Jane Doe an order directing ADHS to amend the sex listed on her birth  
21 certificate. (Docs. 39 & 41.) Thereafter, Plaintiffs filed an amended complaint on January  
22 8, 2021, (Doc. 47), and Defendants moved to dismiss it on March 15, 2021. (Doc. 56.)

### 23 **III. ARGUMENT**

24 Plaintiffs have sufficiently pled standing and the elements of each claim in their  
25 amended complaint. There is no basis for this Court to abstain or decline to preside over  
26 this case. Accordingly, the Court should deny the motion to dismiss and permit Plaintiffs  
27 to remedy the one minor pleading issue identified in Defendants’ motion.

#### 28 **A. The Court has subject-matter jurisdiction over Plaintiffs’ claims and there is no basis for the Court to decline to exercise it.**

Defendants’ assertions that the Court lacks subject-matter jurisdiction or that the  
Court should abstain from exercising it are without merit.

1                   ***1. Plaintiffs have standing.***

2           The allegations in the amended complaint demonstrate that all Plaintiffs satisfy  
 3 Article III’s standing requirements. Plaintiffs Helen Roe, James Poe, and Carl Voe have  
 4 standing because they seek to obtain birth certificates reflecting their correct gender markers  
 5 through Arizona’s administrative process, but are prevented from doing so because of  
 6 Defendants’ unlawful enforcement of the surgical requirement in Subsection (A)(3). This  
 7 violation may be redressed by this Court through appropriate injunctive and declaratory  
 8 relief. Plaintiffs D.T. and Jane Doe have standing because they were prevented from  
 9 obtaining corrected birth certificates through the administrative process before filing this  
 10 action and have received them now only as a result of filing suit to vindicate their  
 11 constitutional rights. Their entitlement to nominal damages for Defendants’ constitutional  
 12 violations is sufficient to establish standing, as the Supreme Court recently made clear. *See*  
 13 *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801–02 (2021).

14                   i.       Helen Roe, James Poe, and Carl Voe have redressable  
 15                               injuries.

16           “A plaintiff’s burden to demonstrate redressability is ‘relatively modest.’” *M.S. v.*  
 17 *Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018) (quoting *Renee v. Duncan*, 686 F.3d 1002,  
 18 1013 (9th Cir. 2012)). It is “easily” established in cases, like this one, where a plaintiff  
 19 challenges a statute or regulation as discriminatory. *Hassan v. City of New York*, 804 F.3d  
 20 277, 293 (3d Cir. 2015).

21           Plaintiffs’ amended complaint alleges injuries that arise from Defendants’  
 22 enforcement of the unlawful surgical requirement in Subsection (A)(3). Excluding Helen,  
 23 James, and Carl—and the putative class they represent—from the private administrative  
 24 process created by Subsection (A)(3) discriminates against transgender people and violates  
 25 their constitutional rights to privacy, individual liberty, and autonomy. Plaintiffs seek  
 26 permanent declaratory and injunctive relief barring Defendants from imposing a surgical  
 27 requirement as part of their administrative process for changing a sex marker. Such relief  
 28 would remedy Plaintiffs’ injuries by requiring Defendants to issue them birth certificates

1 that accurately reflect their sex without enforcing the discriminatory surgery requirement.

2 Defendants wrongly suggest that granting the relief Plaintiffs seek would require this  
3 Court to strike down the entirety of Subsection (A)(3). Federal courts have “broad  
4 discretion to fashion injunctive relief.” *Melendres v. Maricopa Cty.*, 897 F.3d 1217, 1221  
5 (9th Cir. 2018); *see also Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th Cir.  
6 1990) (same). The injunction that Plaintiffs seek would enable transgender people in  
7 Arizona to use the administrative process to amend the sex listed on their birth certificate  
8 without enforcement of the discriminatory surgery requirement, thus redressing Plaintiffs’  
9 specific injury and that of the putative class.

10 Granting relief on Plaintiffs’ claims would not require invalidation of Arizona’s  
11 entire administrative procedure for correcting sex markers, just as granting relief to same-  
12 sex couples and interracial couples challenging unconstitutional restrictions on the  
13 requirements for civil marriage did not require invalidating marriage statutes in their  
14 entirety. *See Obergefell v. Hodges*, 576 U.S. 644, 681 (2015); *Loving v. Virginia*, 388 U.S.  
15 1, 12 (1967); *see also Heckler v. Mathews*, 465 U.S. 728, 738 (1984) (holding “a court  
16 sustaining” an equal-protection challenge “may either declare [the statute] a nullity . . . or  
17 it may extend the coverage of the statute”); *Nat’l Coalition for Men v. Selective Serv. Sys.*,  
18 640 F. App’x 664, 666 (9th Cir. 2016) (same). Nothing about the relief Plaintiffs seek is  
19 improper or even unusual in constitutional challenges to discriminatory state laws, and  
20 Defendants offer no authority to the contrary.

21 Nor do Defendants’ questions about how the administrative process would operate  
22 in the absence of a surgical requirement demonstrate that the injury in this case is not  
23 redressable. Similar questions about the need to amend marriage licenses and application  
24 forms, and about amending birth certificate forms to reflect the parentage of children born  
25 to same-sex married couples, did not prevent courts from providing effective relief in cases  
26 challenging those exclusions on constitutional grounds. *See Obergefell*, 576 U.S. at 681;  
27 *Pavan v. Smith*, 137 S. Ct. 2075, 2078 (2017); *cf. In re Marriage of McLaughlin & Swanson*,  
28 250 Ariz. 156, 476 P.3d 336, 339 (Ct. App. 2020) (holding that Arizona state courts have

1 authority to order amendment of birth certificates to reflect two parents of the same sex  
2 even if such orders “require[] ADHS to alter its existing internal practices”).

3 In any event, the Court need not determine at this early stage “the exact nature of the  
4 possible relief” it will award at the conclusion of the case in order to find that Plaintiffs’  
5 allegations meet the modest redressability threshold. *Hassan*, 804 F.3d at 293. At this  
6 stage, it is sufficient that the Court has the authority and practical ability to redress  
7 Plaintiffs’ injuries. There is no question that the Court has both.

8 ii. D.T. and Jane Doe have standing.

9 That D.T. and Jane Doe managed to obtain amended birth certificates as a result of  
10 filing this litigation does not extinguish their standing or render their claims for nominal  
11 damages moot. By enforcing the surgical requirement in Subsection (A)(3), Defendants  
12 bar transgender minors from using the private administrative process. That surgical  
13 requirement prevented D.T. and Jane Doe from changing the sex listed on their respective  
14 birth certificates through that process, resulting in serious harms to their health and well-  
15 being. Obtaining an accurate birth certificate as part of this litigation mitigated D.T. and  
16 Jane’s prospective injuries; it did not and could not cure the previously inflicted harms.

17 D.T.’s and Jane Doe’s damages claims satisfy the redressability element of standing.  
18 “When a plaintiff alleges violation of a constitutional right . . . nominal damages are . . .  
19 available in order to make the deprivation of such right actionable and to thereby  
20 acknowledge the importance to organized society that the right be scrupulously observed.”  
21 *Jacobs v. Clark Cnty. Sch. Distr.*, 526 F.3d 419, 426 (9th Cir. 2008) (cleaned up). Nominal  
22 damages preclude the dismissal of “a completed violation of a legal right.” *Uzuegbunam*,  
23 141 S. Ct. at 801–02; *Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862, 872 (9th Cir. 2002);  
24 *Johnson v. Rancho Santiago Comm. College Dist.*, 623 F.3d 1011, 1018 (9th Cir. 2010).  
25 Thus, the amended complaint more than adequately demonstrates that D.T. and Jane Doe  
26 meet each of the elements for standing.

27 Defendants’ only other argument is a technical one that is easily cured by  
28 amendment: “nominal damages are not recoverable against Defendants, who are sued only

1 in their official capacities.” (Br. at 6.) There is no doubt, however, that Plaintiffs can sue  
 2 and recover nominal damages from Defendants in their *personal capacities*. *Arizonans for*  
 3 *Official English v. Arizona*, 520 U.S. 43, 69 n.24 (1997).<sup>4</sup> Accordingly, Plaintiffs D.T. and  
 4 Jane Doe respectfully request leave to amend the complaint to clarify their intent to sue  
 5 Dr. Cara M. Christ, Thomas Salow, and Krystal Colburn in both their official and personal  
 6 capacities. *See* Fed. R. Civ. P. 15(a) (providing leave to amend “shall be given freely when  
 7 justice so requires”); *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1988)  
 8 (noting request for leave to amend can be considered when resolving a motion to dismiss).<sup>5</sup>

9 **2. The Rooker-Feldman doctrine is inapplicable.**

10 Defendants erroneously assert that the Court may not exercise jurisdiction over this  
 11 lawsuit under *Rooker-Feldman*, a “narrow doctrine” confined to “cases brought by state-  
 12 court losers complaining of injuries caused by state-court judgments rendered before the  
 13 district court proceedings commenced and inviting district court review and rejection of  
 14 those judgments.” *Lance v. Dennis*, 546 U.S. 459, 464 (2006). That doctrine is irrelevant  
 15 here. As alleged in the amended complaint, the harms to Plaintiffs and the putative class  
 16 arise from Defendants’ enforcement of the surgical requirement in Subsection (A)(3), not  
 17 from any state-court decision. The *Rooker-Feldman* doctrine was designed to prevent  
 18 litigants from collaterally attacking state-court judgments. No Plaintiff here is attacking  
 19 any such judgment; they are challenging the surgery requirement imposed under  
 20 Subsection (A)(3)’s administrative procedure. The constitutionality of Subsection (A)(3)  
 21 was not before the Arizona courts in any of the petitions filed by the Plaintiffs. Thus, this  
 22 case does not seek review or reversal of any order issued in any of those cases, and *Rooker-*  
 23 *Feldman* is inapplicable.

24 *Rooker-Feldman* is inapt when there is no adverse state-court ruling to challenge.

25 \_\_\_\_\_  
 26 <sup>4</sup> By suing Defendants in their individual and official capacities, Plaintiffs proposed  
 amendments will also moot Defendants’ claim that suing all three defendants is duplicative.

27 <sup>5</sup> Plaintiffs submit with this opposition brief their proposed second amended complaint,  
 28 which adds allegations against Defendants in their individual capacities and updates certain  
 factual allegations relevant to this motion. For ease of reference, paragraph numbers in the  
 second amended complaint remain consistent with those in the amended complaint.

1 *See Exxon Mobil Corp. v. Saudi Basic Industs. Corp.*, 544 U.S. 280, 292 (2005). Jane Doe  
2 never petitioned the Arizona courts for an order correcting the sex listed on her birth  
3 certificate, so there is no state-court proceeding or order that could even arguably trigger  
4 application of *Rooker-Feldman*. Similarly, although Helen Roe and James Poe filed court  
5 petitions to change their sex markers under Subsection (A)(4), the state courts never ruled  
6 on whether to order ADHS to correct the sex listed on their birth certificates and their  
7 petitions are now closed, leaving them with no order to appeal or collaterally attack. Carl  
8 Voe’s petition was dismissed because he moved out of the state, so there is similarly no  
9 state-court order to challenge. And because Defendants issued D.T. a birth certificate after  
10 he filed this case, he seeks only nominal damages as a result of Defendants’ denial of access  
11 to the administrative process under Subsection (A)(3); he is not seeking to challenge any  
12 adverse state-court order.

13 **3. *The abstention doctrines asserted by Defendants do not apply.***

14 Where federal-question jurisdiction exists, as it does here, “a federal court’s  
15 ‘obligation’ to hear and decide a case is ‘virtually unflagging.’” *Sprint Commc’ns, Inc. v.*  
16 *Jacobs*, 571 U.S. 69, 77 (2013) (citing *Colo. River Water Conservation Dist. v. United*  
17 *States*, 424 U.S. 800, 817 (1976)). None of the potpourri of additional abstention doctrines  
18 asserted by Defendants—the *Younger*, *Pullman*, *Colorado River*, and *Brillhart* doctrines—  
19 apply to this case, because there is no pending parallel litigation in state court that will, or  
20 even could, address the constitutional claims raised by Plaintiffs in this litigation, an  
21 essential requirement of each doctrine.

22 Jane Doe has never filed a state-court proceeding to change the sex listed on her birth  
23 certificate, and thus there is no proceeding to which this Court could even potentially defer  
24 resolution of her claims. Similarly, the state-court petitions of the remaining named  
25 Plaintiffs have been dismissed or resolved and are no longer pending. In short, there are no  
26 pending state-court proceedings, much less any that could obviate the need for the Court to  
27 resolve the central claims in this case. Accordingly, the prudential considerations  
28 underlying abstention are entirely lacking, and the Court is neither required nor permitted

1 to decline to exercise its jurisdiction.

2 i. Younger abstention does not apply.

3 *Younger* abstention has no application here because the Court is not being asked “to  
4 enjoin ongoing state . . . proceedings.” *Page v. King*, 932 F.3d 898, 901 (9th Cir. 2019)  
5 (quoting *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716, 727 (9th Cir. 2017)).

6 Even if *Younger* had any relevance here, under that doctrine, “only exceptional  
7 circumstances justify a federal court’s refusal to decide a case in deference to the States.”  
8 *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989).  
9 Those circumstances arise in three categories of cases: (1) federal intrusion into ongoing  
10 state criminal prosecutions; (2) certain “civil enforcement proceedings;” and (3) “civil  
11 proceedings involving certain orders uniquely in furtherance of the state courts’ ability to  
12 perform their judicial functions.” *Sprint Commc’ns*, 571 U.S. at 78 (cleaned up); *see also*  
13 *ReadyLink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d 754, 758 (9th Cir.  
14 2014) (same). The four-factor test analyzed in Defendants’ motion is only applicable when  
15 a case fits within one of these three “exceptional” categories. None of those categories is  
16 relevant here. Plaintiffs’ state-court petitions were never related to criminal or civil  
17 enforcement proceedings. Nor do the claims before this Court implicate the ability of state  
18 courts to carry out judicial functions. Plaintiffs challenge only the unlawful surgical  
19 requirement in the Subsection (A)(3) administrative procedure to correct birth certificates;  
20 they do not challenge any aspect of the Arizona courts’ separate authority to order  
21 amendments to the birth certificate.

22 ii. Pullman abstention does not apply.

23 *Pullman* likewise has no bearing on this case because there are no pending state-  
24 court proceedings. *Pullman* abstention is reserved for “exceptional cases where principles  
25 of comity and federalism justify postponing the exercise of jurisdiction” so that a state court  
26 can render a decision under state law that would make resolution of the federal question  
27 unnecessary. *Pearl Inv. Co. v. City and Cty. of San Francisco*, 774 F.2d 1460, 1462–63  
28 (9th Cir. 1985). Here, there are no pending state-court proceedings and thus no possibility

1 that any state court order will affect, let alone allow this Court to avoid, the central question  
 2 in this case: does barring transgender minors from using the administrative process in  
 3 Subsection (A)(3) violate Plaintiffs’ constitutional rights under the Equal Protection and  
 4 Due Process Clauses of the Fourteenth Amendment?

5 Moreover, even if there were any pending state-court cases seeking to obtain  
 6 corrected birth certificates without surgery for transgender minors under Subsection (A)(4),  
 7 the *Pullman* doctrine would not apply because no possible resolution of that issue would  
 8 resolve the entirely separate issue in this case. Even if Arizona courts would permit  
 9 transgender minors to obtain corrected birth certificates, that would not cure the  
 10 unconstitutionality of excluding them from the far less burdensome, less expensive, and far  
 11 more private administrative process established by Subsection (A)(3). *See San Francisco*  
 12 *Cty. Democratic Cent. Committee v. Eu*, 826 F.2d 814, 825 (9th Cir. 1987) (holding  
 13 *Pullman* abstention inapplicable when state-court case does not involve dispute that, if  
 14 decided, “would moot the constitutional questions raised by plaintiffs”). *Pullman* is inapt.

15 iii. Neither *Colorado River* nor *Brillhart* abstentions apply.

16 Both the *Colorado River* and *Brillhart* doctrines “rest on considerations of wise  
 17 judicial administration” seeking a comprehensive disposition of litigation, *Colo. River*, 424  
 18 U.S. at 817, and involve a “careful balancing” of the relevant factors “with the balance  
 19 heavily weighted in favor of the *exercise* of jurisdiction,” *Moses H. Cone Mem’l Hosp. v.*  
 20 *Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983) (emphasis added). The Court must “ascertain  
 21 whether there exist ‘exceptional’ circumstances, the ‘clearest of justifications,’ that can  
 22 suffice under *Colorado River* to justify the *surrender* of that jurisdiction.” *Id.* at 25–26.  
 23 “Any doubt as to whether a factor exists should be resolved against a stay, not in favor of  
 24 one.” *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1369 (9th Cir. 1990).<sup>6</sup>

25 Defendants fail to demonstrate any “exceptional circumstances” warranting

26 \_\_\_\_\_  
 27 <sup>6</sup> Defendants acknowledge that the *Brillhart* doctrine requires courts in a declaratory  
 28 judgment action to examine three factors subsumed by the *Colorado River* analysis. (Br.  
 at 20). Plaintiffs’ *Colorado River* analysis thus accounts for them. *See Gov’t Emps. Ins.*  
*Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998) (listing *Brillhart* factors).

1 surrender of jurisdiction. Plaintiffs are not involved in any parallel state-court litigation,  
 2 and their prior state-court cases did not involve the constitutionality of Subsection (A)(3).  
 3 In addition, because this case will resolve the claims of an entire class of transgender people  
 4 harmed by the surgical requirement in Subsection (A)(3), permitting it to proceed would  
 5 promote judicial efficiency and reduce, if not eliminate, the possibility of “conflicting  
 6 results, piecemeal litigation, and . . . duplication of judicial effort.” *Neuchatel Swiss Gen.*  
 7 *Ins. Co. v. Lufthansa Airlines*, 925 F.2d 1193, 1195 (9th Cir. 1991). Finally, contrary to  
 8 Defendants’ assertions that this case rests on construing Arizona law, Plaintiffs’ claims in  
 9 fact depend exclusively on the Equal Protection and Due Process Clauses of the Fourteenth  
 10 Amendment. The language of Subsection (A)(3) is unambiguous, as Defendants concede,  
 11 ensuring that the Court will not be required to resolve any disputed issues of state law, let  
 12 alone ones that are “complex and difficult issues better resolved by a state court.” *Seneca*  
 13 *Ins. Co.*, 862 F.3d at 844. In short, *Colorado River* does not support abstention here.

14 **B. This Court is the proper venue for this case.**

15 Plaintiffs appropriately filed this lawsuit in the Tucson Division of the District of  
 16 Arizona. Defendants’ arguments to transfer venue lack merit.

17 **1. 28 U.S.C. § 1406(a) does not apply.**

18 Local Rule 5.1(a) explicitly allows a plaintiff to choose between divisions where “the  
 19 cause of action has arisen in more than one county.” Although Defendants are located in  
 20 Maricopa County, several of the Plaintiffs reside in Pima County and the injuries caused by  
 21 Defendants’ enforcement of the surgical requirement in Subsection (A)(3) occurred in Pima  
 22 County, making the Tucson Division a proper venue. *Bowling v. Westport Ins. Corp.*, 2015  
 23 WL 13203369, at \*9 (D. Ariz. Oct. 19, 2015) (finding plaintiff’s claim “arose” in both the  
 24 Phoenix and Tucson Divisions when defendant’s residence and actions occurred in  
 25 Maricopa County, but plaintiff suffered harm in Pima County); *see also Bay Cnty.*  
 26 *Democratic Party v. Land*, 340 F.Supp.2d 802, 809 (E.D. Mich. 2004).<sup>7</sup>

27 \_\_\_\_\_  
 28 <sup>7</sup> Defendants wrongly assert that the location of a law’s enactment is relevant to where a  
 cause of action challenging that law “arose.” (Br. at 13, 14 n.8.) Numerous courts have  
 rejected that argument, and this Court should as well. *See McClure v. Manchin*, 301 F.

1 Defendants offer no justification for departing from those well-established rules.  
 2 The only case Defendants cite in support of their argument under 28 U.S.C. § 1406(a)—  
 3 *Carranza v. Con-Way Incorporated*—involved plaintiffs who had no link to the Tucson  
 4 Division. 2010 WL 4777624, at \*1–2 (D. Ariz. Oct. 29, 2010). Here, in contrast, three  
 5 Plaintiffs reside in Pima County, where they were injured by Defendants’ actions, and a  
 6 fourth was born in Pima County before moving out of state. (Compl. ¶¶ 18, 58, 86, 94.).  
 7 Further, Defendants’ cite to Local Rule 77.1 is unhelpful because it does not address the  
 8 proper venue for causes of action arising in more than one county and, in any event, gives  
 9 the Court discretion to order the trial occur anywhere within the District. LRCiv. 77.1(c).  
 10 Because venue is proper in the Tucson Division, 28 U.S.C. § 1406(a) does not apply and  
 11 no transfer is warranted. *Brinkman v. Schriro*, 2009 WL 10635930, at \*1 (D. Ariz. June 11,  
 12 2009) (denying motion to transfer under § 1406(a) when “it is beyond dispute that venue  
 13 [is] appropriate in this District”).<sup>8</sup>

14 **2. 28 U.S.C. § 1404 does not warrant transfer here.**

15 Defendants’ alternative argument for transfer under 28 U.S.C. §§ 1404(a) or 1404(b)  
 16 is equally baseless. Defendants fail to meet their “burden to justify by particular  
 17 circumstances” that the Tucson Division is so inconvenient, or otherwise inappropriate, as  
 18 to upset the deference given to the Plaintiffs’ choice of forum. *Commodity Futures Trading*  
 19 *Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). Defendants’ argument reduces to  
 20 one point: that the Phoenix Division is more convenient because that is where Defendants  
 21 are located. But “transfer should not be granted if the effect is simply to shift the  
 22 inconvenience to the party resisting the transfer.” *Bowling*, 2015 WL 13203369, at \*8  
 23 (quoting *U.S. v. One Oil Painting Entitled Femme en Blanc by Pablo Picasso*, 362 F. Supp.

24 \_\_\_\_\_  
 25 Supp. 2d 564, 569 (N.D. W. Va. 2003) (rejecting state official’s claim that challenge to state  
 26 law must be brought in district where state government sits); *Emison v. Catalano*, 951 F.  
 27 Supp. 714, 721 (E.D. Pa. 1996) (finding suits challenging official acts may be brought in  
 28 district where effects of challenged statute are felt despite statute’s enactment in different  
 district); *School Dist. of Phil. v. Penn. Milk Marketing Bd.*, 877 F. Supp. 245, 249 (E.D. Pa.  
 1995) (rejecting argument that venue is proper only where official decision was made).

<sup>8</sup> Defendants also request that the Court dismiss the case under § 1406(a), but offer no basis  
 or authority supporting that extraordinary request.

1 2d 1175, 1185 (C.D. Cal. 2005) (cleaned up)). For that reason alone, no transfer is  
2 warranted here.

3 The impropriety of transferring this case becomes even more apparent in light of the  
4 relevant factors outlined in *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir.  
5 2000): (1) the plaintiff’s choice of forum; (2) the respective parties’ contacts with the forum;  
6 (3) the contacts relating to the plaintiff’s cause of action in the chosen forum; and (4) the  
7 differences in the costs of litigation in the two forums.<sup>9</sup> Here, Plaintiffs have chosen this  
8 forum and have significant contacts within the Tucson Division, including that the injuries  
9 caused by Defendants’ conduct occurred in Pima County. Although residing and working  
10 in Maricopa County, Defendants have appeared in this Court for nearly six months in this  
11 case, including litigating a motion for preliminary injunction, without difficulty or  
12 complaint—and of course their official duties involve serving residents of the entire state.  
13 *See Bay County*, 340 F. Supp. 2d at 809 (“An argument premised on inconvenience is  
14 difficult to accept when the defendants routinely conduct business around the state and their  
15 advocate routinely appears in this Court.”).<sup>10</sup>

16 Defendants’ vague allusions to work disruptions and inconvenience are insufficient  
17 to warrant a transfer of this case. None of those burdens exceed the ordinary burdens of  
18 litigation or provide a basis for overriding Plaintiffs’ entirely reasonable decision to file in  
19 the Tucson Division. Moreover, Plaintiffs are children, and holding the trial and other in-  
20 person proceedings as close as possible to their respective homes would reduce any  
21 disruptions to their schooling. Further, appearances at occasional in-person hearings and  
22 the trial will not cost Defendants significantly more in Tucson than in Phoenix given their  
23 proximity. *See Jarvis Christian College v. Exxon Corp.*, 845 F.2d 523 (5th Cir.1988)  
24 (denying motion to transfer in part because 203 miles is “minor inconvenience”). “Given  
25 the recent advances in electronic communication and document production, discovery costs

26 \_\_\_\_\_  
27 <sup>9</sup> Plaintiffs agree that only the four *Jones* factors raised in Defendants’ motion—of the eight  
factors—are applicable in this case.

28 <sup>10</sup> Defendants also cite the locations of counsel, but that “is entitled to little consideration.”  
*Cheval Farm LLC v. Chalon*, 2011 WL 13047301, at \*2 (D. Ariz. Jan. 19, 2011).

1 should be about the same in either forum.” *Magedson v. Whitney Info. Network, Inc.*, 2009  
 2 WL 113477, at \*5 (D. Ariz. Jan. 16, 2009). And depositions will not result in greater costs,  
 3 either, because they will occur at a mutually agreeable location, which will almost certainly  
 4 involve Plaintiffs’ counsel deposing Defendants and their employees in Phoenix.

5 When taken together, all relevant factors weigh against transferring this case. *See*  
 6 *Bowling*, 2015 WL 13203369, at \*11 (citing *Gherebi v. Bush*, 352 F.3d 1278, 1303 (9th Cir.  
 7 2003), *cert. granted, judgment vacated on other grounds*, 542 U.S. 952 (2004); *Oil*  
 8 *Painting*, 362 F.Supp.2d at 1185). Furthermore, the interests of judicial economy favor this  
 9 Court retaining the case, as it has presided over this matter for nearly six months during  
 10 which it acquainted itself with the facts and law of the case. There is simply no basis in fact  
 11 or law for transferring this case; the Court should keep it.

12 **C. The amended complaint adequately pleads counts one, three, and four.**

13 “The dispositive issue raised by a motion to dismiss for failure to state a claim is  
 14 whether the facts as pleaded, if established, support a valid claim for relief.” *Ballinger v.*  
 15 *Liberty Ins. Corp.*, 2018 WL 5634128, at \*1 (D. Ariz. Oct. 31, 2018) (Soto, J.). Courts  
 16 considering a motion under Rule 12(b)(6) must “construe the complaint . . . in the light most  
 17 favorable to the non-moving party, and . . . take the allegations and reasonable inferences  
 18 as true.” *Walter v. Drayson*, 538 F.3d 1244, 1247 (9th Cir. 2008). Applying those well-  
 19 worn principles here demonstrates that counts one, three, and four should be sustained.

20 **1. Plaintiffs sufficiently allege an equal-protection claim.**

21 Count one alleges that Defendants’ actions violate the Equal Protection Clause by  
 22 discriminating against transgender young people seeking to correct the sex listed on their  
 23 birth certificates. (Compl. ¶¶ 121–26.) Discrimination against transgender people is a form  
 24 of sex discrimination. *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1737 (2020). Both  
 25 before and since the Supreme Court’s decision in *Bostock*, courts have consistently applied  
 26 heightened scrutiny to equal-protection claims brought by transgender people. *Grimm v.*  
 27 *Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 607–08 (4th Cir. 2020); *Adams v. Sch. Bd. of St.*  
 28 *Johns Cty.*, 968 F.3d 1286, 1296 (11th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist.*

1 *No. 1*, 858 F. 3d 1034, 1051 (7th Cir. 2017); *Glenn v. Brumby*, 663 F.3d 1312, 1320 (11th  
2 Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004); *see also F.V. v.*  
3 *Barron*, 286 F. Supp. 3d 1131, 1144 (D. Idaho 2018). Heightened scrutiny thus applies to  
4 the surgical requirement in Subsection (A)(3), and Plaintiffs have alleged sufficient facts to  
5 demonstrate that it fails the test.

6 Defendants identify only three claimed deficiencies in Plaintiffs’ equal-protection  
7 claim. First, they argue that Subsection (A)(3) does not create a classification based on  
8 transgender status because it “do[es] not target or even reference transgender persons” and  
9 “a nontransgender person who seeks to amend their birth certificate under Subsection (A)(3)  
10 must abide by the same criteria”—*i.e.*, they must show they have undergone what the statute  
11 refers to as a “sex change operation.” (Br. at 22.) Defendants’ argument closely resembles  
12 the contention—uniformly rejected by federal courts including the Ninth Circuit—that bans  
13 on marriage for same-sex couples did not discriminate based on sexual orientation because  
14 those restrictions did not reference sexual orientation explicitly and applied to any person  
15 of any sexual orientation seeking to marry a person of the same sex. *See Latta v. Otter*, 771  
16 F.3d 456, 467–68 (9th Cir. 2014). Just as bans on marriage for same-sex couples facially  
17 discriminated against lesbian, gay, and bisexual people because they are the class of people  
18 who seek to marry a person of the same sex, Subsection (A)(3) facially discriminates against  
19 transgender people, who are, by definition, the class of people who seek to change the sex  
20 listed on their birth certificate as part of the process of gender transition. Arizona’s  
21 requirement that transgender people must undergo “sex change surgery” to correct the sex  
22 listed on their birth certificate impermissibly prevents transgender youth, such as the  
23 Plaintiffs and the putative class here, from obtaining a birth certificate that matches who  
24 they are. While Arizona law ensures that other Arizonan youth have birth certificates that  
25 accurately reflect their sex, it excludes transgender Arizonan youth from that protection.

26 Defendants’ second claimed deficiency is that “Plaintiffs do not allege that the  
27 statute and regulation *intentionally* discriminate against transgender persons.” (Br. at 22.)  
28 But when a statute creates a classification that facially discriminates against a class of

1 persons—as Subsection (A)(3) does here—there is no need for Plaintiffs to further allege  
 2 or prove an additional subjective animus or hostility toward the affected group; the  
 3 operation and effect of the classification itself is sufficient to demonstrate any required  
 4 intent. *Grimm*, 972 F.3d at 609; *Whitaker*, 858 F.3d at 1051–52; *see also Latta*, 771 F.3d  
 5 at 467 (holding that bans on marriage by same-sex couples expressly discriminated in  
 6 violation of equal protection and rejecting argument that “differential treatment by sexual  
 7 orientation is an incidental effect of, but not the reason for, those laws”).

8 Third, Defendants erroneously assert that Subsection (A)(3) does not violate the  
 9 Equal Protection or Due Process Clauses because Subsection (A)(4) purportedly allows  
 10 individuals to amend their birth certificates by seeking a court order “without requiring any  
 11 medical procedure.” (Br. at 22, 24.) In fact, Arizona courts have imported the surgical  
 12 requirement from Subsection (A)(3) into (A)(4) and, as a result, transgender minors are just  
 13 as unable to obtain corrected birth certificates through the state courts as they are through  
 14 the state administrative process. But even if that were not the case, excluding transgender  
 15 minors from the administrative process would still be unconstitutional. A constitutional  
 16 defect in one statute is not cured by the mere existence of a far more burdensome and  
 17 intrusive avenue for obtaining the same legal benefit or protection. Defendants offer no  
 18 authority for that proposition, and Plaintiffs are aware of none.<sup>11</sup>

19 Construed in the light most favorable to Plaintiffs, the allegations in the amended  
 20 complaint are more than adequate to state a claim that the administrative process targets  
 21 transgender people for differential treatment without constitutionally sufficient  
 22 justification. Plaintiffs have sufficiently pleaded a violation of the Equal Protection Clause.

23 **2. Plaintiffs sufficiently allege violations of the Due Process Clause.**

24 Counts three and four allege that Defendants’ conduct deprives Plaintiffs of their  
 25 Fourteenth Amendment due-process rights to decisional autonomy (count three) and bodily  
 26

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27 <sup>11</sup> Tellingly, Defendants made this same argument in their opposition to Jane Doe’s motion  
 28 for a preliminary injunction, (Doc. 23 at 10–14), and in reply Plaintiffs noted the utter lack  
 of supporting authority, (Doc. 30 at 7). Despite an additional four months before filing their  
 motion to dismiss, Defendants still cannot cite one case that supports their argument.

1 integrity (count four). (Compl. ¶¶ 135–44.) The Due Process Clause “includes a  
 2 substantive component that ‘provides heightened protection against government  
 3 interference with certain fundamental rights and liberty interests.’” *Troxel v. Granville*, 530  
 4 U.S. 57, 65 (2000) (plurality opinion) (quoting *Washington v. Glucksberg*, 521 U.S. 702,  
 5 719 (1997)). Defendants’ conduct infringes upon Plaintiffs’ fundamental rights to  
 6 decisional autonomy and bodily integrity and is not justified by any legitimate, much less  
 7 compelling, governmental interest. *See, e.g., Glucksberg*, 521 U.S. at 721; *In re Crawford*,  
 8 194 F.3d 954, 959 (9th Cir. 1999).

9 i. Plaintiffs’ amended complaint states a claim for a violation  
 10 of their right to decisional autonomy.

11 The Due Process Clause “promises liberty to all within its reach, a liberty that  
 12 includes certain specific rights that allow persons . . . to define and express their identity.”  
 13 *Obergefell v. Hodges*, 576 U.S. 644, 651–52 (2015). That includes the right of an individual  
 14 to make “personal choices central to individual dignity and autonomy, including intimate  
 15 choices that define personal identity and beliefs.” *Id.* at 663. Over time, courts have defined  
 16 the scope of the right to protect numerous personal choices including access to  
 17 contraception, *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972), the freedom to enter into a  
 18 consensual sexual relationship with another adult, *Lawrence v. Texas*, 539 U.S. 558, 578  
 19 (2003), the freedom to marry, *Obergefell*, 576 U.S. at 675, the freedom to raise one’s own  
 20 children, *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923), and the freedom to pursue an  
 21 occupation of one’s choice, *Schwartz v. Bd. of Bar Exam.*, 353 U.S. 232, 238–39 (1957),  
 22 among other personal liberties. Federal courts have acknowledged the deeply personal  
 23 nature of the decisions required of transgender persons for them to live in a manner  
 24 consistent with their gender identity, an intimate set of decisions that run parallel to long-  
 25 established liberty rights. *See Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327,  
 26 333 (D.P.R. 2018) (“Much like matters relating to marriage, procreation, contraception,  
 27 family relationships, and child rearing, ‘there are few areas which more closely intimate  
 28 facts of a personal nature’ than one’s transgender status.”).

1 Arizona’s surgical requirement unconstitutionally hinders the ability of transgender  
2 youth, such as Plaintiffs and those in the putative class, to live consistent with their gender  
3 identity by establishing unjustifiable hurdles for them to obtain birth certificates that match  
4 who they are, thus forcing them to endure the constant risk of exposure, rejection, and  
5 discrimination. (*Id.* ¶¶ 137–38.) Currently, claims that state laws barring transgender  
6 people from correcting their birth certificates unconstitutionally infringe their fundamental  
7 right to decisional autonomy are being litigated in several courts across the country. *See,*  
8 *e.g.*, Amended Complaint, Dkt. 59, *Gore v. Lee*, Case No. 3:19-cv-00328, at ¶204–05 (M.D.  
9 Tenn., Mar. 3, 2020); Complaint, Dkt. 1, *Ray v. McCloud*, Case No. 2:18-cv-00272, ¶ 122  
10 (S.D. Ohio, Mar. 29, 2018). None of those courts has dismissed that claim. Plaintiffs have  
11 pleaded sufficient facts to state a valid due-process claim asserting their right to decisional  
12 autonomy.

13 ii. Plaintiffs’ amended complaint states a claim for a violation  
14 of their right to bodily integrity.

15 The Due Process Clause also protects the fundamental right to make decisions  
16 regarding one’s bodily integrity, including choices about medical treatment. *See*  
17 *Glucksberg*, 521 U.S. at 720 (acknowledging fundamental right to bodily integrity and to  
18 obtain an abortion, use contraception, and refuse unwanted medical treatment); *Washington*  
19 *v. Harper*, 494 U.S. 210, 221 (1990) (recognizing “significant liberty interest in avoiding  
20 the unwanted administration of antipsychotic drugs”); *Parham v. J.R.*, 442 U.S. 584, 600  
21 (1979) (recognizing that minors have a protected liberty interest in avoiding unnecessary  
22 mental health treatment). The surgical requirement in Subsection (A)(3) unjustifiably  
23 intrudes on Plaintiffs’ right to bodily integrity and choices concerning medical treatment.  
24 For most transgender youth, surgery is not medically appropriate. By requiring them to  
25 undergo an unwanted and medically unnecessary treatment in order to obtain a corrected  
26 birth certificate, Subsection (A)(3) impermissibly infringes upon their right to bodily  
27 integrity, while serving no legitimate, much less, compelling governmental interest. The  
28 government has no legitimate interest in pushing minors to undergo medical surgeries that

1 they neither need nor want in order to obtain accurate identity documents that are necessary  
2 to protect their privacy and safety. In effect, Subsection (A)(3) forces transgender minors  
3 to choose between undergoing medically inappropriate surgery or subjecting themselves to  
4 the constant risk of exposure due to having identity documents that disclose their  
5 transgender status, which puts them at risk of discrimination, harassment, and violence.

6 Defendants only response is to argue that Subsection (A)(3) does not violate the right  
7 to bodily integrity because surgical treatments for gender dysphoria are “purely voluntary  
8 medical procedure[s].” (Br. at 23.) But that argument disregards the importance of  
9 obtaining accurate identity documents and the coercive pressure of conditioning access to  
10 such documents on an intrusive medical procedure. Arizona has a monopoly on the  
11 issuance of birth certificates; Plaintiffs have no choice but to use these official documents,  
12 which are required to prove their identity in a wide variety of situations. As a result, the  
13 surgical requirement in Subsection (A)(3) subjects transgender minors to an impermissible  
14 burden on their right to bodily integrity.

15 Obtaining accurate identity documents is a critical part of a transgender person’s  
16 ability to live safely and freely, just as non-transgender people do. By conditioning the  
17 availability of those documents on whether a person has obtained surgery, the state injects  
18 itself into what should be a personalized and private medical assessment and treatment plan,  
19 and it does so wholly without justification. *See Parham*, 442 U.S. at 602 (finding state’s  
20 power to interfere is at its lowest ebb when medical decision is supported by child, child’s  
21 parents, and “a physician’s independent examination and medical judgment”). The Due  
22 Process Clause affords transgender young people the freedom to make treatment decisions  
23 based on the advice of medical and mental health professionals, and consistent with the  
24 prevailing standards of care, without governmental pressure to undergo surgeries that may  
25 be unnecessary for that individual. Consequently, count four also states a claim.

#### 26 **IV. CONCLUSION**

27 For the foregoing reasons, Plaintiffs respectfully request that the Court deny  
28 Defendants’ motion to dismiss.

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Dated: April 23, 2021

Respectfully submitted,

OSBORN MALEDON, P.A.

s/Colin M. Proksel

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12

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 individual and  
official capacity as State Registrar of Vital  
Records and Director of the Arizona  
23 Department of Health Services; Thomas  
Salow, in his individual and official  
24 capacity as Branch Chief of the Division of  
Public Health Licensing Services at the  
25 Arizona Department of Health Services;  
and Krystal Colburn, in her individual and  
26 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

SECOND 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 who had been prevented from  
12 changing the sex on her birth certificate through a private administrative process overseen  
13 by the Arizona Department of Health Services until very recently when it was changed to  
14 female by order of this Court, (Doc. 41), following Jane Doe’s motion for preliminary  
15 injunction filed in this lawsuit, (Doc. 3). Plaintiff D.T. is a transgender boy who had been  
16 prevented from changing the sex on his birth certificate through that same private  
17 administrative process until Defendants represented in this lawsuit that they would accept  
18 a state-court order he previously received as a basis to amend his birth certificate.

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

27 4. For transgender people, the sex listed on their initial birth certificate does not  
28 match who they are. For a young person who has undergone gender transition, having a

1 birth certificate that fails to reflect who they are puts them at risk of exposure,  
2 discrimination, harassment, and even violence. Changing the sex marker on their birth  
3 certificate is thus critically important for transgender young people.

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

17         6. Unlike other youth, transgender youth in Arizona have only one option open  
18 to them that is more expensive, confusing, and time-consuming than the Subsection (A)(3)  
19 process, and does not guarantee that they will receive a corrected birth certificate at the end.  
20 Specifically, they must incur additional fees and shoulder extra risk by filing a public  
21 petition in their local superior court seeking an order amending the sex on their birth  
22 certificate. Because of the surgical requirement in Subsection (A)(3), Arizona courts  
23 regularly deny that relief to transgender young people who have not undergone surgery as  
24 part of their transition. Additionally, forcing transgender young people to seek a court order  
25 vastly increases the risk that their transgender status will be made public, denying them the

26 \_\_\_\_\_  
27 <sup>1</sup> The term “sex change operation” as used in Subsection (A)(3) is not widely recognized in  
28 the medical community, which instead refers to a surgical operation for the treatment of  
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 very privacy they seek to safeguard by correcting their identity documents. And Arizonans  
2 who move out of state and are no longer under the jurisdiction of Arizona courts face a  
3 patchwork of differing state laws, several of which deny them the ability to obtain a court  
4 order to change the sex listed on their birth certificates. For many transgender people and  
5 their families, the court-order process is thus entirely unavailable or presents such  
6 insurmountable hurdles that it is no option at all.

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

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

18 **JURISDICTION AND VENUE**

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

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

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

28 12. This Court has the authority to enter a declaratory judgment and to provide

1 preliminary and permanent injunctive relief pursuant to Federal Rules of Civil Procedure 57  
2 and 65, and 28 U.S.C. §§ 2201 and 2202.

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

## 6 PARTIES

### 7 The Plaintiffs

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

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

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

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

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

### 23 The Defendants

24 19. Defendant Dr. Cara M. Christ (~~“Director Christ”~~) is sued in her individual and  
25 official capacity as capacities. Defendant Christ is the State Registrar of Vital Records and  
26 Director of the Department of Health Services for the State of Arizona. ~~Director~~ Defendant  
27 Christ has general supervision of vital statistics in the state and is charged with the execution  
28 of the vital statistics laws of Arizona, including the provision of the necessary instructions

1 and forms for obtaining and preserving records of births. ~~Director~~Defendant Christ also has  
2 supervisory authority over the assistant state registrars and deputy local registrars  
3 throughout Arizona. ~~Director~~Defendant Christ has knowingly encouraged, condoned, and  
4 acquiesced in the acts barring Plaintiffs from correcting or amending their birth certificates  
5 to be consistent with their gender identity. ~~Director~~Defendant Christ has been personally  
6 involved in reviewing, implementing, and enforcing policies that have prevented Plaintiffs  
7 from obtaining birth certificates that accurately reflect their sex. Defendant Christ's  
8 administration and enforcement of the vital statistics laws are actions under the color of  
9 state law. ~~Director~~Defendant Christ is a person within the meaning of 42 U.S.C. § 1983  
10 and has acted under color of state law at all times relevant to this Amended Complaint.

11 20. Defendant Thomas Salow (~~“Chief Salow”~~) is sued in his individual and  
12 official ~~capacity~~ as capacities. Defendant Salow is the Branch Chief of the Division of  
13 Public Health Licensing Services within the Department of Health Services for the State of  
14 Arizona. As Branch Chief of the Division of Public Health Licensing Services,  
15 ~~Chief~~Defendant Salow has supervisory authority over Chief Colburn and deputy local  
16 registrars throughout Arizona. ~~Chief~~Defendant Salow has knowingly encouraged,  
17 condoned, and acquiesced in the acts barring Plaintiffs from correcting or amending their  
18 birth certificates to be consistent with their gender identity. ~~Chief~~Defendant Salow has been  
19 personally involved in reviewing, implementing, and enforcing policies that have prevented  
20 Plaintiffs from obtaining birth certificates that accurately reflect their sex. Defendant  
21 Salow's administration and enforcement of the vital statistics laws are actions under the  
22 color of state law. ~~Chief~~Defendant Salow is a person within the meaning of 42 U.S.C.  
23 § 1983 and has acted under color of state law at all times relevant to this Amended  
24 Complaint.

25 21. Defendant Krystal Colburn (~~“Chief Colburn”~~) is sued in her individual and  
26 official ~~capacity~~ as capacities. Defendant Colburn is the Assistant State Registrar and  
27 Bureau Chief of the Bureau of Vital Records within the Department of Health Services for  
28 the State of Arizona. ~~Chief~~Defendant Colburn has supervisory authority over deputy local

1 registrars throughout Arizona. ChiefDefendant Colburn has knowingly encouraged,  
2 condoned, and acquiesced in the acts barring Plaintiffs from correcting or amending their  
3 birth certificates to be consistent with their gender identity. ChiefDefendant Colburn has  
4 been personally involved in reviewing, implementing, and enforcing policies that have  
5 prevented Plaintiffs from obtaining birth certificates that accurately reflect their sex.  
6 Defendant Colburn’s administration and enforcement of the vital statistics laws are actions  
7 under the color of state law. ChiefDefendant Colburn is a person within the meaning of  
8 42 U.S.C. § 1983 and has acted under color of state law at all times relevant to this Amended  
9 Complaint.

### 10 **STATEMENT OF FACTS**

#### 11 **Gender identity development and treatment for gender dysphoria**

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

16 23. Research indicates that being transgender has a biological component and  
17 cannot be changed. As such, efforts to change a transgender person’s identity are unethical  
18 and harmful to a person’s health and well-being.

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

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

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

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

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

15           29. WPATH is an international, multidisciplinary, professional association of  
16 medical providers, mental health providers, researchers, and others, with a mission of  
17 promoting evidence-based care and research for transgender health, including the treatment  
18 of gender dysphoria. WPATH published the seventh and most recent edition of the  
19 Standards of Care in 2011.

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

26           31. The WPATH and the Endocrine Society standards have been adopted by  
27 many major associations of healthcare professionals, including the American Medical  
28 Association, American Psychiatric Association, and American Psychological Association,

1 as well as associations of healthcare professionals focused on youth and adolescents, such  
2 as the American Academy of Pediatrics, American Association of Child and Adolescent  
3 Psychiatrists, and the Pediatric Endocrine Society. Federal courts across the country have  
4 also recognized the standards of these medical societies as setting the prevailing standard  
5 of care for the treatment of gender dysphoria.

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

12 33. Typically, transgender people start their transition with a social transition,  
13 which includes changing their name, using different pronouns, wearing clothing and  
14 adopting grooming habits typically associated with their peers of the same gender identity,  
15 and using the corresponding sex-specific facilities such as restrooms. Making these changes  
16 enable a transgender person to live their life consistent with who they are and helps ensure  
17 that they are treated as such by family, peers, and others in the community.

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

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

27 36. At the onset of puberty, transgender young people may also start taking  
28 puberty-delaying medication to prevent their bodies from being flooded with the incorrect

1 sex hormone and the attendant development of unwanted secondary-sex characteristics that  
2 conflict with their sex. Without these medications, transgender young people would  
3 experience debilitating psychological distress because their changing bodies would be a  
4 constant reminder of the disjunction between their bodies and their sex. The psychological  
5 distress is heightened by the reality that some of these physical changes may be irreversible,  
6 permanently constricting a transgender young person's future treatment options and  
7 negatively affecting their quality of life.

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

12 38. The prevailing standards of care recognize that, under limited circumstances,  
13 it may be medically necessary for some transgender young people to undergo surgical  
14 treatment for their gender dysphoria while they are minors. The most common surgical  
15 procedure that is medically necessary for transgender young people is male chest  
16 reconstruction surgery. That procedure is specifically for transgender males. However,  
17 because of the increasing availability of puberty-delaying medication, an increasing number  
18 of transgender boys never develop breasts and therefore never need that surgery.

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

27 40. Even when medically necessary, a transgender person's ability to access any  
28 of those treatments—particularly surgery—may also be limited by financial resources,

1 insurance coverage, and provider availability, in addition to many other barriers to health  
2 care access.

3 **The need for accurate birth certificates matching one’s identity**

4 41. The use of birth certificates is ubiquitous in our society. A person’s birth  
5 certificate is a trusted and essential government-issued document that serves as proof of a  
6 person’s identity. That document also reflects the government’s recognition of a person’s  
7 identity, including the person’s sex.

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

12 43. Depriving transgender young people of birth certificates that accurately  
13 reflect who they are forces them to disclose their transgender status—information that is  
14 private and sensitive—without their consent whenever they need to rely on birth certificates  
15 to establish their identity. That disclosure causes several distinct and significant harms: it  
16 creates barriers to full participation in school and other activities that are critical to a young  
17 person’s health and well-being, circumvents that young person’s ability to control the  
18 disclosure of their transgender status, undermines the effectiveness of a transgender young  
19 person’s treatment for gender dysphoria, and exposes a transgender young person to an  
20 increased risk of harassment, discrimination, and potentially bodily harm.

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

25 45. Barring transgender youth from obtaining corrected birth certificates places  
26 them in a disfavored class. Unlike other youth, whose birth certificates match who they are,  
27 transgender youth are forced to use birth certificates that do not match their sex.  
28

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

2 46. ADHS, through the Bureau of Vital Records, exercises responsibility for the  
3 registration, issuance, correction, and maintenance of Arizona birth certificates. A.R.S.  
4 § 36-302.

5 47. Recognizing birth certificates may be inaccurate or require updating, A.R.S.  
6 § 36-337 provides for the issuance of an updated birth certificate in a variety of  
7 circumstances, including to reflect a declaration of paternity or adoption or to correct the  
8 sex of a transgender or intersex person.

9 48. Under Subsection (A)(3) of that statute, a transgender person may change the  
10 sex listed on a person’s birth certificate by submitting “[a] written request for an amended  
11 birth certificate” accompanied by “a written statement by a physician that verifies the  
12 [applicant or applicant’s child has undergone a] sex change operation.” A.R.S. § 36-  
13 337(A)(3). ADHS has promulgated a regulation that details the information, in addition to  
14 a letter from a physician, that a transgender person is required to provide in order to change  
15 the sex listed on their birth certificate under Subsection (A)(3). *See* A.A.C. R9-19-208(O).

16 49. These requirements—both statutory and regulatory—deny transgender young  
17 people the ability to correct their birth certificates under Subsection (A)(3) because most  
18 transgender youth cannot undergo or may never require surgery. This ban deprives  
19 Plaintiffs of equal treatment, violates fundamental constitutional rights to privacy and  
20 liberty, and subjects Plaintiffs and other transgender young people to serious irreparable  
21 harm to their safety, health, and well-being.

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

27 51. Arizona courts interpreting Subsection (A)(4) have required families  
28 petitioning for amendments to the sex listed on a transgender minor’s birth certificate to

1 comply with the surgical requirement of Subsection (A)(3), which those families cannot do  
2 because their children are not eligible for surgery. Based on information and belief, courts  
3 have imposed that requirement due, at least in part, to the language of Subsection (A)(3)  
4 and ADHS's prior publicly-stated position that Arizona courts lack the authority under  
5 Subsection (A)(4) to issue orders amending the sex listed on an Arizona birth certificate.

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

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

16 54. That is not the only significant hurdle that transgender young people and their  
17 families face when petitioning a court for an order amending the sex listed on a birth  
18 certificate. The court-order process in Arizona requires additional fees, a significant  
19 expenditure of time and thus further and unnecessary delay, filing a petition and therefore  
20 creating an easily accessible public record about the requested change, and appearing at a  
21 public hearing where they must persuade a court that they or their child needs a corrected  
22 or amended birth certificate, all of which strip transgender young people of the very privacy  
23 and rights they are trying to secure. While petitioners in court may seek to protect their  
24 privacy by filing other motions, such as motions to proceed under a pseudonym and to seal  
25 the records, those are yet more documents that must be prepared and filed, again with an  
26 uncertain outcome. And these procedures vary from state to state, creating additional  
27 expenses, uncertainties, risks, and burdens for families who have moved away from  
28 Arizona. To ensure that these multiple court submissions are completed correctly,

1 transgender people and their families would likely require the assistance of an attorney,  
2 which is an additional and significant expense. And, even if successful, transgender young  
3 people must still apply to ADHS for the amended birth certificate, adding yet another step  
4 to the process and imposing further expense and delay.

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

15 56. Based on information and belief, ADHS does not impose the burdens of  
16 seeking a court order on nontransgender people when correcting or amending an inaccurate  
17 sex marker on a birth certificate. Relying on its broad statutory authority, ADHS developed  
18 a policy permitting it to change sex markers on Arizona birth certificates with a physician's  
19 letter attesting to the error.

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

24 ***Plaintiff D.T.***

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

28 59. D.T. began expressing himself as a boy at around two years old. As a toddler,

1 D.T. gravitated to more masculine clothing options and actively resisted girls' clothing. He  
2 would regularly wear his father's fedora and necktie around the house.

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

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

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

14 63. The day before D.T. began third grade, he and Lizette stopped by his  
15 classroom to drop off some supplies. D.T.'s best friend was also there with her mother.  
16 His friend pointed to D.T. and asked her mother: "Can he and I go play?" The mother  
17 replied: "No, that's a she." Later, while driving D.T. home, Lizette asked D.T. about that  
18 moment. "Your friend called you 'him.' Is that what you are?" D.T. was silent for a  
19 moment, then said: "I know my body is wrong. But in my insides, I'm a boy. My mind  
20 tells me I'm a boy." He also shared that he was worried that his parents would stop loving  
21 him if he ever shared this piece of himself.

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

26 65. D.T. became a different person. He transformed from a reserved child who  
27 rarely smiled and was constantly anxious to a gregarious child who was interested in music  
28 and sports. His anxiety also decreased significantly, and his behavioral tics disappeared.

1 In the years since, D.T. has continued to flourish in every aspect of his life.

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

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

16 68. Because of that experience, and other similar experiences, D.T. has  
17 significant anxiety and worry about not being accepted by others and being mistreated if he  
18 is forced to disclose that he is transgender. The fact that D.T.'s current birth certificate does  
19 not match his sex exacerbates these fears; that fear is constraining. For example, D.T.  
20 started playing basketball a few years ago and is currently playing on his school's boys'  
21 basketball team. D.T. wants to play recreational basketball in the off-season, both because  
22 he loves the sport and wants to improve his skill and be good enough to play for the school  
23 team when he enters high school. But he has not pursued this interest because he is worried  
24 that he will be required to play on the girls' team because of his birth certificate.

25 69. D.T.'s parents started the process of correcting his identity documents. They  
26 obtained a state court order changing D.T.'s name. In their petition, they also requested an  
27 order changing the sex listed on D.T.'s birth certificate. The judge informed D.T.'s parents  
28 that ADHS would require proof that D.T. underwent surgical treatment for his gender

1 dysphoria before complying with the court order. Thus, the judge's order included language  
2 noting that it was subject to ADHS's rules and regulations regarding the amendment of the  
3 sex listed on a transgender person's birth certificate.

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

12 71. D.T.'s parents ~~seek~~wanted to change the sex listed on D.T.'s birth certificate  
13 through the administrative process but ~~are~~were precluded from doing so because D.T.  
14 cannot meet the surgical requirement.

15 72. Despite the judge's statement in court to D.T.'s parents and the court order's  
16 language subjecting D.T. to the surgical requirement, Defendants represented to Plaintiffs  
17 that the court order that D.T. obtained is sufficient for him to apply for an amended birth  
18 certificate. In reliance on Defendants' representation, on or about December 21, 2020,  
19 Lizette submitted an application to ADHS to change the sex listed on D.T.'s birth certificate.  
20 D.T. received the amended birth certificate on or about February 8, 2021. However, even  
21 ~~if~~though D.T. ~~obtains~~obtained an amended birth certificate in this way, his ability to make  
22 that change ~~has been~~was significantly delayed due to Defendants' interpretation and  
23 enforcement of Subsection (A)(3). That delay ~~has~~ required him to disclose his transgender  
24 status in situations that he would have preferred to keep that information private and caused  
25 him to forgo participating in certain activities to avoid disclosing his transgender status.

1 ***Plaintiff Jane Doe***

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

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

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

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

20 77. At Dr. Onufrak's recommendation, Susan took Jane to Dr. Veenod Chulani,  
21 a physician specializing in treating transgender youth and the Medical Director of the  
22 Gender Support Program at Phoenix Children's Hospital. Dr. Chulani agreed with  
23 Dr. Onufrak's assessment and diagnosed Jane with gender dysphoria. He has since  
24 provided Jane with primary care and supported Jane and her family through Jane's social  
25 transition.

26 78. Before Jane started the second grade, her parents asked her school if she could  
27 start the year as a girl. The school agreed and worked with Jane and her family to prepare  
28 for her transition at school. However, several students in Jane's class recognized her from

1 the prior year and repeatedly teased her for being transgender. The incidents caused Jane  
2 significant psychological distress.

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

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

21 81. Nevertheless, given the significant improvement in Jane's well-being during  
22 distance learning, her parents decided to use this opportunity to enroll Jane in a different  
23 school where students do not know she is transgender. The new school where they would  
24 like to enroll her, however, will not enroll Jane as female without a corrected birth  
25 certificate.

26 82. Susan previously explored options for changing the sex listed on Jane's birth  
27 certificate. Through that research, Susan learned that ADHS required evidence of surgery  
28 prior to changing the sex on a transgender person's birth certificate and that she would need

1 to present proof of surgery to obtain a court order as well. Susan visited ADHS to inquire  
2 about what she needed to provide to amend the sex listed on Jane’s birth certificate and an  
3 ADHS employee confirmed to her that Jane would need to provide a letter from a doctor as  
4 required by Arizona law. Due to Jane’s age, it would be inappropriate and inconsistent with  
5 the standards of care for her to undergo any surgical treatment for gender dysphoria. The  
6 medical necessity of those treatments will be assessed by Jane and her team of healthcare  
7 providers at an appropriate time and consistent with the prevailing standards of care.

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

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

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

25 ***Plaintiff Helen Roe***

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

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

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

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

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

19           91. Although Helen's family has accepted her as female, Helen has still  
20 experienced prejudice because she is transgender. Towards the beginning of Helen's  
21 transition, her mother shared that Helen is transgender with several parents in Helen's small  
22 pre-school community. One family reacted negatively to this information, distancing  
23 themselves from Helen and called the director of Helen's pre-school to allege that Helen  
24 was a threat to their children's security.

25           92. Helen's parents also fear for Helen's safety because, as a transgender girl of  
26 color, she is in a particularly vulnerable population. Having an accurate birth certificate  
27 will not only give her control over who learns that she is transgender, but it will also reduce  
28 the risk that Helen will be singled out or targeted for violence because she is transgender.

1 Currently, the information on Helen's birth certificate is used to generate many other  
2 records that are part of her life, including school and healthcare records, exacerbating her  
3 parents' fears.

4 93. ~~Earlier this year~~In January 2020, Helen's parents filed a petition to change  
5 Helen's name and the sex listed on her birth certificate. The court granted the requested  
6 name change, but did not rule on the request to change the sex listed on Helen's birth  
7 certificate from male to female. Instead, the court provided Helen's parents with a printout  
8 of A.R.S. § 36-337. The court also deferred ruling on their request to seal Helen's name-  
9 change petition, ~~making that petition available to public~~leaving it accessible by the public.  
10 With the assistance of her counsel, Helen recently filed a motion to seal the public record,  
11 which was granted by the court. Following the issuance of the name-change order, the case  
12 was closed. Given their concerns for Helen's safety, Helen's parents seek to correct Helen's  
13 birth certificate administratively to protect her private medical information and prevent her  
14 from being forced to reveal that she is transgender.

15 ***Plaintiff James Poe***

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

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

23 96. Around the time that he turned two, James began to refer to himself as a boy.  
24 He would point at his mother, Laura, and say "girl," point at his father and say "boy," and  
25 point to himself and say "boy." Faced with his continuing refusal to wear girls' clothing,  
26 James's parents started buying him boys' clothing in the summer of 2018. James has never  
27 switched back and, when offered a choice, James always selects boys' clothes.

28 97. James' parents grew increasingly convinced that this was more than just a

1 phase for James. They sought guidance from James's pediatrician, who referred them to  
2 Dr. Tracey Kurtzman, a pediatrician with expertise working with transgender youth.  
3 Around that same time, James and his family started to see Dr. Richard Muszynski, a  
4 clinical psychologist. James sees Dr. Muszynski regularly for therapy sessions to treat his  
5 gender dysphoria.

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

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

20 100. Despite the fact that Laura works in a public school district, James' parents  
21 enrolled him in private school in order to avoid the public school's requirement that he  
22 provide a birth certificate to enroll. They do not want their son's transgender status  
23 disclosed publicly and view private school as a smaller and safer environment, even though  
24 that choice came at a significant additional cost. For example, James has a learning  
25 disability that requires specialized services, which would have been provided by a public  
26 school at no cost to his family. Instead, James's parents have to cover those services through  
27 their health insurance, paying the applicable co-pays, deductibles, and, in some cases,  
28 covering the entire cost out-of-pocket. They have even delayed starting those needed

1 services out of a concern that the service provider will mistreat James because he is  
2 transgender, a fact that is obvious from his birth certificate.

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

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

18 ***Plaintiff Carl Voe***

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

22 104. Carl began expressing his gender identity just before he turned two years old.  
23 For example, Carl would ask his parents when he was going to get a boy's body. When  
24 strangers would complement his long, curly hair, Carl told his parents that he hated his hair  
25 and soon insisted that they cut it short like a boy's. When Carl was four, his mother, Rachel,  
26 cut his hair in a Mohawk. Following that haircut, strangers would say "what a cute boy,"  
27 and Carl instructed his parents that he did not want them to correct the strangers.

28 105. Around the same time, Carl's parents noticed that he was becoming

1 increasingly angry and defiant at home for reasons they could not immediately determine.  
2 In addition to fits of rage, Carl would also attempt to harm himself, such as by shutting his  
3 hand in cabinets. He also informed his parents that he hated girls and wished he was a boy.  
4 Concerned for his health and safety, Carl's parents began taking him to Dr. Muszynksi for  
5 therapy in late 2017.

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

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

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

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

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

7 111. Late last year, Carl's family moved to Maryland. Prior to the move, Carl's  
8 parents petitioned an Arizona court for a name and gender-marker change, but due to delays  
9 associated with the COVID-19 pandemic, the Superior Court did not rule on the petition  
10 before they left the state- [and denied it without prejudice in February 2021](#). Because he  
11 now lives in Maryland, Carl is no longer within the jurisdiction of Arizona courts. Carl's  
12 parents have been advised that transgender young people in Maryland face many hurdles to  
13 obtaining court orders correcting or amending the sex listed on their birth certificates.  
14 Instead, to protect Carl's privacy and health, his parents wish to use the private  
15 administrative process under Subsection (A)(3) to correct Carl's Arizona birth certificate.

16 **Class action allegations**

17 112. Plaintiffs, [Helen Roe, James Poe, and Carl Voe \("Class Plaintiffs"\)](#), on behalf  
18 of themselves and all similarly situated individuals, bring their claims for declaratory and  
19 injunctive relief as a class action under Federal Rules of Civil Procedure 23(a) and 23(b)(2).

20 113. [Class](#) Plaintiffs request that the Court certify the following class ("Class")  
21 under Rule 23(b)(2):

22 All transgender individuals born in Arizona, now and in the  
23 future, who seek to change the sex listed on their birth  
24 certificates but have not undergone a "sex change operation"  
25 as treatment for their gender dysphoria.

26 114. [Class](#) Plaintiffs are adequate representatives of the Class. [Class](#) Plaintiffs are  
27 transgender individuals who seek to change the sex listed on their birth certificates and have  
28 not undergone surgical treatment to treat their gender dysphoria and may never require such

1 treatment.

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

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

1 the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. All  
2 members of the Class share at least one common question of fact: Whether the purported  
3 justification(s) for excluding transgender people who do not meet the surgical requirement  
4 for changing their birth certificate via the private administrative process created by  
5 Subsection (A)(3) are pretext(s) for impermissible discrimination?

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

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

24 119. The Class further satisfies the requirements of Rule 23(a)(4) because counsel  
25 for the Class will fairly and adequately represent the interests of the Class. The Class is  
26 represented by counsel from Cooley LLP and Osborn Maledon, P.A., two large law firms,  
27 and the National Center for Lesbian Rights ("NCLR"), a non-profit legal organization  
28 dedicated to advancing the civil and human rights of the LGBTQ community. Collectively,

1 counsel has significant experience litigating civil rights cases, including transgender rights  
2 cases and complex class actions in federal court.

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

14 **COUNT I**

15 **(Violation of the Equal Protection Clause of the  
16 Fourteenth Amendment of the United States Constitution)**

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

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

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

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

25 125. Arizona’s current statutory and regulatory scheme, which prevents Plaintiffs  
26 and the Class from obtaining amended birth certificates through the process created by  
27 Subsection (A)(3), impermissibly discriminates against transgender people on the basis of  
28 sex and transgender status, in violation of their right to equal protection of the laws under  
the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

1 Unlike their nontransgender peers and other Arizonans who can have accurate birth  
2 certificates and correct their birth certificates when necessary, transgender people are  
3 denied accurate birth certificates.

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

8 **COUNT II**  
9 **(Violation of the Substantive Due Process Right to Privacy**  
10 **under the United States Constitution)**

11 127. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through  
12 126 of this Amended Complaint as though fully set forth herein.

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

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

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

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

25 132. Section 36-337(A)(3) and A.A.C. R9-19-208(O) violate the right to privacy  
26 of transgender people, including Plaintiffs and the Class, in that denying them a birth  
27 certificate that matches their sex requires them to disclose their transgender status and  
28 deprives them of significant control over the circumstances around such disclosure.

133. There are no adequate safeguards to prevent the harm caused by the

1 involuntary disclosure of one’s transgender status through a birth certificate. For example,  
2 a person may need to disclose their birth certificate directly to third parties, without any of  
3 the privacy safeguards that may exist where the government discloses information to third  
4 parties.

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

7 **COUNT III**  
8 **(Violation of the Substantive Due Process Right to Individual Liberty and**  
9 **Autonomy under the United States Constitution)**

10 135. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through  
11 134 of this Amended Complaint as though fully set forth herein.

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

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

24 138. The government’s refusal to permit transgender people who have not  
25 undergone surgery to treat their gender dysphoria to obtain amended birth certificates  
26 through the private administrative process created by Subsection (A)(3) additionally  
27 burdens their right to autonomy by inviting and encouraging other public and private entities  
28 to similarly discriminate against them.

139. Arizona has no compelling, important, or even legitimate government interest

1 in burdening the ability of transgender people to live consistent with their sex.

2 **COUNT IV**

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

5 140. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through  
6 139 of this Amended Complaint as though fully set forth herein.

7 141. The substantive protections of the Due Process Clause safeguard the right of  
8 every person to bodily integrity. Encompassed in that right is the right to choose whether  
9 to undergo a particular medical treatment. *See Washington v. Glucksberg*, 521 U.S. 702,  
10 720 (1997); *Washington v. Harper*, 494 U.S. 210, 221 (1990); *Parham v. J.R.*, 442 U.S. 584,  
11 600 (1979).

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

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

23 144. Arizona has no compelling, important, or even legitimate government interest  
24 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 Class 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: April 23, 2021

OSBORN MALEDON, P.A.

8  
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12  
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 individual and  
official capacity as State Registrar of Vital  
Records and Director of the Arizona  
23 Department of Health Services; Thomas  
Salow, in his individual and official  
24 capacity as Branch Chief of the Division of  
Public Health Licensing Services at the  
25 Arizona Department of Health Services;  
and Krystal Colburn, in her individual and  
26 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

**SECOND 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 James Poe and Carl Voe are transgender boys, but their Arizona  
9 birth certificates identify them as female. Plaintiff Helen Roe is a transgender girl, but her  
10 Arizona birth certificate identifies her as male. Plaintiff Jane Doe is a transgender girl who  
11 had been prevented from changing the sex on her birth certificate through a private  
12 administrative process overseen by the Arizona Department of Health Services until very  
13 recently when it was changed to female by order of this Court, (Doc. 41), following Jane  
14 Doe's motion for preliminary injunction filed in this lawsuit, (Doc. 3). Plaintiff D.T. is a  
15 transgender boy who had been prevented from changing the sex on his birth certificate  
16 through that same private administrative process until Defendants represented in this  
17 lawsuit that they would accept a state-court order he previously received as a basis to amend  
18 his birth certificate.

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

27 4. For transgender people, the sex listed on their initial birth certificate does not  
28 match who they are. For a young person who has undergone gender transition, having a

1 birth certificate that fails to reflect who they are puts them at risk of exposure,  
2 discrimination, harassment, and even violence. Changing the sex marker on their birth  
3 certificate is thus critically important for transgender young people.

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

17         6. Unlike other youth, transgender youth in Arizona have only one option open  
18 to them that is more expensive, confusing, and time-consuming than the Subsection (A)(3)  
19 process, and does not guarantee that they will receive a corrected birth certificate at the end.  
20 Specifically, they must incur additional fees and shoulder extra risk by filing a public  
21 petition in their local superior court seeking an order amending the sex on their birth  
22 certificate. Because of the surgical requirement in Subsection (A)(3), Arizona courts  
23 regularly deny that relief to transgender young people who have not undergone surgery as  
24 part of their transition. Additionally, forcing transgender young people to seek a court order  
25 vastly increases the risk that their transgender status will be made public, denying them the

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26 <sup>1</sup> 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 very privacy they seek to safeguard by correcting their identity documents. And Arizonans  
2 who move out of state and are no longer under the jurisdiction of Arizona courts face a  
3 patchwork of differing state laws, several of which deny them the ability to obtain a court  
4 order to change the sex listed on their birth certificates. For many transgender people and  
5 their families, the court-order process is thus entirely unavailable or presents such  
6 insurmountable hurdles that it is no option at all.

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

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

18 **JURISDICTION AND VENUE**

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

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

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

28 12. This Court has the authority to enter a declaratory judgment and to provide

1 preliminary and permanent injunctive relief pursuant to Federal Rules of Civil Procedure 57  
2 and 65, and 28 U.S.C. §§ 2201 and 2202.

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

6 **PARTIES**

7 **Plaintiffs**

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

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

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

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

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

23 **Defendants**

24 19. Defendant Dr. Cara M. Christ is sued in her individual and official capacities.  
25 Defendant Christ is the State Registrar of Vital Records and Director of the Department of  
26 Health Services for the State of Arizona. Defendant Christ has general supervision of vital  
27 statistics in the state and is charged with the execution of the vital statistics laws of Arizona,  
28 including the provision of the necessary instructions and forms for obtaining and preserving

1 records of births. Defendant Christ also has supervisory authority over the assistant state  
2 registrars and deputy local registrars throughout Arizona. Defendant Christ has knowingly  
3 encouraged, condoned, and acquiesced in the acts barring Plaintiffs from correcting or  
4 amending their birth certificates to be consistent with their gender identity. Defendant  
5 Christ has been personally involved in reviewing, implementing, and enforcing policies that  
6 have prevented Plaintiffs from obtaining birth certificates that accurately reflect their sex.  
7 Defendant Christ's administration and enforcement of the vital statistics laws are actions  
8 under the color of state law. Defendant Christ is a person within the meaning of 42 U.S.C.  
9 § 1983 and has acted under color of state law at all times relevant to this Amended  
10 Complaint.

11 20. Defendant Thomas Salow is sued in his individual and official capacities.  
12 Defendant Salow is the Branch Chief of the Division of Public Health Licensing Services  
13 within the Department of Health Services for the State of Arizona. As Branch Chief of the  
14 Division of Public Health Licensing Services, Defendant Salow has supervisory authority  
15 over Chief Colburn and deputy local registrars throughout Arizona. Defendant Salow has  
16 knowingly encouraged, condoned, and acquiesced in the acts barring Plaintiffs from  
17 correcting or amending their birth certificates to be consistent with their gender identity.  
18 Defendant Salow has been personally involved in reviewing, implementing, and enforcing  
19 policies that have prevented Plaintiffs from obtaining birth certificates that accurately  
20 reflect their sex. Defendant Salow's administration and enforcement of the vital statistics  
21 laws are actions under the color of state law. Defendant Salow is a person within the  
22 meaning of 42 U.S.C. § 1983 and has acted under color of state law at all times relevant to  
23 this Amended Complaint.

24 21. Defendant Krystal Colburn is sued in her individual and official capacities.  
25 Defendant Colburn is the Assistant State Registrar and Bureau Chief of the Bureau of Vital  
26 Records within the Department of Health Services for the State of Arizona. Defendant  
27 Colburn has supervisory authority over deputy local registrars throughout Arizona.  
28 Defendant Colburn has knowingly encouraged, condoned, and acquiesced in the acts

1 barring Plaintiffs from correcting or amending their birth certificates to be consistent with  
2 their gender identity. Defendant Colburn has been personally involved in reviewing,  
3 implementing, and enforcing policies that have prevented Plaintiffs from obtaining birth  
4 certificates that accurately reflect their sex. Defendant Colburn's administration and  
5 enforcement of the vital statistics laws are actions under the color of state law.  
6 Defendant Colburn is a person within the meaning of 42 U.S.C. § 1983 and has acted under  
7 color of state law at all times relevant to this Amended Complaint.

### 8 **STATEMENT OF FACTS**

#### 9 **Gender identity development and treatment for gender dysphoria**

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

14 23. Research indicates that being transgender has a biological component and  
15 cannot be changed. As such, efforts to change a transgender person's identity are unethical  
16 and harmful to a person's health and well-being.

17 24. Children typically become aware of their gender identity between the ages of  
18 two and five years old. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental*  
19 *Disorders* 455 (5th ed. 2013) ("DSM-5"). Around this age, transgender children often begin  
20 to express their cross-gender identification to their family members and caregivers through  
21 statements and actions. Transgender children exhibit a strong cross-gender identification  
22 that is insistent, persistent, and consistent. Research has found the gender identities of  
23 transgender and nontransgender children to be indistinguishable—that is, a transgender boy  
24 identifies himself as male just as strongly and consistently as a non-transgender boy, and a  
25 transgender girl identifies herself as female just as strongly and consistently as a  
26 non-transgender girl.

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

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

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

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

13           29. WPATH is an international, multidisciplinary, professional association of  
14 medical providers, mental health providers, researchers, and others, with a mission of  
15 promoting evidence-based care and research for transgender health, including the treatment  
16 of gender dysphoria. WPATH published the seventh and most recent edition of the  
17 Standards of Care in 2011.

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

24           31. The WPATH and the Endocrine Society standards have been adopted by  
25 many major associations of healthcare professionals, including the American Medical  
26 Association, American Psychiatric Association, and American Psychological Association,  
27 as well as associations of healthcare professionals focused on youth and adolescents, such  
28 as the American Academy of Pediatrics, American Association of Child and Adolescent

1 Psychiatrists, and the Pediatric Endocrine Society. Federal courts across the country have  
2 also recognized the standards of these medical societies as setting the prevailing standard  
3 of care for the treatment of gender dysphoria.

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

10 33. Typically, transgender people start their transition with a social transition,  
11 which includes changing their name, using different pronouns, wearing clothing and  
12 adopting grooming habits typically associated with their peers of the same gender identity,  
13 and using the corresponding sex-specific facilities such as restrooms. Making these changes  
14 enable a transgender person to live their life consistent with who they are and helps ensure  
15 that they are treated as such by family, peers, and others in the community.

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

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

25 36. At the onset of puberty, transgender young people may also start taking  
26 puberty-delaying medication to prevent their bodies from being flooded with the incorrect  
27 sex hormone and the attendant development of unwanted secondary-sex characteristics that  
28 conflict with their sex. Without these medications, transgender young people would

1 experience debilitating psychological distress because their changing bodies would be a  
2 constant reminder of the disjunction between their bodies and their sex. The psychological  
3 distress is heightened by the reality that some of these physical changes may be irreversible,  
4 permanently constricting a transgender young person's future treatment options and  
5 negatively affecting their quality of life.

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

10 38. The prevailing standards of care recognize that, under limited circumstances,  
11 it may be medically necessary for some transgender young people to undergo surgical  
12 treatment for their gender dysphoria while they are minors. The most common surgical  
13 procedure that is medically necessary for transgender young people is male chest  
14 reconstruction surgery. That procedure is specifically for transgender males. However,  
15 because of the increasing availability of puberty-delaying medication, an increasing number  
16 of transgender boys never develop breasts and therefore never need that surgery.

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

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

1 **The need for accurate birth certificates matching one’s identity**

2 41. The use of birth certificates is ubiquitous in our society. A person’s birth  
3 certificate is a trusted and essential government-issued document that serves as proof of a  
4 person’s identity. That document also reflects the government’s recognition of a person’s  
5 identity, including the person’s sex.

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

10 43. Depriving transgender young people of birth certificates that accurately  
11 reflect who they are forces them to disclose their transgender status—information that is  
12 private and sensitive—without their consent whenever they need to rely on birth certificates  
13 to establish their identity. That disclosure causes several distinct and significant harms: it  
14 creates barriers to full participation in school and other activities that are critical to a young  
15 person’s health and well-being, circumvents that young person’s ability to control the  
16 disclosure of their transgender status, undermines the effectiveness of a transgender young  
17 person’s treatment for gender dysphoria, and exposes a transgender young person to an  
18 increased risk of harassment, discrimination, and potentially bodily harm.

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

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

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

27 46. ADHS, through the Bureau of Vital Records, exercises responsibility for the  
28 registration, issuance, correction, and maintenance of Arizona birth certificates. A.R.S.

1 § 36-302.

2 47. Recognizing birth certificates may be inaccurate or require updating, A.R.S.  
3 § 36-337 provides for the issuance of an updated birth certificate in a variety of  
4 circumstances, including to reflect a declaration of paternity or adoption or to correct the  
5 sex of a transgender or intersex person.

6 48. Under Subsection (A)(3) of that statute, a transgender person may change the  
7 sex listed on a person’s birth certificate by submitting “[a] written request for an amended  
8 birth certificate” accompanied by “a written statement by a physician that verifies the  
9 [applicant or applicant’s child has undergone a] sex change operation.” A.R.S. § 36-  
10 337(A)(3). ADHS has promulgated a regulation that details the information, in addition to  
11 a letter from a physician, that a transgender person is required to provide in order to change  
12 the sex listed on their birth certificate under Subsection (A)(3). *See* A.A.C. R9-19-208(O).

13 49. These requirements—both statutory and regulatory—deny transgender young  
14 people the ability to correct their birth certificates under Subsection (A)(3) because most  
15 transgender youth cannot undergo or may never require surgery. This ban deprives  
16 Plaintiffs of equal treatment, violates fundamental constitutional rights to privacy and  
17 liberty, and subjects Plaintiffs and other transgender young people to serious irreparable  
18 harm to their safety, health, and well-being.

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

24 51. Arizona courts interpreting Subsection (A)(4) have required families  
25 petitioning for amendments to the sex listed on a transgender minor’s birth certificate to  
26 comply with the surgical requirement of Subsection (A)(3), which those families cannot do  
27 because their children are not eligible for surgery. Based on information and belief, courts  
28 have imposed that requirement due, at least in part, to the language of Subsection (A)(3)

1 and ADHS's prior publicly-stated position that Arizona courts lack the authority under  
2 Subsection (A)(4) to issue orders amending the sex listed on an Arizona birth certificate.

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

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

13 54. That is not the only significant hurdle that transgender young people and their  
14 families face when petitioning a court for an order amending the sex listed on a birth  
15 certificate. The court-order process in Arizona requires additional fees, a significant  
16 expenditure of time and thus further and unnecessary delay, filing a petition and therefore  
17 creating an easily accessible public record about the requested change, and appearing at a  
18 public hearing where they must persuade a court that they or their child needs a corrected  
19 or amended birth certificate, all of which strip transgender young people of the very privacy  
20 and rights they are trying to secure. While petitioners in court may seek to protect their  
21 privacy by filing other motions, such as motions to proceed under a pseudonym and to seal  
22 the records, those are yet more documents that must be prepared and filed, again with an  
23 uncertain outcome. And these procedures vary from state to state, creating additional  
24 expenses, uncertainties, risks, and burdens for families who have moved away from  
25 Arizona. To ensure that these multiple court submissions are completed correctly,  
26 transgender people and their families would likely require the assistance of an attorney,  
27 which is an additional and significant expense. And, even if successful, transgender young  
28 people must still apply to ADHS for the amended birth certificate, adding yet another step

1 to the process and imposing further expense and delay.

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

12 56. Based on information and belief, ADHS does not impose the burdens of  
13 seeking a court order on nontransgender people when correcting or amending an inaccurate  
14 sex marker on a birth certificate. Relying on its broad statutory authority, ADHS developed  
15 a policy permitting it to change sex markers on Arizona birth certificates with a physician's  
16 letter attesting to the error.

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

21 ***Plaintiff D.T.***

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

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

28 60. His parents still sent him to school in girls' clothing. But every afternoon

1 D.T. immediately removed the clothes when he returned home, and then often spent hours  
2 crying in his room afterwards.

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

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

11 63. The day before D.T. began third grade, he and Lizette stopped by his  
12 classroom to drop off some supplies. D.T.’s best friend was also there with her mother.  
13 His friend pointed to D.T. and asked her mother: “Can he and I go play?” The mother  
14 replied: “No, that’s a she.” Later, while driving D.T. home, Lizette asked D.T. about that  
15 moment. “Your friend called you ‘him.’ Is that what you are?” D.T. was silent for a  
16 moment, then said: “I know my body is wrong. But in my insides, I’m a boy. My mind  
17 tells me I’m a boy.” He also shared that he was worried that his parents would stop loving  
18 him if he ever shared this piece of himself.

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

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

27 66. Last summer, D.T. began showing the first signs of puberty. Consistent with  
28 the standards of care, D.T. began taking puberty-delaying medication. More recently, he

1 began taking testosterone as part of his medical treatment. Those medications prevent  
2 D.T.'s body from undergoing physical changes associated with female puberty and instead  
3 induce male puberty. As a result of these treatments, D.T. may never need surgical care to  
4 treat his gender dysphoria.

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

13 68. Because of that experience, and other similar experiences, D.T. has  
14 significant anxiety and worry about not being accepted by others and being mistreated if he  
15 is forced to disclose that he is transgender. The fact that D.T.'s current birth certificate does  
16 not match his sex exacerbates these fears; that fear is constraining. For example, D.T.  
17 started playing basketball a few years ago and is currently playing on his school's boys'  
18 basketball team. D.T. wants to play recreational basketball in the off-season, both because  
19 he loves the sport and wants to improve his skill and be good enough to play for the school  
20 team when he enters high school. But he has not pursued this interest because he is worried  
21 that he will be required to play on the girls' team because of his birth certificate.

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

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

9           71. D.T.'s parents wanted to change the sex listed on D.T.'s birth certificate  
10 through the administrative process but were precluded from doing so because D.T. cannot  
11 meet the surgical requirement.

12           72. Despite the judge's statement in court to D.T.'s parents and the court order's  
13 language subjecting D.T. to the surgical requirement, Defendants represented to Plaintiffs  
14 that the court order that D.T. obtained is sufficient for him to apply for an amended birth  
15 certificate. In reliance on Defendants' representation, on or about December 21, 2020,  
16 Lizette submitted an application to ADHS to change the sex listed on D.T.'s birth certificate.  
17 D.T. received the amended birth certificate on or about February 8, 2021. However, even  
18 though D.T. obtained an amended birth certificate in this way, his ability to make that  
19 change was significantly delayed due to Defendants' interpretation and enforcement of  
20 Subsection (A)(3). That delay required him to disclose his transgender status in situations  
21 that he would have preferred to keep that information private and caused him to forgo  
22 participating in certain activities to avoid disclosing his transgender status.

23 ***Plaintiff Jane Doe***

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

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

1 girls' section.

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

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

14 77. At Dr. Onufrak's recommendation, Susan took Jane to Dr. Veenod Chulani,  
15 a physician specializing in treating transgender youth and the Medical Director of the  
16 Gender Support Program at Phoenix Children's Hospital. Dr. Chulani agreed with  
17 Dr. Onufrak's assessment and diagnosed Jane with gender dysphoria. He has since  
18 provided Jane with primary care and supported Jane and her family through Jane's social  
19 transition.

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

25 79. Students continued to bully and harass Jane throughout the second and third  
26 grade. In fourth grade the bullying intensified when a student found Jane's class roster in  
27 the cafeteria and saw Jane's name with the letter "M" next to it. That student shared the  
28 class roster and the information he learned from it with many classmates before the school

1 could intervene. After that, the taunting and teasing became relentless. In response, Jane's  
2 anxiety about attending school increased significantly. She was unable to concentrate in  
3 class or focus on her schoolwork. Jane's education was further disrupted by her frequent  
4 anxiety-induced stomachaches, which brought her to the school nurse nearly every day.  
5 Jane's only respite has been distance-learning, which has deprived her classmates the  
6 opportunity to continue bullying and harassing her.

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

15 81. Nevertheless, given the significant improvement in Jane's well-being during  
16 distance learning, her parents decided to use this opportunity to enroll Jane in a different  
17 school where students do not know she is transgender. The new school where they would  
18 like to enroll her, however, will not enroll Jane as female without a corrected birth  
19 certificate.

20 82. Susan previously explored options for changing the sex listed on Jane's birth  
21 certificate. Through that research, Susan learned that ADHS required evidence of surgery  
22 prior to changing the sex on a transgender person's birth certificate and that she would need  
23 to present proof of surgery to obtain a court order as well. Susan visited ADHS to inquire  
24 about what she needed to provide to amend the sex listed on Jane's birth certificate and an  
25 ADHS employee confirmed to her that Jane would need to provide a letter from a doctor as  
26 required by Arizona law. Due to Jane's age, it would be inappropriate and inconsistent with  
27 the standards of care for her to undergo any surgical treatment for gender dysphoria. The  
28 medical necessity of those treatments will be assessed by Jane and her team of healthcare

1 providers at an appropriate time and consistent with the prevailing standards of care.

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

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

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

19 ***Plaintiff Helen Roe***

20 86. Plaintiff Helen Roe is a six-year-old transgender girl in Pima County,  
21 Arizona. Helen enjoys time with her girlfriends, whether playing "princess" or "house," or  
22 with her girls' toys. She likes roller skating, singing, and dancing.

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

28 88. Helen continued to play like other little girls, such as playing house with pink

1 plates and cutlery, pushing a stroller, and playing with her many Barbie dolls. For her fourth  
2 birthday, Helen requested a party with unicorn decorations and permission to wear a Disney  
3 princess costume to the party. Her parents agreed. Most of Helen's friends were (and are)  
4 girls, and they also wore brightly colored dresses and accessories. Helen was as happy as  
5 her parents had ever seen her that day. The party made them fully appreciate that Helen's  
6 behavior was not a phase. Their daughter expressed herself as, and indeed was, a girl.

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

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

13 91. Although Helen's family has accepted her as female, Helen has still  
14 experienced prejudice because she is transgender. Towards the beginning of Helen's  
15 transition, her mother shared that Helen is transgender with several parents in Helen's small  
16 pre-school community. One family reacted negatively to this information, distancing  
17 themselves from Helen and called the director of Helen's pre-school to allege that Helen  
18 was a threat to their children's security.

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

26 93. In January 2020, Helen's parents filed a petition to change Helen's name and  
27 the sex listed on her birth certificate. The court granted the requested name change, but did  
28 not rule on the request to change the sex listed on Helen's birth certificate from male to

1 female. Instead, the court provided Helen's parents with a printout of A.R.S. § 36-337. The  
2 court also deferred ruling on their request to seal Helen's name-change petition, leaving it  
3 accessible by the public. With the assistance of her counsel, Helen recently filed a motion  
4 to seal the public record, which was granted by the court. Following the issuance of the  
5 name-change order, the case was closed. Given their concerns for Helen's safety, Helen's  
6 parents seek to correct Helen's birth certificate administratively to protect her private  
7 medical information and prevent her from being forced to reveal that she is transgender.

8 ***Plaintiff James Poe***

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

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

16 96. Around the time that he turned two, James began to refer to himself as a boy.  
17 He would point at his mother, Laura, and say "girl," point at his father and say "boy," and  
18 point to himself and say "boy." Faced with his continuing refusal to wear girls' clothing,  
19 James's parents started buying him boys' clothing in the summer of 2018. James has never  
20 switched back and, when offered a choice, James always selects boys' clothes.

21 97. James' parents grew increasingly convinced that this was more than just a  
22 phase for James. They sought guidance from James's pediatrician, who referred them to  
23 Dr. Tracey Kurtzman, a pediatrician with expertise working with transgender youth.  
24 Around that same time, James and his family started to see Dr. Richard Muszynski, a  
25 clinical psychologist. James sees Dr. Muszynski regularly for therapy sessions to treat his  
26 gender dysphoria.

27 98. Based in part on the counseling from these medical professionals, James's  
28 parents socially transitioned him from female to male. James immediately adopted male

1 pronouns and the name “James.” Days later, James’s family went out to dinner, and his  
2 father asked Laura if she would like to try some lemonade. James mistakenly believed that  
3 his father was referring to him as “she” and immediately corrected his father to use the  
4 pronoun “he.”

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

13 100. Despite the fact that Laura works in a public school district, James’ parents  
14 enrolled him in private school in order to avoid the public school’s requirement that he  
15 provide a birth certificate to enroll. They do not want their son’s transgender status  
16 disclosed publicly and view private school as a smaller and safer environment, even though  
17 that choice came at a significant additional cost. For example, James has a learning  
18 disability that requires specialized services, which would have been provided by a public  
19 school at no cost to his family. Instead, James’s parents have to cover those services through  
20 their health insurance, paying the applicable co-pays, deductibles, and, in some cases,  
21 covering the entire cost out-of-pocket. They have even delayed starting those needed  
22 services out of a concern that the service provider will mistreat James because he is  
23 transgender, a fact that is obvious from his birth certificate.

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

1           102. In March 2020, James’s parents sought a court order to change his name,  
2 which the court granted. They also sought an order to correct the sex listed on James’s birth  
3 certificate, but the court did not rule on that request. Instead, the judge informed them that,  
4 while she would have been willing to order a change to the sex listed on James’s school and  
5 health records, ADHS would require more in order to change the sex listed on his birth  
6 certificate. She then handed them a printed copy of A.R.S. § 36-337. Following the  
7 issuance of the name-change order, the case was closed. Despite having corrected some of  
8 James’s identity documents, his parents have not corrected his birth certificate because they  
9 could not change the sex listed on that document. They seek to change the sex listed on his  
10 birth certificate through the private administrative process in order to maintain his privacy.

11 ***Plaintiff Carl Voe***

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

15           104. Carl began expressing his gender identity just before he turned two years old.  
16 For example, Carl would ask his parents when he was going to get a boy’s body. When  
17 strangers would complement his long, curly hair, Carl told his parents that he hated his hair  
18 and soon insisted that they cut it short like a boy’s. When Carl was four, his mother, Rachel,  
19 cut his hair in a Mohawk. Following that haircut, strangers would say “what a cute boy,”  
20 and Carl instructed his parents that he did not want them to correct the strangers.

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

27           106. When Carl was in kindergarten, his parents learned that other children were  
28 asking him whether he was a boy or a girl and would not believe him regardless of how he

1 answered. With the support of his parents, Carl addressed his class to tell them that he did  
2 not like their questions. The environment improved for a few weeks, but then the questions  
3 returned. Carl's parents also later learned that Carl was not eating his lunch and refusing to  
4 use the restroom during the school day out of fear—a common behavior among transgender  
5 youth due to the distress they experience using a restroom that does not match their gender  
6 identity. At the end of kindergarten, Carl told his parents “I am a boy.”

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

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

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

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

28 111. Late last year, Carl's family moved to Maryland. Prior to the move, Carl's

1 parents petitioned an Arizona court for a name and gender-marker change, but due to delays  
2 associated with the COVID-19 pandemic, the Superior Court did not rule on the petition  
3 before they left the state and denied it without prejudice in February 2021. Because he now  
4 lives in Maryland, Carl is no longer within the jurisdiction of Arizona courts. Carl's parents  
5 have been advised that transgender young people in Maryland face many hurdles to  
6 obtaining court orders correcting or amending the sex listed on their birth certificates.  
7 Instead, to protect Carl's privacy and health, his parents wish to use the private  
8 administrative process under Subsection (A)(3) to correct Carl's Arizona birth certificate.

9 **Class action allegations**

10 112. Plaintiffs Helen Roe, James Poe, and Carl Voe ("Class Plaintiffs"), on behalf  
11 of themselves and all similarly situated individuals, bring their claims for declaratory and  
12 injunctive relief as a class action under Federal Rules of Civil Procedure 23(a) and 23(b)(2).

13 113. Class Plaintiffs request that the Court certify the following class ("Class")  
14 under Rule 23(b)(2):

15 All transgender individuals born in Arizona, now and in the  
16 future, who seek to change the sex listed on their birth  
17 certificates but have not undergone a "sex change operation"  
18 as treatment for their gender dysphoria.

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

23 115. The Class satisfies the requirements of Rule 23(a)(1) because the class is so  
24 numerous that joinder of all members is impracticable. Studies estimate that the population  
25 of transgender adults in Arizona exceeds 30,000. Based on population studies, there are  
26 approximately 2,000-5,000 transgender young people under eighteen years old in Arizona.  
27 Of that population, approximately one-third will undergo surgery to treat their gender  
28 dysphoria. That percentage will be significantly smaller among transgender young people

1 who, with limited exception, cannot undergo surgery due to their age. That leaves a large  
2 proportion of transgender young people and adults—whether surgery is not medically  
3 necessary for them or they face other barriers to accessing surgical care—who are denied  
4 the opportunity to amend the sex listed on their birth certificate through the private  
5 administrative process created by Subsection (A)(3) and it would be impractical to join all  
6 of them as named plaintiffs. In addition to the potential size of the class, it would also be  
7 impractical to join them all because there may be transgender people who were born in  
8 Arizona, but currently live in another state.

9       116. The Class satisfies the commonality requirements of Rule 23(a)(2) because  
10 there are questions of law and fact common to the Class. Pursuant to Subsection (A)(3),  
11 Defendants have acted or refused to act on grounds generally applicable to the Class. This  
12 action raises questions of law common to all members of the Class, including: (a) whether  
13 Subsection (A)(3), facially and as applied to members of the Class, violates the Equal  
14 Protection Clause of the Fourteenth Amendment to the U.S. Constitution; (b) whether  
15 Subsection (A)(3), facially and as applied to members of the Class, violates the Substantive  
16 Due Process Right to Privacy secured by the Due Process Clause of the Fourteenth  
17 Amendment to the U.S. Constitution; (c) whether Subsection (A)(3), facially and as applied  
18 to members of the Class, violates the Substantive Due Process Right to Individual Liberty  
19 and Autonomy of the Fourteenth Amendment to the U.S. Constitution; and (d) whether  
20 Subsection (A)(3), facially and as applied to members of the Class, violates the Substantive  
21 Due Process Right to Choose whether to undergo a particular medical treatment secured by  
22 the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. All  
23 members of the Class share at least one common question of fact: Whether the purported  
24 justification(s) for excluding transgender people who do not meet the surgical requirement  
25 for changing their birth certificate via the private administrative process created by  
26 Subsection (A)(3) are pretext(s) for impermissible discrimination?

27       117. The Class satisfies the typicality requirements of Rule 23(a)(3) because the  
28 named Plaintiffs' claims are typical of the claims of the Class. Plaintiffs are members of

1 the Class, are individuals who have been unable and will be unable to amend the sex listed  
2 on their birth certificates through the private administrative process set forth in Subsection  
3 (A)(3). Plaintiffs and members of the Class share the same legal claims under the Equal  
4 Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution.

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

17 119. The Class further satisfies the requirements of Rule 23(a)(4) because counsel  
18 for the Class will fairly and adequately represent the interests of the Class. The Class is  
19 represented by counsel from Cooley LLP and Osborn Maledon, P.A., two large law firms,  
20 and the National Center for Lesbian Rights (“NCLR”), a non-profit legal organization  
21 dedicated to advancing the civil and human rights of the LGBTQ community. Collectively,  
22 counsel has significant experience litigating civil rights cases, including transgender rights  
23 cases and complex class actions in federal court.

24 120. The Class also satisfies the requirements of Rule 23(b)(2) because Defendants  
25 have acted or refused to act on grounds that apply generally to the Class, so that final  
26 injunctive or corresponding declaratory relief is appropriate respecting the class as a whole.  
27 The Class exhibits sufficient cohesiveness because its members have suffered group, as  
28 opposed to individual, injuries; namely, the categorical exclusion of transgender people who

1 have not undergone surgery to treat their gender dysphoria from amending their birth  
2 certificate through the private administrative process created by Subsection (A)(3).  
3 Members of the Class are bound together by the significant common traits that they are all  
4 transgender, they have gender dysphoria, they need to amend the sex listed on their birth  
5 certificates, and they have not undergone surgical treatment to alleviate their gender  
6 dysphoria.

7 **COUNT I**

8 **(Violation of the Equal Protection Clause of the  
9 Fourteenth Amendment of the United States Constitution)**

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

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

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

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

18 125. Arizona’s current statutory and regulatory scheme, which prevents Plaintiffs  
19 and the Class from obtaining amended birth certificates through the process created by  
20 Subsection (A)(3), impermissibly discriminates against transgender people on the basis of  
21 sex and transgender status, in violation of their right to equal protection of the laws under  
22 the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.  
23 Unlike their nontransgender peers and other Arizonans who can have accurate birth  
24 certificates and correct their birth certificates when necessary, transgender people are  
25 denied accurate birth certificates.

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

**COUNT II**

**(Violation of the Substantive Due Process Right to Privacy  
under the United States Constitution)**

1  
2  
3 127. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through  
4 126 of this Amended Complaint as though fully set forth herein.

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

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

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

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

17 132. Section 36-337(A)(3) and A.A.C. R9-19-208(O) violate the right to privacy  
18 of transgender people, including Plaintiffs and the Class, in that denying them a birth  
19 certificate that matches their sex requires them to disclose their transgender status and  
20 deprives them of significant control over the circumstances around such disclosure.

21 133. There are no adequate safeguards to prevent the harm caused by the  
22 involuntary disclosure of one’s transgender status through a birth certificate. For example,  
23 a person may need to disclose their birth certificate directly to third parties, without any of  
24 the privacy safeguards that may exist where the government discloses information to third  
25 parties.

26 134. The government has no compelling, important, or legitimate interest in  
27 disclosing a person’s transgender status on state-issued birth certificates.  
28

**COUNT III**

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

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

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

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

138. The government’s refusal to permit transgender people who have not undergone surgery to treat their gender dysphoria to obtain amended birth certificates through the private administrative process created by Subsection (A)(3) additionally burdens their right to autonomy by inviting and encouraging other public and private entities to similarly discriminate against them.

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

**COUNT IV**

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

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

141. The substantive protections of the Due Process Clause safeguard the right of

1 every person to bodily integrity. Encompassed in that right is the right to choose whether  
2 to undergo a particular medical treatment. *See Washington v. Glucksberg*, 521 U.S. 702,  
3 720 (1997); *Washington v. Harper*, 494 U.S. 210, 221 (1990); *Parham v. J.R.*, 442 U.S. 584,  
4 600 (1979).

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

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

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

18 **PRAYER FOR RELIEF**

19 ***WHEREFORE***, Plaintiffs respectfully request that this Court:

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

23 B. Enter a declaratory judgment that continuing to enforce the surgical  
24 requirement in A.R.S. § 36-337(A)(3) and A.A.C. R9-19-208(O) to deny Class Plaintiffs  
25 and the Class the ability to change the sex markers on their birth certificates:

- 26 1. Violates the Equal Protection Clause of the Fourteenth Amendment to  
27 the United States Constitution by discriminating on the basis of sex  
28 and transgender status;



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

D.T., a minor, by and through his parent and next friend Lizette Trujillo; et al.,

Plaintiffs,

v.

Dr. Cara M. Christ, in her official capacity as State Registrar of Vital Records and Director of the Arizona Department of Health Services; et al.,

Defendants.

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

**[PROPOSED] ORDER DENYING  
DEFENDANTS’ MOTION TO DISMISS  
AND GRANTING PLAINTIFFS’ REQUEST  
TO FILE SECOND AMENDED  
COMPLAINT**

Having considered Defendants’ Motion to Dismiss and related briefing,

**IT IS HEREBY ORDERED** as follows:

1. Defendants’ Motion is **DENIED**.
2. Plaintiffs’ request to file a Second Amended Complaint is **GRANTED**.
3. Plaintiffs shall have up to and including [DATE] to file the Second Amended Complaint; and
4. Defendants shall have twenty (20) days after Plaintiffs file and serve the Second Amended Complaint to file any responsive pleading.