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12
13 **UNITED STATES DISTRICT COURT**
DISTRICT OF ARIZONA

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

19 Plaintiffs,

20 v.

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

28 Defendants.

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

**JOINT REPORT AND RULE 26(f) CASE
MANAGEMENT STATEMENT**

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1 **I. The Rule 26(f) Conference**

2 On July 28, 2021, all parties participated in the conference ordered by the Court,
3 (Doc. 79), and required by Federal Rule of Civil Procedure 26(f). Plaintiffs were
4 represented by their attorneys Asaf Orr, Barrett Anderson, and Payslie Bowman. Defendant
5 was represented by Patricia LaMagna, Aubrey Joy Corcoran, Dan Struck, and Dana Keene.

6 **II. The Nature of the Case**

7 *A. The Claims of Plaintiffs and Proposed Class*

8 Plaintiffs allege one count under the Equal Protection Clause and three counts under
9 the Due Process Clause of the Fourteenth Amendment of the United States Constitution.
10 They challenge the constitutionality of A.R.S. § 36-337(A)(3), an Arizona law that
11 establishes a private administrative process under which transgender individuals may only
12 amend the sex listed on their birth certificates upon proof from a physician that they have
13 “undergone a sex change operation.” Plaintiffs are transgender young people born in
14 Arizona who seek to amend their birth certificates using that private administrative process,
15 but who are prohibited from doing so because they are too young to undergo the required
16 surgery. That differential treatment, in and of itself, causes harm. Furthermore, birth
17 certificates are vital identity documents, especially to young people, and thus Plaintiffs are
18 harmed by their inability to use this private administrative process because possessing a
19 birth certificate that does not match who they are invades their privacy and puts them at risk
20 of exposure, discrimination, harassment, and even violence.

21 Plaintiffs also seek to represent a class of all transgender individuals born in Arizona
22 who seek to change the sex listed on their birth certificates but have not undergone a “sex
23 change operation.” The scope of the putative class is sufficiently numerous to make joinder
24 impracticable and the categorical nature of the surgical requirement—which by its terms
25 excludes transgender individuals who have not undergone surgical treatment for their
26 gender dysphoria—necessarily establishes the elements of commonality and typicality. The
27 claims Plaintiffs seek to bring on behalf of the class mirror the claims Plaintiffs bring in
28 their individual capacities.

1 *B. The Defenses of Defendant*

2 The Arizona Legislature established a statewide system of vital records and
3 appointed Defendant, the Director of the Arizona Department of Health Services
4 (“ADHS”), as the state registrar of vital records. A.R.S. §§ 36-302, 36-303. The state
5 registrar may amend registered birth certificates only as authorized by A.R.S. § 36-323.
6 Whereas the Legislature has given the state registrar broad authority to adopt rules to make
7 corrections to vital records, her authority to amend registered birth certificates is limited.¹
8 A.R.S. §§ 36-323(A), (B) and 36-337. Defendant is only permitted to exercise the authority
9 the Legislature has granted her.

10 A.R.S. § 36-337(A) does not mandate that any Arizonan (let alone Plaintiffs)
11 undergo a sex change operation to amend the gender/sex marker on a birth certificate.
12 A.R.S. § 36-337(A)(3) provides a mechanism by which individuals who have already
13 undergone a sex change operation may seek an amendment of their birth certificates through
14 an administrative process. Arizonans who have not undergone a sex change operation can
15 seek to amend the sex/gender field on their birth certificates by obtaining a court order in
16 Arizona state court pursuant to A.R.S. § 36-337(A)(4). Involving a court in this
17 determination is a crucial function and ensures that the rights of all individuals seeking to
18 amend their birth certificates are protected. Allowing any individual (particularly minors)
19 to utilize the administrative process eviscerates the safeguards established by the
20 Legislature.

21 Defendant does not have the power or authority to change the language of the statute
22 and lacks any authority to promulgate a process for amending birth certificates that exceeds
23 the authority already granted by A.R.S. § 36-337. Nor can she expand the scope of the
24 statute to allow Plaintiffs to participate in the administrative process afforded to individuals
25 who have already undergone a sex change operation. The Court does not have the authority

26 _____
27 ¹ The Legislature has defined “correction” as “a change made to a registered certificate
28 because of a typographical error, including misspelling and missing or transposed letters or
numbers” and has defined “amend” as “to make a change, other than a correction, to a
registered certificate by adding, deleting or substituting information on that certificate.”
A.R.S. § 36-301.

1 to rewrite or add to the statute. If the Court strikes the surgical requirement in § 36-
2 337(A)(3), Plaintiffs would still be required to obtain a court order under § 36-337(A)(3).
3 Thus, Plaintiffs lack Article III standing, and this Court lacks subject matter jurisdiction
4 because Plaintiffs' alleged injuries are not redressable. In addition, discovery is necessary
5 to determine whether Plaintiffs suffered an injury in fact that is causally related to
6 Defendant's alleged conduct.

7 As articulated in Defendant's Motion to Dismiss, this Court also lacks jurisdiction
8 under the *Rooker Feldman* Doctrine, as Plaintiffs' claims are inextricably intertwined with
9 the petitions filed in state court. Additionally, the Court should abstain from exercising
10 jurisdiction under the *Younger* Doctrine because each Plaintiff filed a state-court petition to
11 amend their birth certificates. The Court should also abstain from exercising jurisdiction
12 until Plaintiffs' state court proceedings have concluded pursuant to the *Pullman, Colorado*
13 *River, and Brillhart* Doctrines.

14 On the merits, A.R.S. § 36-337 and A.A.C. R9-19-208 do not deny any individual
15 due process or equal protection under the law. With respect to Plaintiffs' Equal Protection
16 claim (Count I), the statute and corresponding regulation (A.A.C. R9-19-208(O)) are
17 facially neutral—they apply to *all* persons seeking to amend their birth certificates,
18 including those wishing to amend their gender/sex markers—and do not intentionally
19 discriminate against Plaintiffs or any transgender person. Regarding Plaintiffs' Due Process
20 claims (Counts II, III, & IV), neither the statute nor the regulation deprives or otherwise
21 unconstitutionally interferes with any protected interest. Counts III and IV fail to even
22 identify a protected liberty or property interest.

23 Finally, these constitutional claims are not suitable for class certification under Rule
24 23(a) and (b).

25 **III. List of All Parties**

26 Plaintiffs are Helen Roe, a minor, by and through her parent and next friend Megan
27 Roe; James Poe, a minor by and through his parent and next friend Laura Poe; and Carl Voe,
28 a minor by and through his parent and next friend Rachel Voe.

1 Defendant is Dr. Cara M. Christ, in her official capacity as State Registrar of Vital
2 Records and Director of the Arizona Department of Health Services (“ADHS”).

3 Dr. Christ has announced her intention to step down from her official position as
4 State Registrar of Vital Records and Director of ADHS, which will necessitate changing
5 the named Defendant when her successor assumes office. Once that occurs, the parties will
6 jointly seek leave to amend the case caption to remove the parties that have been dismissed
7 from the case and substitute in Dr. Christ’s successor.

8 Otherwise, at this stage of the case, neither Plaintiffs nor Defendant anticipate
9 changing or adding any other parties.

10 **IV. The Status of Service and Responsive Pleadings**

11 All parties have been served. The Court issued a formal Order denying Defendant’s
12 Motion to Dismiss on August 5, 2021. (Dkt. 83.) Defendant intends to file her answer by
13 August 19, 2021.

14 **V. Jurisdiction, Venue, and Joinder**

15 The Court has personal jurisdiction over all parties. The Court has subject matter
16 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 because Plaintiffs’ claims arise under
17 42 U.S.C. §§ 1983 and 1988 and seek to redress violations of the Equal Protection and Due
18 Process Clauses of the Fourteenth Amendment to the United States Constitution.

19 The parties agree that there are no remaining issues regarding jurisdiction, venue, or
20 joinder, although Defendant maintains that jurisdiction is lacking for all the reasons stated
21 in her Motion to Dismiss.

22 **VI. Jury Trial Not Requested**

23 Plaintiffs do not request a trial by jury.

24 Defendant reserves the right to request a jury trial should Plaintiffs amend their
25 complaint to seek monetary damages.

26 **VII. Master or Magistrate Judge.**

27 The parties do not believe this case is suitable for reference to a Master. The parties
28 do not consent to trial before a United States Magistrate Judge.

1 **VIII. The Case is Not Complex**

2 The parties agree that this case does not present any unusual, difficult, or complex
3 problems or issues that would require it to be placed on the complex track for case
4 management purposes pursuant to Local Rule 16.2.

5 **IX. Related Cases**

6 The parties are unaware of any related cases currently pending in the United States
7 District Court for the District of Arizona or any other court.

8 **X. Disputed Facts and Legal Issues**

9 Plaintiffs believe that few, if any, factual disputes remain and that it may be possible
10 for the Court to resolve the case on summary judgment.

11 Defendant does not dispute the medical definition of gender identity/gender
12 dysphoria, or the accepted medical/psychological best practices to treat gender dysphoria
13 in minors. Nor does she anticipate that there will be any dispute regarding Plaintiffs' social
14 history, including their diagnoses and/or treatment of gender dysphoria. Defendants dispute
15 the social and emotional impact that Plaintiffs allege is the result of A.R.S. § 36-337.
16 Defendants also dispute that Rule 23's class certification elements are satisfied, that § 36-
17 337 is unconstitutional, and that the Court has the authority to grant the relief that Plaintiffs
18 seek.

19 Defendant agrees that the case may be best resolved by summary judgement,
20 however the amount of disputed facts will be better determined after discovery is conducted
21 relating to facts as asserted by Plaintiffs.

22 Given the Court's Order (Dkt. 83), the parties agree to meet and confer to discuss
23 what other factual or legal disputes remain and how they might be resolved by stipulation
24 or motion.

25 **XI. The Scope of Discovery**

26 *A. Plaintiffs and Proposed Class*

27 Plaintiffs will need to conduct discovery on all defenses raised by Defendant. For
28 example, Plaintiffs will need to conduct discovery on the origins of, as well as any

1 justifications or governmental interests for, ADHS’s requirement that transgender
2 individuals born in Arizona undergo a “sex change operation” in order to amend the sex
3 listed on their birth certificates under A.R.S. § 36-337(A)(3) and Defendant’s enforcement
4 of that surgical requirement.

5 *B. Defendant*

6 Defendant will need to conduct class discovery before responding to Plaintiffs’
7 Motion for Class Certification, including discovery regarding numerosity, typicality, and
8 commonality.

9 Merits discovery is also necessary to determine the efforts undertaken by the named
10 Plaintiffs to amend their birth certificates in State court. Defendant believes that minimal
11 discovery may be necessary to determine the existence or extent of the harm and emotional
12 distress Plaintiffs allegedly sustain(ed).

13 *C. Electronically Stored Information*

14 The parties are not currently aware of any issues relating to preservation, disclosure,
15 or discovery of ESI. The parties intend to meet and confer following the case management
16 conference regarding Defendant’s ESI-retention policies, sources of stored data, and
17 potential custodians in order to streamline discovery of ESI. Notwithstanding the foregoing,
18 to the extent ESI contains confidential information, the parties have stipulated to and the
19 Court has entered a protective order governing the parties’ obligations regarding designated
20 confidential information. (Doc. 25.)

21 **XII. Proposed discovery schedule**

22 *A. Fact discovery*

23 The parties propose that fact discovery close on February 25, 2022.

24 *B. Rule 26(a)(1) Initial Disclosures*

25 The parties agree to exchange initial discovery disclosures required by Rule 26(a)(1)
26 no later than September 10, 2021. The parties may begin serving discovery requests after
27 the Case Management Conference on August 11, 2021.

28

1 *C. Deadline to add parties or amend pleadings*

2 The parties propose that the last day for adding parties or amending pleadings
3 without leave is August 11, 2021.

4 *D. Class certification and discovery*

5 The parties agree that Plaintiffs will file their Motion for Class Certification on
6 August 25, 2021. Plaintiffs do not believe that class-related discovery will be necessary.
7 Defendant believes that limited class-related discovery may be needed and reserves the right
8 to seek it until after she has reviewed Plaintiffs' motion.

9 After Plaintiffs file their motion, the parties agree to meet and confer by September
10 2, 2021 regarding what, if any, class-related discovery may be warranted. The parties will
11 then submit a joint report to the Court by September 6, 2021 detailing any agreement
12 regarding class-related discovery and any related disputes that require resolution by the
13 Court. In any event, the parties agree that any limited class-related discovery will not be
14 bifurcated from ordinary discovery.

15 Plaintiffs' Proposal: If the parties agree or the Court rules that Defendant may seek
16 class-related discovery, Plaintiffs propose that Defendant have sixty (60) days from the date
17 of the meet and confer or court order, whichever is later, to conduct that discovery and
18 submit their opposition to Plaintiffs' Motion for Class Certification. Plaintiffs propose filing
19 a reply brief in support of the motion for class certification within forty-five (45) days from
20 the date the opposition is filed. Plaintiffs reserve the right to conduct any discovery limited
21 to the facts and arguments relied upon in Defendant's opposition and file their reply brief
22 in support of class certification. Despite Defendant's suggestion to the contrary, any
23 discovery Plaintiffs may need cannot be conducted simultaneously with Defendant.
24 Plaintiffs will need to review Defendant's opposition and the evidence she relies upon to
25 determine whether further discovery is needed, let alone the scope of that discovery.

26 If the parties agree or the Court rules that Defendant may not seek class-related
27 discovery, the parties propose that Defendant have thirty (30) days from the date of the meet
28 and confer or court order, whichever is later, to submit their opposition to Plaintiffs' Motion

1 for Class Certification and Plaintiffs have fourteen (14) days from the date the opposition
2 is filed to file their reply brief in support of class certification.

3 Defendant's Proposal: If the parties agree or the Court rules that Defendant may seek
4 class-related discovery, Defendant proposes that all class-related discovery—by both
5 parties—shall be conducted over ninety (90) days beginning on the date the parties agree or
6 the Court rules, whichever is later. Plaintiffs should not be permitted additional discovery
7 after Defendant files her opposition to Plaintiffs' Motion for Class Certification. All class
8 discovery should be conducted contemporaneously. If Plaintiffs are permitted to conduct
9 additional discovery after Defendant files her opposition to the Motion for Class
10 Certification and relies on such discovery in their reply, Defendant should be given an
11 opportunity to file a supplemental opposition to address the new evidence.

12 *E. Expert discovery*

13 Plaintiffs' Proposal: The parties exchange expert disclosures and reports on March
14 18, 2022; exchange rebuttal expert disclosures and reports on April 18, 2022; and that expert
15 discovery closes on May 9, 2022.

16 Defendant's Proposal: Plaintiffs submit their expert disclosure(s) and report(s) on
17 March 1, 2022; Defendant submits her expert disclosure(s) and report(s) on April 1, 2022;
18 Plaintiffs submit any rebuttal report(s) on May 1, 2022; and expert discovery ends on June
19 6, 2022.

20 *F. Dispositive and Daubert motions*

21 The parties agree to file any dispositive and *Daubert* motions by July 11, 2022, with
22 opposition and reply briefs due according to the Court's ordinary schedule for such motions.
23 The parties agree that it may be possible for the Court to resolve the case on a Motion for
24 Summary Judgment following the close of discovery.

25 **XIII. Settlement prospects**

26 The parties believe that a settlement conference with a Magistrate Judge is
27 worthwhile and propose that such a conference be set on or before June 20, 2022.

28

1 While Defendant is amenable to engaging in settlement discussions with the
2 assistance of a Magistrate Judge, Defendant believes the only way this case could be settled
3 to Plaintiffs' satisfaction is if Defendant agrees to act in contravention of, or expand, a state
4 statute (A.R.S. § 37-337(A)). Defendant lacks the authority to do so.

5 **XIV. Proposed pre-trial and trial schedule**

6 *A. Pre-trial disclosures*

7 Plaintiffs' Proposal: The parties file pre-trial disclosures on September 26, 2022.

8 Defendant's Proposal: The parties file pre-trial disclosures on October 26, 2022.

9 *B. Pre-trial motions*

10 Plaintiffs' Proposal: The parties file pre-trial motions on October 17, 2022.

11 Defendant's Proposal: Defendant believes that pre-trial motion deadlines should not
12 be set until after the Court rules on any dispositive motions. To afford the Court adequate
13 time to resolve those motions and allow the parties adequate time to prepare any pre-trial
14 motions, the pre-trial motion deadline should not be filed any earlier than November 18,
15 2022.

16 *C. Trial*

17 The parties agree that they anticipate needing three (3) days for a trial on the merits.

18 Plaintiffs' Proposal: Trial begins on November 14, 2022.

19 Defendant's Proposal: Defendant believes that a trial date should not be set until
20 after the Court rules on any dispositive motions. To afford the Court adequate time to
21 resolve those motions and allow the parties adequate time to prepare for trial on any
22 remaining claims, a trial should not begin any earlier than December 12, 2022.

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1 Dated: August 9, 2021

OSBORN MALEDON, P.A.

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3 s/Colin M. Proksel

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