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7 *Ron Shoopman, Larry Penley, Cecilia Mata,*
8 *Bill Ridenour, Lyndel Manson, Robert Herbold,*
Jessica Pacheco, and Fred DuVal

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 **Russell B. Toomey,**

12 Plaintiff,

13 v.

14 **State of Arizona; Arizona Board of**
15 **Regents**, a governmental body of the State
of Arizona; **Ron Shoopman**, in his
16 official capacity as Member of the
Arizona Board of Regents; **Larry Penley**,
17 in his official capacity as Treasurer of the
Arizona Board of Regents; **Cecilia Mata**,
18 in her official capacity as Secretary of the
Arizona Board of Regents; **Bill Ridenour**,
19 in his official capacity as Member of the
Arizona Board of Regents; **Lyndel**
20 **Manson**, in her official capacity as Chair
of the Arizona Board of Regents; **Robert**
21 **Herbold**, in his official capacity as
Member of the Arizona Board of Regents;
22 **Jessica Pacheco**, in her official capacity
as Member of the Arizona Board of
23 Regents; **Fred DuVal**, in his official
capacity as Member of the Arizona Board
of Regents; **Andy Tobin**, in his official
24 capacity as Director of the Arizona
Department of Administration; **Paul**
25 **Shannon**, in his official capacity as
Acting Assistant Director of the Benefits
26 Services Division of the Arizona
Department of Administration,

27 Defendants.
28

Case No. CV 19-00035-TUC-RM (LAB)

**DEFENDANTS ARIZONA BOARD
OF REGENTS, RON SHOOPMAN,
LARRY PENLEY, CECILIA MATA,
BILL RIDENOUR, LYNDEL
MANSON, ROBERT HERBOLD,
JESSICA PACHECO, AND FRED
DUVAL'S RESPONSE TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

1 Defendants Arizona Board of Regents (“the Board”), Ron Shoopman, Larry Penley,
2 Cecilia Mata, Bill Ridenour, Lyndel Manson, Robert Herbold, Jessica Pacheco, and Fred
3 DuVal (collectively, “the University Defendants”) reiterate the positions that they have
4 taken from the beginning of this litigation.

5 The University Defendants do not object to Plaintiff’s requested injunctive relief
6 against Defendants State of Arizona, Andy Tobin, and Paul Shannon (collectively, “the
7 State Defendants”). [*See also* Docs. 23, 31, 91, 122, 139 (taking this same position)]. Nor
8 does the Board object to an injunction against it so long as: (1) the injunction is no greater
9 than the injunction entered against the State Defendants; (2) the injunction does not create
10 a legal responsibility or obligation on the University Defendants beyond their authority and
11 control under state law applicable to the administration of the state health care plan; and (3)
12 the injunction is not entered against the individually named Regents because (a) any
13 injunction against the Board would consequently apply to the Regents under Federal Rule
14 of Civil Procedure 65(d)(2)(B) and (b) the Regent appointees to the Board are predictably
15 subject to change. [*See, e.g.*, Doc. 256 (substituting current Regents for former Regents)].
16 [*See also* Docs. 122, 139 (taking this same position)].

17 Should the Court issue any injunction, it should make clear that none of the
18 University Defendants discriminated against Plaintiff or violated Plaintiff’s equal
19 protection rights. The undisputed facts prove that the University Defendants have no
20 authority over exclusions in the health insurance plan that the Arizona Department of
21 Administration (“ADOA”) controls and administers. [PSOF ¶¶ 10–11; CSOF ¶¶ 10–11].¹
22 And the University Defendants indisputably had no role in adding, changing, or keeping
23 the exclusion for “[g]ender reassignment surgery” in ADOA’s health insurance plan. [PSOF
24 ¶¶ 45, 50; CSOF ¶¶ 45, 50 (stating that “ADOA”—not any of the University Defendants—
25 “ultimately maintained” the “[g]ender reassignment surgery” exclusion after a meeting with
26

27 ¹ “PSOF” refers to Plaintiff’s statement of facts. “CSOF” refers to the University
28 Defendants’ controverting statement of facts.

1 the Arizona Governor’s Office) (emphasis added)]. As a result, the University Defendants
2 did not discriminate against Plaintiff or violate Plaintiff’s equal protection rights.

3 In the event that the State Defendants prevail at summary judgment or trial, the
4 University Defendants should likewise prevail. As explained above, the undisputed facts
5 prove that the University Defendants have no authority to provide Plaintiff’s requested
6 relief. Plaintiff’s Amended Complaint seeks the following injunctive relief:

7 Permanent injunctive relief with respect to all Defendants, requiring
8 Defendants to remove the Plan’s categorical exclusion of coverage for
9 “[g]ender reassignment surgery” and evaluate whether Dr. Toomey and the
10 proposed classes’ surgical care for gender dysphoria is “medically necessary”
11 in accordance with the Plan’s generally applicable standards and procedures.

12 [Doc. 86 (Relief Requested) ¶ B]. But Plaintiff cannot establish that any of the University
13 Defendants has authority to remove any exclusion from the health insurance plan that
14 ADOA controls and administers. To the contrary, the undisputed facts prove that the
15 Director of ADOA—and only the Director of ADOA—has authority to “determine the
16 type, structure, and components of the insurance plans made available by [ADOA].”
17 [PSOF ¶¶ 10–11; CSOF ¶¶ 10–11]. These facts are unsurprising. As the University
18 Defendants have repeatedly explained throughout this litigation, Arizona law *requires* the
19 Board to “accept the benefit level, plan design, insurance providers, premium level and
20 other terms and conditions *determined by [ADOA].*” A.R.S. § 38-656(E) (emphasis
21 added); *see also* A.R.S. § 38-656(B) (stating that ADOA’s health insurance plan “shall be
22 the only health . . . insurance coverage” offered to the Board’s employees). [*See also* Docs.
23 23, 31, 91, 122, 139 (taking this same position and quoting A.R.S. § 38-656(E))].

24 In short, in the event that the State Defendants prevail at summary judgment or trial,
25 Plaintiff has no right to recover his requested injunctive relief against the University
26 Defendants. Plaintiff presented no *facts* establishing that any of the University Defendants
27 has authority to remove any exclusion from ADOA’s health insurance plan. And he also
28 presented no *legal authority* that would allow any of the University Defendants to interfere
with ADOA’s health insurance plan in this way. Therefore, in the event that the State

1 Defendants prevail at summary judgment or trial, the University Defendants should
2 likewise prevail. *See, e.g., Sebra v. Neville*, 801 F.2d 1135, 1138–39 (9th Cir. 1986)
3 (affirming the dismissal of a defendant when his “lack of authority” to provide the requested
4 relief precluded the plaintiff from “obtaining injunctive relief against him”); *Oram v.*
5 *Linderman*, No. CV-12-02450, 2014 WL 2569128, at *9–10 (D. Ariz. June 9, 2014)
6 (denying a plaintiff’s summary judgment motion against two defendants when “there [was]
7 no evidence that either Defendant ha[d] authority” to provide the requested relief).
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9
10

11 Dated: October 26, 2022

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By: *s/ Paul F. Eckstein*

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Certificate of Service

I certify that, October 26, 2022, I electronically transmitted the above document to the Clerk’s Office using the CM/ECF System for filing. The CM/ECF System notified the following CM/ECF registrants of the filing:

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