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12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 Helen Roe, a minor, by and through her
parent and next friend Megan Roe; James
16 Poe, a minor, by and through his parent and
next friend Laura Poe; and Carl Voe, a
17 minor, by and through his parent and next
friend Rachel Voe,

18 Plaintiffs,

19 v.

20 Don Herrington, in his official capacity as
Interim State Registrar of Vital Records and
21 Interim Director of the Arizona Department
of Health Services,
22

23 Defendant.

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

**REPLY IN FURTHER SUPPORT OF
PLAINTIFFS’ MOTION FOR CLASS
CERTIFICATION**

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1 **I. INTRODUCTION**

2 In the nearly eighteen months since Plaintiffs filed their motion for class
3 certification, Defendant has been unable to muster a single good reason why Plaintiffs
4 should not be permitted to challenge the constitutionality of A.R.S. § 36-337(A)(3) and its
5 implementing regulations (the “Surgical Requirement”) on behalf of a class of transgender
6 people. Indeed, the primary purpose of Rule 23(b)(2) of the Federal Rules of Civil
7 Procedure is to permit class certification in cases precisely like this one, where plaintiffs
8 seek to enjoin unlawful, class-based discrimination. *See Rodriguez v. Maricopa Cnty.*
9 *Comm. Coll. Dist.*, 2006 WL 89938, at *11 (D. Ariz. Jan. 12, 2006). Each of Defendant’s
10 arguments to the contrary misses the mark.

11 *First*, Defendant’s argument that Plaintiffs have not satisfied the numerosity
12 requirement under Rule 23(a)(1) is wrong. Defendant fundamentally misapprehends the
13 Proposed Class, which is not (as Defendant suggests) limited to transgender young people
14 who object to pursuing an accurate birth certificate through the court-order process under
15 § 36-337(A)(4). The Proposed Class includes *all* transgender people with Arizona birth
16 certificates who have not undergone a “sex change operation.” Unrebutted evidence shows
17 there are thousands of Proposed Class members, and Defendant does not contest that
18 joinder would be impracticable for numerous reasons.

19 *Second*, Defendant asserts that Plaintiffs lack standing, and thus do not satisfy the
20 typicality or adequacy requirements under Rule 23(a)(3) and (a)(4), because they have not
21 suffered emotional harm as a result of Defendant’s conduct. This is the *third time* that
22 Defendant has argued that Plaintiffs lack standing. “[T]he Court has already found that
23 Plaintiffs have standing and has already rejected Defendant’s arguments as to standing.”
24 (Dkt. 153 at 3 n.4; *see also* Dkt. 83 at 12–13.) Regardless, while the Surgical Requirement
25 has indeed caused Plaintiffs emotional harm, that is irrelevant to the standing inquiry.
26 Plaintiffs’ injury—like the injury of all members of the Proposed Class—is the
27 infringement of their constitutional rights. That is all that is needed to establish Plaintiffs’
28 standing in this case.

1 *Third*, the Court should also reject Defendant’s argument that Plaintiffs’ ability to
 2 obtain injunctive relief on their individual claims makes class certification “unnecessary
 3 and inappropriate.” As Defendant concedes, Rule 23(b)(2) class actions do not require a
 4 plaintiff to show that class-wide relief is “necessary” or superior to individual relief.
 5 Regardless, class-wide relief is critical here. Among other things, a class action will allow
 6 Proposed Class members to obtain relief even if Plaintiffs are able to obtain an accurate
 7 birth certificate—something that happened to two of the original plaintiffs in this case.

8 *Fourth*, and finally, Defendant has failed to show that the Proposed Class is
 9 overbroad. Although Defendant argues Plaintiffs’ allegations are limited to minors, the
 10 Amended Complaint in fact alleges that the Surgical Requirement discriminates against *all*
 11 transgender people with Arizona birth certificates who have not undergone a “sex change
 12 operation.” In denying Defendant’s motion to dismiss, the Court ruled that the statute
 13 facially discriminates on the basis of sex and transgender status. The Proposed Class is
 14 thus not overbroad, and the Court should certify it.

15 **II. ARGUMENT**

16 **A. The Proposed Class satisfies Rule 23(a)’s requirements.**

17 Defendant concedes “there are questions of law or fact common to the class.” Fed.
 18 R. Civ. P. 23(a)(2).¹ Thus, the only remaining issues under Rule 23(a) are whether “the
 19 class is so numerous that joinder of all members is impracticable,” the Plaintiffs’ claims
 20 are typical of the Proposed Class’s claims, and Plaintiffs and their counsel “will fairly and
 21 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(1), (3), (4). Defendant’s
 22 arguments that Plaintiffs do not meet these requirements fail.

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 25 ¹ Defendant erroneously asserts that one of the numerous common questions identified
 26 in Plaintiffs’ motion is moot because “Plaintiffs have . . . withdrawn their as-applied
 27 challenge.” (Dkt. 169 (Opp.) at 3 n.5). But Plaintiffs *never* purported to make an as-applied
 28 challenge to the Surgical Requirement. (See July 13, 2022 Hr’g Tr. 40:13–16; 44:22–45:2;
 49:12–17.) In any event, there can be no dispute that a facial challenge to the
 constitutionality of a statute raises a common question, which is all that Rule 23(a)(2)
 requires. See *Garris v. City of Los Angeles*, 2018 WL 5919214, at *4 (C.D. Cal. Feb. 9,
 2018) (“Cases that involve a facial challenge to a statute satisfy the commonality
 requirement.”).

1 **1. Joinder is impractical because the Proposed Class includes**
 2 **thousands of transgender Arizonans.**

3 It cannot seriously be disputed that there are more than forty transgender people with
 4 Arizona birth certificates (including those who will be born in the future) who have not
 5 had a “sex change operation.” *See Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir.
 6 2010) (“In general, courts find the numerosity requirement satisfied when a class includes
 7 at least 40 members.”). But the Court need not speculate on that point because, in support
 8 of their motion for class certification, Plaintiffs submitted demographic studies showing
 9 there are thousands of transgender people with Arizona birth certificates who have not had
 10 surgical treatment for gender dysphoria. This is ample evidence that the number of
 11 Proposed Class members satisfies the numerosity requirement. *See Toomey v. Arizona*,
 12 2020 WL 2465707, at *3 (D. Ariz. May 12, 2020) (concluding that Williams Institute
 13 survey data was sufficiently reliable to estimate number of transgender people in Arizona),
 14 *adopted by* 2020 WL 3197647 (D. Ariz. June 15, 2020).²

15 Defendant does not contend that the Proposed Class includes fewer than forty
 16 members or that the Proposed Class is unascertainable. Nor does Defendant rebut the
 17 demographic studies’ bases or conclusions. Rather, Defendant argues Plaintiffs have failed
 18 to adduce evidence establishing “the number of *young minor* children with Arizona birth
 19 certificates who . . . wish to change the sex marker their birth certificates . . . *and* who
 20 object to obtaining a court order under Subsection (A)(4).” (Dkt. 169 (Opp.) at 4–5.) But
 21 that is not the class Plaintiffs have asked the Court to certify. The Proposed Class includes
 22 “[a]ll transgender individuals born in Arizona, now and in the future, who seek to change
 23 the sex listed on their birth certificates but have not undergone a ‘sex change operation’ as
 24 treatment for their gender dysphoria.” (Dkt. 47 (Am. Compl.) ¶ 113.)

25 Contrary to Defendant’s suggestion, a plaintiff seeking class certification has no
 26 obligation to prove the proposed class contains a threshold number of members who are

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 28 ² Although Defendant claims Plaintiffs have failed to produce “admissible evidence”
 to establish numerosity, (Opp. at 5), Defendant does not specifically argue or provide
 support for the proposition that the demographic studies Plaintiffs cite are inadmissible.

1 identical to, or “look like,” the class representatives. While Rule 23 requires that class
 2 representatives’ *claims* are “reasonably coextensive with those of absent class members”
 3 and that class representatives can “adequately protect the interests of the class,” those
 4 issues have nothing to do with numerosity. *See Staton v. Boeing Co.*, 327 F.3d 938, 957
 5 (9th Cir. 2003) (quotation marks omitted). Nor is there a requirement, as Defendant
 6 contends, that Plaintiffs conclusively establish the precise number of members in the
 7 Proposed Class. *See Gaston v. GabFitFun, Inc.*, 2021 WL 3362028, at *4 (C.D. Cal. Apr.
 8 2, 2021) (finding no requirement to “state the exact number of potential class members”);
 9 *see also Sueoka v. United States*, 101 F. App’x 649, 653 (9th Cir. 2004) (stating that, in
 10 Rule 23(b)(2) cases, “even speculative or conclusory allegations regarding numerosity are
 11 sufficient to permit class certification” (quotation marks omitted)).

12 Defendant does not contest that joinder would be uniquely impracticable in this case
 13 because the Proposed Class includes *future* transgender people, transgender people with
 14 Arizona birth certificates who reside out of state, and transgender people who would be
 15 reluctant to join a lawsuit that could out them as transgender. Based on Plaintiffs’
 16 un rebutted evidence and common sense, Plaintiffs have satisfied the Rule 23(a)(1)
 17 numerosity requirement.³ *See Chief Goes Out v. Missoula Cnty.*, 2013 WL 139938, at *4
 18 (D. Mont. Jan. 10, 2013) (“A court must rely on simple common sense when determining
 19 whether a class size meets the numerosity requirement.” (quotation marks omitted)).

20 **2. Plaintiffs have Article III standing and otherwise meet the**
 21 **typicality and adequacy requirements.**

22 Defendant’s contention that Plaintiffs cannot satisfy Rule 23(a)’s typicality and
 23 adequacy requirements rests solely on an Article III standing argument this Court has
 24 already considered and rejected. At the outset of the case, Defendant argued that Plaintiffs
 25 lacked Article III standing because their “alleged injuries cannot be redressed by a favorable

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 27 ³ Defendant incorrectly states that “[t]he Court ruled that Plaintiffs’ witness
 28 declaration submitted in support of numerosity (Dkt. 89-1) is inadmissible.” (Opp. at 5
 n.8). In fact, Plaintiffs agreed to withdraw the Declaration of Lizette Trujillo to prevent
 Defendant from seeking intrusive and unnecessary discovery into the identities of members
 of transgender support groups, and the Court deemed it withdrawn. (Dkt. 153.)

1 decision.” (Dkt. 56 at 7.) In denying Defendant’s motion to dismiss, the Court held that
 2 “Plaintiffs have redressable injuries in this case.” (Dkt. 83 at 13.) More recently, in
 3 rejecting Defendant’s request to compel Plaintiffs to produce their school, medical, and
 4 social media records, the Court stated: “To the extent Defendant asserts that this information
 5 is relevant as to standing, the Court has already found that Plaintiffs have standing and has
 6 already rejected Defendant’s arguments as to standing.” (Dkt. 153 at 3, n.4). Nothing has
 7 changed since these rulings that warrants revisiting Plaintiffs’ standing. Even if the Court
 8 considered the issue anew, Defendant’s recycled arguments cannot change that violations
 9 of Plaintiffs’ constitutional rights are clearly an injury that can be redressed by this Court.

10 Defendant first argues that Plaintiffs do not have an “actual non-speculative injury”
 11 caused by Defendant sufficient to meet the “injury-in-fact” requirement for Article III
 12 standing. (Opp. at 6–10.) As support, Defendant cites Plaintiffs’ mothers’ deposition
 13 testimony, which purportedly demonstrates that Plaintiffs are well-adjusted and have not
 14 been prevented from participating in academic and extra-curricular activities due to their
 15 lack of an accurate birth certificate. (*See, e.g.*, Opp. at 8.) But Defendant does not dispute
 16 that Plaintiffs have experienced bullying and harassment; instead, he asserts that their
 17 mistreatment was either unrelated to their gender or, alternatively, caused by their
 18 transgender status rather than Defendant’s enforcement of an unconstitutional law. (*See,*
 19 *e.g.*, Opp. at 7, 9.) Defendant misunderstands the nature of the injury in this case.

20 Plaintiffs’ injury is not the emotional impact of § 36-337(A)(3)—although there can
 21 be no question of emotional harm based on the evidentiary record.⁴ Rather, the injury is
 22 the statute’s invasion of Plaintiffs’ rights to due process and equal protection under the
 23 Constitution. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (describing an
 24 injury in fact as “an invasion of a legally protected interest”). The “liberty interests

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 26 ⁴ Each of Plaintiffs’ mothers testified that their child’s inability to obtain an accurate
 27 birth certificate had caused them considerable harm. (*See, e.g.*, Opp. Ex. 1 (Megan Roe
 28 Dep. Tr.) 53:15–23; Opp. Ex. 2 (Laura Poe Dep. Tr.) 70:12–15; Opp. Ex. 3 (Rachel Voe
 Dep. Tr.) 47:2–10.) Each mother also testified about the considerable challenges of
 obtaining an accurate birth certificate through the § 36-337(A)(4) court order process. (*See,*
e.g., Megan Roe Dep. Tr. 116:24–25; Laura Poe Dep. Tr. 84:4–6; Rachel Voe Dep. Tr.
 118:6–12.)

1 protected by the Due Process Clause of the Fourteenth Amendment . . . constitute legally
 2 protected interests for the purpose of standing.” *Osborne v. Cnty. of Riverside*, 385 F. Supp.
 3 2d 1048, 1052 (C.D. Cal. 2005). Moreover, “[t]he ‘injury in fact’ in an equal protection
 4 case . . . is the denial of equal treatment resulting from the imposition of the barrier.” *NE*
 5 *Fla. Ch. of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666
 6 (1993); *Ruelas v. Cnty. of Alameda*, 519 F. Supp. 3d 636, 659 (N.D. Cal. 2021) (finding
 7 that injury for equal protection purposes is constitutional violation, not effects of the
 8 violation); *see also, e.g., Hecox v. Little*, 479 F. Supp. 3d 930, 960 (D. Id. 2020) (holding
 9 that law preventing transgender athlete from participating in collegiate athletic teams
 10 injured her regardless of whether she would have ultimately made the team).

11 This Court has already concluded that the Surgical Requirement invades Plaintiffs’
 12 rights under the Due Process Clause and Equal Protection Clause of the Constitution. (Dkt.
 13 83 at 9–12.) Moreover, Defendant does not dispute that Plaintiffs and the Proposed Class
 14 members cannot obtain an accurate birth certificate through ADHS’s private administrative
 15 process precisely because of § 36-337(A)(3). Thus, Plaintiffs have established (once again)
 16 that they have suffered an injury-in-fact.⁵

17 Defendant otherwise does not argue Plaintiffs’ claims are atypical of the Proposed
 18 Class’s claims or that Plaintiffs or their counsel are unable to adequately represent the
 19 Proposed Class. Plaintiffs satisfy the typicality and adequacy requirements of Rule 23(a).

20 **B. Class certification is appropriate under Rule 23(b)(2).**

21 This case is tailor-made for class certification under Rule 23(b)(2), which was
 22 designed for civil rights actions “against parties charged with unlawful, class-based
 23

24 ⁵ Defendant’s rehashed argument that Plaintiffs’ injury cannot be redressed by the
 25 Court should be rejected once again. Defendant asserts that because Plaintiffs have
 26 mounted a facial challenge, the Court cannot redress Plaintiffs’ injury without “rewriting
 27 the statute entirely in a manner that the Arizona Legislature did not intend.” (Opp. at 6 n.9.)
 28 The fact that Plaintiffs make a facial challenge does not mean that the entire statute need be
 invalidated. As Defendant concedes, the Court has “broad discretion to fashion injunctive
 relief” tailored to redress Plaintiffs’ injuries, *Melendres v. Maricopa Cnty.*, 897 F.3d 1217,
 1221 (9th Cir. 2018), and the Court has already concluded it can grant appropriate injunctive
 relief should Plaintiffs prevail, (Dkt. 83 at 12–13).

1 discrimination.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997).
 2 Rule 23(b)(2)’s requirements “are unquestionably satisfied when members of a putative
 3 class seek uniform injunctive or declaratory relief from policies or practices that are
 4 generally applicable to the class as a whole.” *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir.
 5 2014). Plaintiffs easily meet that standard, as they seek to enjoin ADHS from enforcing the
 6 Surgical Requirement, which precludes Plaintiffs and all members of the Proposed Class
 7 from obtaining an accurate birth certificate through ADHS’s private administrative process
 8 under § 36-337(A)(3) and its implementing regulations.⁶

9 Defendant confuses the straightforward requirements of Rule 23(b)(2) by arguing
 10 that injunctive relief may not result in positive outcomes for all members of the Proposed
 11 Class. (Opp. at 13–14.) By way of example, Defendant argues that if the requested
 12 injunction is granted, “a child who is too young to understand the concept of sex or gender
 13 or communicate their comprehension could be misdiagnosed with gender dysphoria,” or
 14 that some parents could even engage in birth certificate fraud. (*Id.*) Defendant’s concerns
 15 are both speculative and irrelevant.⁷ The question is not whether injunctive relief reflects
 16 good policy or whether an injunction’s effects would be universally positive. Rather, the
 17 question under Rule 23(b)(2) is whether Plaintiffs seek uniform injunctive relief that would
 18 inure to the benefit of the entire class. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360
 19 (2011) (“The key . . . is ‘the indivisible nature of the injunctive or declaratory remedy
 20 warranted—the notion that the conduct is such that it can be enjoined or declared unlawful
 21 only as to all of the class members or as to none of them.’”).

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 24 ⁶ Contrary to Defendant’s view, facial challenges present “a legal question plainly
 25 capable of class-wide resolution.” *Fodera v. Equinox Holdings, Inc.*, 341 F.R.D. 616, 629
 (N.D. Cal. 2022). Courts regularly certify classes under Rule 23(b)(2) in cases involving
 facial statutory challenges. *Garris*, 2018 WL 5919214, at *8 (collecting cases).

26 ⁷ There is no reason to believe—and Defendant cites no evidence supporting his
 27 belief—that permitting transgender Arizonans who have not had a “sex change operation”
 28 to obtain an accurate birth certificate through a private administrative process will result in
 more or different gender dysphoria diagnoses. Moreover, the implication that requiring
 transgender people to use the § 36-337(A)(4) court order process will reduce or
 disincentivize inaccurate gender dysphoria diagnoses is perplexing and unsupported.

1 This is not the case where some of the Proposed Class members would be left out of
2 the proposed injunction. *Cf. Wal-Mart*, 564 U.S. at 359 (denying class certification under
3 Rule 23(b)(2) in part because former employees would not benefit from an injunction
4 affecting ongoing policies); *Moheb v. Nutramax Labs. Inc.*, 2012 WL 6951904, at *6 (C.D.
5 Cal. Sept. 4, 2012) (finding class member who no longer purchased drug would not benefit
6 from injunction affecting advertising practices for drug). Nor would the requested
7 injunctive relief leave certain Proposed Class members worse off. *Cf. Allied Orthopedic*
8 *Appliances, Inc. v. Tyco Healthcare Grp., L.P.*, 247 F.R.D. 156, 177 (C.D. Cal. 2007)
9 (finding injunctive relief would have divergent effect on two groups of class members).
10 Rather, all members of the Proposed Class would benefit from an injunction against the
11 enforcement of the Surgical Requirement. An injunction would protect all Proposed Class
12 members' constitutional rights to due process and equal protection and make it less
13 complicated and burdensome to obtain accurate birth certificates.

14 Defendant further argues class certification is “unnecessary and inappropriate”
15 because declaratory or injunctive relief ordered on Plaintiffs' individual claims would
16 produce the same results as class-wide injunctive relief. (Opp. at 10–13 (citing *James v.*
17 *Ball*, 613 F.2d 180, 186 (9th Cir. 1979), *rev'd on other grounds*, 451 U.S. 355, 362 (1981).)
18 But as Defendant concedes, Rule 23(b)(2) does not require a plaintiff seeking class
19 certification to show that class treatment is necessary. (Opp. at 11 n.11); *see Ollier v.*
20 *Sweetwater Union High Sch. Dist.*, 251 F.R.D. 564, 566 (S.D. Cal. 2008) (“There is no
21 requirement in the Ninth Circuit that the ‘need’ for an injunction be considered in certifying
22 a class.”); *see also Nehmer v. United States Veterans Admin.*, 118 F.R.D. 113, 118–19 (N.D.
23 Cal. 1987) (concluding that *James* has limited precedential value). Imposing a necessity
24 requirement would “eviscerate” Rule 23(b)(2) class actions, which primarily seek
25 declaratory and injunctive relief. *J.L. v. Cissna*, 2019 WL 415579, at *11 (N.D. Cal. Feb.
26 1, 2019); *Californians for Disability Rights, Inc. v. Calif. Dep't of Transport.*, 249 F.R.D.
27 334, 349 (N.D. Cal. 2008).

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1 “[C]lass certification should not be denied simply because class adjudication is not
2 ‘necessary’ where all of the express requirements of Rule 23 are satisfied.” *Pereira v.*
3 *Ralphs Grocery Co.*, 2007 WL 9759648, at *4 (C.D. Cal. July 2, 2007). And in this case,
4 where the actual requirements of Rule 23 are easily satisfied, Defendant has offered no
5 reason for the Court to take the extraordinary step of denying Plaintiffs’ motion for class
6 certification simply because members of the Proposed Class could conceivably benefit from
7 injunctive relief on Plaintiffs’ individual claims. There is no suggestion, for example, that
8 this case would become less manageable or more expensive if a class were certified. *Cf.*
9 *DiFrancesco v. Fox*, 2019 WL 145627, at *2–3 (D. Mont. Jan. 9, 2019) (citing costs).

10 On the contrary, there are compelling reasons to adjudicate Plaintiffs’ constitutional
11 claims on a class-wide basis. Class certification ensures that all Proposed Class members’
12 claims are resolved in the same manner and eliminates the risk of inconsistent decisions.
13 *See Cissna*, 2019 WL 415579, at *11 (N.D. Cal. Feb. 1, 2019). Moreover, “Rule 23(b)(2)
14 class actions have the added benefit of providing notice to unnamed class members who
15 might not otherwise know they are entitled to relief and enabling class members to avoid
16 the mootness of important claims.” *Arnott v. United States Citizenship and Immigration*
17 *Servs.*, 290 F.R.D. 579, 588–89 (C.D. Cal. 2012); *see also Toomey*, 2020 WL 2465707, at
18 *5. The mootness consideration is particularly relevant here. Earlier in this case, two
19 former plaintiffs reached an agreement with Defendant whereby Defendant issued them
20 corrected birth certificates. Defendant then contended that those plaintiffs’ claims were
21 moot. (Dkt. 56 at 6 (arguing that “D.T. and Jane Doe lack Article III standing” because
22 “they have already received their amended birth certificates”).) Class certification would
23 create an opportunity for Plaintiffs to reach similar agreements with Defendant without the
24 risk of mootness of their claims.

25 **C. The Proposed Class is not overbroad.**

26 Finally, Defendant’s argument that the Proposed Class is too broad because it is not
27 limited to transgender young people like Plaintiffs and because it includes individuals “who
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1 do not object to obtaining a court order,” (Opp. at 15–16), rests on mischaracterization of
2 Plaintiffs’ claims and an incorrect recitation of the law.

3 From the outset of the case, Plaintiffs have sought to represent a class of transgender
4 Arizonans. (*See* Am. Compl. ¶ 113.) Although Plaintiffs are minors, they allege that the
5 Surgical Requirement discriminates against *all* transgender people in Arizona who have not
6 undergone a “sex change operation.” (*See, e.g.*, Am. Compl. ¶ 57 (“Despite the substantial
7 and unjustified burdens imposed by the surgical requirement . . . Defendants continue to
8 enforce Subsection (A)(3) to the detriment of transgender people.”); ¶ 126 (“Excluding
9 transgender people who have not undergone surgery to treat their gender dysphoria from
10 obtaining corrected or amended birth certificates using the private administrative
11 process . . . does not serve any rational, legitimate, important, or compelling state
12 interest.”); ¶ 115 (“[A] large proportion of transgender young people and adults . . . are
13 denied the opportunity to amend the sex listed on their birth certificate through the private
14 administrative process created by Subsection (A)(3) . . .”).) Defendant does substantiate
15 his claim that, because Plaintiffs are minors, they are incapable of adequately representing
16 all members of the Proposed Class. Nor, as explained above, is there any merit to
17 Defendant’s argument that the Proposed Class must be limited to young people because
18 Plaintiffs are young people.

19 Likewise, the idea that some Proposed Class members may wish to try to obtain an
20 accurate birth certificate through the court process under § 36-337(A)(4) does not make the
21 Proposed Class definition overbroad. *See* Charles Alan Wright, Arthur R. Miller & Mary
22 Kay Kane, *Federal Practice & Procedure* § 1775 (3d ed. updated July 2022) (“All the class
23 members need not be aggrieved by or desire to challenge the defendant’s conduct in order
24 for some of them to seek relief under rule 23(b)(2). What is necessary is that the challenged
25 conduct or lack of conduct be premised on a ground that is applicable to the entire class.”).
26 The Surgical Requirement discriminates against—and therefore harms—all Proposed Class
27 members, notwithstanding the fact that some of them may wish to obtain, and be able to
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1 obtain, an accurate birth certificate through other means, including the § 36-337(A)(4) court
2 order process.

3 **III. CONCLUSION**

4 Defendant has offered this Court no persuasive reason to deny class certification.
5 His arguments are speculative, unsupported, legally incorrect, have already been rejected
6 by this Court, or are based on a mischaracterization or misunderstanding of the Plaintiffs'
7 claims and the scope of the Proposed Class. For the foregoing reasons, Plaintiffs' motion
8 for class certification should be granted.

9
10 Dated: February 24, 2023

Respectfully submitted,

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