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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**
17

18 Helen Roe, a minor, by and through her parent
and next friend Megan Roe; James Poe, a
19 minor, by and through his parent and next
friend Laura Poe; and Carl Voe, a minor, by
20 and through his parent and next friend, Rachel
Voe,

21 Plaintiffs,

22 v.

23 Jennie Cunico, in her official capacity as State
Registrar of Vital Records and Director of the
24 Arizona Department of Health Services,

25 Defendant.
26
27
28

NO. 4:20-cv-00484-JAS

**DEFENDANT'S STATEMENT OF
FACTS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

1 Pursuant to Local Rule of Civil Procedure 56.1(a), Defendant submits the following
2 Statement of Facts (“DSOF”), Exhibits, and Appendix (“App.”) in support of her Motion
3 for Summary Judgment.

4 1. Some transgender people do not pursue any form of surgery as part of their
5 transition process. (Exhibit 1, Report of Dr. Daniel Shumer, ¶ 37.)

6 2. The “sex” field on an Arizona birth certificate can be reported as either
7 “male,” “female,” or “not yet determined.” (Exhibit 2, Deposition of Krystal Colburn, R.T.
8 4/10/23, at 53.)

9 3. That requirement comports with the U.S. Standard Certificate of Live Birth,
10 issued by the Centers for Disease Control and Prevention, National Center for Health
11 Statistics (“NCHS”). (Ex. 2 at 49–50, 54–55.) See [https://www.cdc.gov/nchs/data/dvs/
12 birth-edit-specifications.pdf](https://www.cdc.gov/nchs/data/dvs/birth-edit-specifications.pdf), at Item 3, Page 1 (instructions for completing “sex” of the
13 child on birth certificate) (App. 11); [https://www.cdc.gov/nchs/nvss/facility-worksheets-
14 guide/31.htm](https://www.cdc.gov/nchs/nvss/facility-worksheets-guide/31.htm) (defining “[s]ex of child” on birth certificate as “[t]he sex of the infant based
15 on physical characteristics presented at birth”) (App. 12).

16 4. The NCHS’s Model State Vital Statistics Act and Regulations states that the
17 state registrar shall change a person’s name on a birth certificate upon receipt of a court
18 order, and further states that a state registrar shall prescribe by regulation the fee to be paid
19 for amending a vital record. (Exhibit 3, ADHS000198, §§ 21(c), 25(a)(4).)

20 5. The NCHS’s Model State Vital Statistics Act and Regulations states that
21 amendments to vital records may be made “in accordance with ... regulations adopted by
22 the State Agency.” (Ex. 3, § 21(a).)

23 6. The NCHS’s Model State Vital Statistics Act and Regulations states:
24 “Upon receipt of a certified copy of an order of (a court of competent jurisdiction) indicating
25 the sex of an individual born in this State has been changed by surgical procedure and
26 whether such individual’s name has been changed, the certificate of birth of such individual
27 shall be amended as prescribed by regulation.” (Ex. 3, § 21(d).)

28 7. The Department has assisted with procuring, received, and honored court

1 orders to change the sex marker on a person’s birth certificate. (Ex. 2 at 58–59, 89; Dkt.
2 23-1, ¶ 7.)

3 8. In 2017, a state court Administrative Law Judge ruled that the documentation
4 required by § 36-337(A)(3) and R9-19-208(O) is not required to secure a court order under
5 § 36-337(A)(4) and R9-19-208(B), which the Director adopted. (Exhibit 4, ADHS000294–
6 303.)

7 9. The parties agree that the sex field on a birth certificate does not document a
8 baby’s gender identity. (Ex. 1, ¶¶ 22, 24; Ex. 2 at 52–53; Exhibit 5, Expert Report of Dr.
9 Randi Ettner, ¶¶ 16, 18–19.)

10 10. “Gender identity” is not anatomical, but rather “a person’s inner sense of
11 belonging to a particular sex, such as male or female,” which is only “detectible by self-
12 disclosure.” (Ex. 5, ¶¶ 19–20.)

13 11. For transgender persons, “there is a divergence between anatomy and
14 identity,” and the former “does not align with” the latter. (Ex. 5, ¶¶ 16–20.)

15 12. “Like non-transgender people, transgender people do not simply ... behave
16 consistently with their gender identity.” (Ex. 5, ¶ 21.)

17 13. Not all transgender persons “align their physical characteristics, voice,
18 mannerisms, and appearance to match their gender identity.” (*See* Ex. 5, ¶ 50 [opining only
19 that “[m]any” transgender individuals do]; *see also* Ex. 1, ¶ 32 [opining only that the
20 transition process “typically” includes a “social transition”].)

21 14. Individuals born with an intersex condition, such as “Congenital Adrenal
22 Hyperplasia,” which can result in “ambiguous genitalia,” may seek out a “sex change
23 operation.” (Ex. 1, ¶¶ 8, 41–42; Ex. 2 at 125.)

24 15. Eleanor Eisenberg, Executive Director of the Arizona Civil Liberties Union,
25 supported the 2004 amendments to the vital records laws. (Exhibit 6, Feb. 5, 2004,
26 Committee on Health, Minutes on Meeting (H.B. 2200).)

27 16. The sex marker on a birth certificate is information that is used for Arizona
28 vital statistics and related reports. *See, e.g.*, <https://pub.azdhs.gov/health-stats/report/ahs/>

1 [ahs2020/pdf/ahs2020.pdf](#) (Arizona Health Status and Vital Statistics Annual Report) (App.
2 13); <https://pub.azdhs.gov/health-stats/menu/info/pop/index.php> (population statistics)
3 (App. 14); <https://www.azdhs.gov/documents/prevention/womens-childrens-health/reports>
4 [-fact-sheets/child-fatality-review-annual-reports/cfr-annual-report-2022.pdf](#) (child fatality
5 review report) (App. 15); [https://www.azdhs.gov/documents/preparedness/public-health-](https://www.azdhs.gov/documents/preparedness/public-health)
6 [statistics/cancer-registry/adhs-acr-arizona-cancer-report-2016-2020.pdf](#) (Arizona cancer
7 report) (App. 16); <https://pub.azdhs.gov/health-stats/report/ahs/ahs2020/pdf/1b2.pdf>
8 (trends) (App. 17); <https://pub.azdhs.gov/health-stats/menu/info/sources.php> (source data)
9 (App. 18).

10 17. The sex marker on a birth certificate is information that is used to prepare
11 national vital statistics and for other statistical or research purposes. *See, e.g.,*
12 <https://www.cdc.gov/nchs/data/nvsr/nvsr72/nvsr72-12.pdf> (National Center for Health
13 Statistics National Vital Statistics Report, Life Tables) (App. 19);
14 <https://www.cdc.gov/nchs/data/nvsr/nvsr72/nvsr72-11.pdf> (National Center for Health
15 Statistics National Vital Statistics Report, Infant Mortality) (App. 20).

16 18. Identity theft is pervasive in the United States. *See*
17 <https://bjs.ojp.gov/document/vit21.pdf> (U.S. Dept. of Justice, Bureau of Justice Statistics,
18 Victims of Identity Theft, 2021) (App. 21); [https://oig.hhs.gov/oei/reports/oei-07-99-](https://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf)
19 [00570.pdf](#) (Dept. of Health and Human Services, Office of Inspector General, Birth
20 Certificate Fraud, 2000) (App. 22). In 1977, the U.S. Public Health Service revised its
21 Model State Vital Statistics Act, in part, “to strengthen [sic] efforts to reduce birth certificate
22 fraud.” *See* <https://oig.hhs.gov/oei/reports/oai-02-86-00001.pdf> (Dept. of Health and
23 Human Services, Office of Inspector General, Birth Certificate Fraud, 1988), at 1 (App. 23).
24 “Almost all perpetrators of birth certificate fraud go through a two-step process. ... (1) to
25 fraudulently use a birth certificate to obtain false ID documents and thus create a false
26 identity; and (2) to use one or more of these false ID documents to obtain government
27 benefits or privileges to which one is not entitled, or to commit other crimes under an
28 assumed name. The first step is to use a birth certificate as a ‘breeder’ document, and the

1 second step is to use the resulting false identity as a modus operandi, or method of operating,
2 to defraud business or Government, and/or avoid legal sanctions.” *Id.* at 4.

3 DATED this 17th day of November, 2023.

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