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14
 15 **UNITED STATES DISTRICT COURT**
 16 **DISTRICT OF ARIZONA**

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

20
 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.

NO. 4:20-cv-00484-JAS

**DEFENDANT'S
 CONTROVERTING STATEMENT
 OF FACTS RE: PLAINTIFFS'
 SEPARATE STATEMENT OF
 FACTS IN SUPPORT OF THEIR
 MOTION FOR SUMMARY
 JUDGMENT**

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1 Defendant submits the following Controverting Statement of Facts (“DCSOF”).
2 Counsel for Plaintiffs and Defendant (each a “Party” and together the “Parties”) met and
3 conferred regarding the statements of fact each submitted with their cross-motions for
4 summary judgment. (Docs. 231, 233.) The Parties agree that, while each Party has certain
5 disagreements with and objections to the opposing Party’s statement of facts, any such
6 disputes and objections are about *each party’s interpretation of or characterization of the*
7 *evidence*. The Parties agree that there are no disputes that would require a fact-finding or
8 evidentiary hearing before the Court. Thus, the Parties are each filing a Controverting
9 Statement of Facts to preserve their arguments and present their view of the other party’s
10 evidence, but nevertheless, the Parties believe that the record permits the Court to resolve
11 their cross-motions as a matter of law.

12 1. When a child is born, a health care provider identifies the child’s sex based
13 on the child’s observable anatomy. *See*, Expert Report of Dr. Randi C. Ettner, Ph.D. ¶ 16,
14 attached as Exhibit 1 to the Declaration of Colin M. Proksel (“Proksel Decl.”); Expert
15 Report of Dr. Daniel Shumer, MD, MPH ¶ 22, attached as Exhibit 2 to the Proksel Decl.

16 **Objection: Defendant objects to this contention as phrased but does not object**
17 **to the following alternative phrasing: “When a child is born, a health care provider**
18 **or other person present at the child’s birth records either “male,” “female,” or “not**
19 **yet determined” in the sex field of the child’s Arizona birth certificate based on the**
20 **person’s observation of the child’s “observable anatomy” or “external genitalia” at**
21 **the time of birth.” Defendant believes its phrasing of the contention is a more**
22 **complete and accurate description of the evidence and Arizona law. (Dkt. 231, ¶ 2;**
23 **Dkt. 233-2 at 6, ¶ 16.) See also A.A.C. R9-19-201.**

24 2. In medical terminology, this provider-identified sex is often referred to as the
25 person’s “assigned sex.” *See* Ex. 1 ¶ 16; Ex. 2 ¶ 22.

26 **Objection: Defendant objects to this contention as phrased to the extent**
27 **Plaintiffs intended the contention to suggest that the Arizona Department of Health**
28

1 Services, Bureau of Vital Records is responsible for “assigning” a sex to any person
2 born in Arizona. Defendant does not object to the following alternative phrasing,
3 which Defendant believes is a more complete and accurate description of the evidence
4 and Arizona law: “Because the Arizona Department of Health Services, Bureau of
5 Vital Records (“ADHS/BVR”) only issues a birth certificate that reflects information
6 submitted to ADHS/BVR by a health care provider or other person who attended the
7 child’s birth, ADHS/BVR does not “assign” a sex to any individual. However,
8 ADHS/BVR recognizes that other people refer to the sex field recorded on a child’s
9 birth certificate as the child’s “birth-assigned sex,” “assigned sex,” or “sex assigned
10 at birth.”” (Dkt. 233-2 at 6, ¶ 16 & at 50, ¶ 22.) *See also* A.A.C. R9-19-201.

11 3. Gender identity is the medical term for a person’s internal, innate, and deeply
12 held sense of their own gender. *See* Ex. 1 ¶ 19; Ex. 2 ¶¶ 24–25.

13 **Not disputed.**

14 4. There is a medical consensus that a person’s gender identity has a significant
15 biological foundation and is not subject to voluntary change. *See* Ex. 1 ¶¶ 19, 24, 26; Ex.
16 2 ¶¶ 19, 25, 40.

17 **Not disputed.**

18 5. Gender identity, like sexual orientation, is immutable. *See* Ex. 1 ¶¶ 24, 26;
19 Ex. 2 ¶¶ 25, 40.

20 **Objection:** Defendant does not dispute that a person’s gender identity is
21 immutable but neither of Plaintiffs’ experts offered an opinion as to whether sexual
22 orientation is immutable. Whether a person’s sexual orientation is immutable,
23 however, is not material to the cross motions for summary judgment.

24 6. Most peoples’ gender identity matches their sex assigned at birth. *See* Ex. 1
25 ¶ 16; Ex. 2 ¶ 22.

26 **Objection:** Defendant objects to this contention as phrased but does not object
27 to the following alternative phrasing: “Most peoples’ gender identity aligns with or
28 matches the sex field recorded on their birth certificate.” The basis for this objection

1 **is the same as Paragraphs 1 and 2.**

2 7. For a transgender person, that initial designation does not match the person’s
3 gender identity. *See* Ex. 1 ¶ 16; Ex. 2 ¶ 22.

4 **Objection: Defendant objects to this contention as phrased but does not object**
5 **to the following alternative phrasing: “For a transgender person, the sex field**
6 **recorded on their birth certificate does not match the person’s gender identity.” The**
7 **basis for this objection is the same as Paragraphs 1, 2, and 6.**

8 8. The discordance between one’s gender identity and birth-assigned sex can
9 cause gender dysphoria. *See* Ex. 1 ¶ 16; Ex. 2 ¶ 28.

10 **Objection: Defendant objects to this contention as phrased but does not object**
11 **to the following alternative phrasing: “The discordance between a person’s gender**
12 **identity and the sex field recorded on their birth certificate can cause gender**
13 **dysphoria.” The basis for this objection is the same as Paragraphs 1, 2, 6, and 7.**

14 9. Gender dysphoria is a serious medical condition that, if left untreated, can
15 cause serious health consequences, including anxiety, depression, eating disorders,
16 substance abuse, self-harm, and suicide. *See* Ex. 1 ¶ 27; Ex. 2 ¶ 28.

17 **Objection: Defendant does not dispute that gender dysphoria is a serious**
18 **medical condition that, if left untreated, can cause serious health consequences,**
19 **including anxiety, depression, self-harm, and suicide, but neither of Plaintiffs’ experts**
20 **opined that gender dysphoria can cause eating disorders or substance abuse. Whether**
21 **gender dysphoria can cause eating disorders or substance abuse, however, is not**
22 **material to the cross-motions for summary judgment.**

23 10. When individuals with gender dysphoria receive appropriate medical care and
24 support, they can thrive. *See* Ex. 1 ¶¶ 30, 46; Ex. 2 ¶ 31.

25 **Not disputed.**

26 11. Major associations of medical and mental health providers in the United
27 States, including the American Medical Association, the American Academy of Pediatrics,
28 the American Psychiatric Association, the American Psychological Association, and the

1 Pediatric Endocrine Society, have adopted or endorsed standards of care for treating gender
2 dysphoria. *See* Ex. 1 ¶¶ 33–34; Ex. 2 ¶¶ 29–38.

3 **Not disputed.**

4 12. The goal of treatment is to allow transgender people to live consistently with
5 their gender identities in all aspects of their lives. *See* Ex. 1 ¶ 42; Ex. 2 ¶ 27.

6 **Objection: Defendant objects to this contention as phrased but does not object**
7 **to the following alternative phrasing: “The goal of treatment for gender dysphoria is**
8 **to “align [a] person’s body and lived experience with the person’s” gender identity**
9 **and “to alleviate their distress by bringing their lives into closer alignment with their**
10 **gender identity.” Defendant believes that this alternative phrasing is a more complete**
11 **and accurate description of the cited evidence because it quotes directly from the cited**
12 **Exhibit.**

13 13. The process of undergoing treatment to alleviate gender dysphoria is
14 commonly referred to as transition. *See* Ex. 1 ¶ 38; Ex. 2 ¶ 32.

15 **Not disputed.**

16 14. The transition process typically includes one or more of the following three
17 components: (i) social transition, including adopting a new name, pronouns, appearance,
18 and clothing, and correcting identity documents; (ii) medical transition, including puberty-
19 suppressing medication and hormone-replacement therapy; and, typically only for adults,
20 (iii) surgeries to alter the appearance and functioning of primary- and secondary-sex
21 characteristics. *See* Ex. 1 ¶¶ 34, 38–39; Ex. 2 ¶ 32.

22 **Not disputed.**

23 15. Transition is highly individualized for each person. *See* Ex. 1 ¶¶ 30, 34, 52;
24 Ex. 2 ¶¶ 27, 32–34; transcript of the deposition of Daniel Shumer MD, taken on July 20,
25 2023 (33:15–25, 36:10–18, 36:19–37:2), attached as Exhibit 3 to the Proksel Decl.

26 **Not disputed.**

27 16. Birth certificates reflect the government’s recognition of an individual’s sex.
28 *See* Ex. 1 ¶¶ 14, 57.

1 **Objection:** Defendant objects to this contention as phrased because it
2 incorrectly implies that governments generally, or ADHS/BVR specifically, have a role
3 in determining a person’s sex or inputting the sex field on a person’s birth certificate.
4 Defendant does not object to the following alternative phrasing: “A birth certificate is
5 a government-issued document that contains a sex field reflecting the “observable
6 anatomy” or “external genitalia” of the individual as observed at the time of birth by
7 a health care provider or other person attending that individual’s birth.” Defendant
8 believes this alternative phrasing is a more complete and accurate description of the
9 cited evidence and Arizona law. (*See* DCSOF ¶¶ 1, 2, 6, 7, and 8, above.)

10 17. Birth certificates are government-issued documents that people use to prove
11 their identities for a wide variety of situations, including to school registration and
12 employment and to obtain other identity documents such as driver’s licenses, social security
13 cards, and passports. *See* transcript of the deposition of Randi C. Ettner, taken on July 26,
14 2023 (101:17–23, 103:4–8), attached as Exhibit 4 to the Proksel Decl.; transcript of the
15 deposition of the designated representative of the Arizona Department of Health Services
16 (“ADHS”), Krystal Colburn, taken pursuant to Federal Rule of Civil Procedure 30(b)(6) on
17 April 10, 2023 (50:14–18, 50:24–51:7), attached as Exhibit 5 to the Proksel Decl.; transcript
18 of the deposition of Laura Poe, taken on November 3, 2022 (32:1–11), attached as Exhibit
19 6 to the Proksel Decl.

20 **Not disputed.**

21 18. Transgender people who cannot change the sex marker on their identity
22 documents to accurately reflect their gender identity face myriad practical, social, and
23 psychological consequences. *See* Ex. 1 ¶ 44; Ex. 2 ¶ 45; Ex. 4 (98:3–100:13, 101:17–23,
24 103:4–104:4).

25 **Objection:** Defendant objects to this contention as phrased to the extent
26 Plaintiffs intend to imply that transgender people in Arizona “cannot” amend the sex
27 field on their Arizona birth record because that is an inaccurate description of Arizona
28 law. *See* A.R.S. § 36-337. Does not object to the following alternative phrasing:

1 “Transgender people who have a birth certificate with a sex field that does not match
2 their gender identity may experience myriad practical, social, and psychological
3 consequences.” Defendant believes that this alternative phrasing is an accurate
4 description of the cited evidence that does not make unsupported implications about
5 Arizona law.

6 19. Transgender people may not be able to use their birth certificate to prove their
7 identity. For example a birth certificate containing a sex marker that visibly conflicts with
8 a person’s gender identity—as reflected by their physical appearance—may arouse
9 suspicion as to whether they are the person identified by the document. *See* Ex. 1 ¶ 59; Ex.
10 2 ¶ 45; Ex. 4 (98:3–100:13, 103:4–8, 103:24–104:4); transcript of the deposition of Megan
11 Roe, taken on November 3, 2022 (34:21–36:25), attached as Exhibit 7 to the Proksel Decl.

12 **Objection: Defendant does not dispute that transgender people who have a**
13 **birth certificate with a sex field that may be perceived as inconsistent with their**
14 **physical appearance or gender expression may experience questions about their**
15 **transgender status, but Defendant objects in that the cited Exhibits do not support the**
16 **contentions that transgender people may not be able to use their birth certificate to**
17 **prove their identity or that a birth certificate containing a sex field that visibly**
18 **conflicts with a person’s gender identity may arouse suspicion as to whether they are**
19 **the person identified by the document.**

20 20. Birth certificates that reflect an incongruity between a person’s gender
21 identity and assigned sex risk disclosing a person’s transgender status, which is personal
22 information they may not wish to disclose for fear of discrimination, harassment, or
23 violence. *See* Ex. 1 ¶ 59; Ex. 2 ¶ 45; Ex. 4 (93:4–10); Ex. 6 (29:16–19); Ex. 7 (34:21–36:25).

24 **Objection: Defendant does not dispute that some transgender people may not**
25 **wish to disclose their transgender status for fear of discrimination, harassment, or**
26 **violence, but Defendant objects to the phrasing of the remaining contention because it**
27 **improperly assumes that incongruity between a person’s gender identity and the sex**
28 **field on their birth certificate can always be ascertained based on a person’s physical**

1 appearance. (Dkt. 233-2, 7, ¶ 21 & at 16, ¶ 50 & at 53, ¶ 32.) Defendant does not
2 object to the following alternative phrasing: “Transgender people who have a birth
3 certificate with a sex field that may be perceived as inconsistent with their physical
4 appearance or gender expression and who share their birth certificate with another
5 person may experience questions about their transgender status.” Defendant believes
6 that this alternative phrasing is a more accurate reflection of the cited evidence.

7 21. Disclosing a person’s transgender status also invades their privacy, which is
8 crucial because it is the basis for the development of individuality and autonomy. *See* Ex. 1
9 ¶ 14.

10 **Objection:** Defendant objects to this contention as phrased to the extent that
11 Plaintiffs intended for this contention to imply that a birth certificate can “disclose” a
12 person’s transgender status. (*See* DCSOF, ¶¶ 1, 2, 6, 7, and 8, above.) Defendant does
13 not object to the following alternative phrasing: “Some transgender people choose to
14 keep their transgender status private, and the involuntary disclosure of a person’s
15 transgender status may have practical, social, and psychological consequences for that
16 person, however, a birth certificate does not, without more, disclose an individual’s
17 transgender status.” Defendant believes that this alternative phrasing is a more
18 accurate description of the cited evidence and Arizona law. (*Id.*)

19 22. According to the 2015 U.S. Transgender Survey, nearly one in three
20 transgender respondents who showed an identity document with a name or gender that did
21 not match their perceived gender were verbally harassed, denied benefits or service, asked
22 to leave, or assaulted. *See* The Report of the 2015 U.S. Transgender Survey at 9, attached
23 as Exhibit 8 to the Proksel Decl.

24 **Objection:** Defendant does not dispute that some transgender persons may
25 experience discrimination, harassment, or violence by others as a result of their
26 transgender status, but Defendant objects to this contention because it inaccurately
27 describes the cited evidence. The 2015 U.S. Transgender Survey was conducted in “the
28 summer of 2015” (8 years ago) and includes respondents from “all fifty states, the

1 District of Columbia, American Samoa, Guam, Puerto Rico, and U.S. military bases
2 overseas.” (Dkt. 233-3 at 9.) Not all respondents identified as transgender; only 1.9%
3 of the respondents lived in Arizona; “identity documents” included driver’s
4 licenses/state-issued IDs, social security records, student records, passports, *and* birth
5 certificates; and the respondents were asked if they were verbally harassed [25%],
6 denied benefits of service [16%], asked to leave [9%], or assaulted [2%] when they
7 showed “an ID with a *name or gender that did not match their gender presentation.*”
8 (*Id.* at 14, 46, 87, 94–95, emphasis added.) Although Defendant believes this contention
9 is not material to the cross-motions for summary judgment and that the Court need
10 not consider the cited evidence in order to resolve those motions, for purposes of
11 preserving evidentiary objections, Defendant notes that the 2015 U.S. Transgender
12 Survey is inadmissible hearsay that lacks appropriate foundation for admission at
13 trial.

14 23. For transgender people, the inability to safely and privately change the sex
15 listed on their birth certificate interferes with their treatment for gender dysphoria, thereby
16 exacerbating their gender dysphoria and distress. *See* Ex. 1 ¶ 47; Ex. 2 ¶ 45; Ex. 4 (55:25–
17 56:7).

18 **Objection:** Defendant objects to this contention as phrased to the extent
19 Plaintiffs intend for this contention to imply that Arizona law prevents transgender
20 people from safely and privately amending the sex field on their birth certificate.
21 Defendant does not object to the following alternative phrasing: “Transgender people
22 who have a birth certificate with a sex field that does not match their gender identity
23 may experience more gender dysphoria and distress than transgender people who
24 have a birth certificate with a sex field that is congruent with their gender identity.”
25 Defendant believes that this alternative phrasing is a more accurate description of the
26 cited evidence and Arizona law. *See* Ariz. R. Civ. P. 5.4(c), (i).

27 24. Being deprived of birth certificates that accurately reflect who they are
28 stigmatizes transgender people and invades their privacy, releases confidential medical

1 information, and places them at risk for grave psychological and physical harm. *See* Ex. 1
2 ¶¶ 14, 59; Ex. 2 ¶ 45; Ex. 4 (98:9–100:13, 101:17–23, 103:4–104:4).

3 **Objection:** Defendant objects to this contention as phrased to the extent
4 **Plaintiffs intend to imply that the Director or ADHS/BVR has or would ever “deprive”**
5 **any Plaintiff or Class member of any amended birth certificate upon receipt of a**
6 **complete application to amend. Defendant does not object to the following alternative**
7 **phrasing: “Transgender people who have a birth certificate with a sex field that does**
8 **not match their gender identity may experience more gender dysphoria and distress**
9 **than transgender people who have a birth certificate with a sex field that is congruent**
10 **with their gender identity, and, for some transgender people, the involuntary**
11 **disclosure of their transgender status may have practical, social, and psychological**
12 **consequences. However, a birth certificate does not, without more, disclose an**
13 **individual’s transgender status, invade their privacy, or release confidential medical**
14 **information.” Defendant believes that this alternative phrasing is a more accurate**
15 **description of the cited evidence and Arizona law. (*See* DCSOF, ¶¶ 1, 2, 6, 7, and 8,**
16 **above.)**

17 25. Defendant is a state official who exercises responsibility for issuing and
18 changing Arizona birth certificates. *See* Ex. 5 (29:5–6, 31:19–24, 34:4–19, 104:4–7).

19 **Objection:** Defendant objects to this contention as phrased because it does not
20 **fully describe Defendant’s responsibilities under Arizona law. *See, e.g.,* A.R.S. § 36-**
21 **302. Defendant does not object to the following alternative phrasing: “Defendant is**
22 **the state official responsible for the registration, preservation, and correction and**
23 **amendment of vital records, including birth certificates.” Defendant believes that this**
24 **alternative phrasing is a more accurate description of the cited evidence and Arizona**
25 **law. *Id.***

26 26. Under Defendant’s direction, ADHS registers a birth certificate for every
27 person born in the state that reflects, among other things, their sex. *See* Ex. 5 (50:14–18).

28

1 **Objection: Defendant objects to this contention as phrased because it does not**
 2 **fully describe Defendant’s responsibilities under Arizona law. See, e.g., A.R.S. § 36-**
 3 **302. Defendant does not object to the following alternative phrasing: “Defendant is**
 4 **the state official responsible for registering Arizona birth, which include a “sex” field**
 5 **that reflects an observation of the individual’s external genitalia made by a health care**
 6 **provider or other person attending the individual’s birth and must be marked either**
 7 **“male,” “female,” or “not yet determined.”” Defendant believes that this alternative**
 8 **phrasing is a more accurate description of the evidence and Arizona law. (See DC SOF**
 9 **¶¶ 1, 2, 6, 7, and 8, above.) See also id.**

10 27. Arizona law provides three ways for applicants to seek a change to
 11 information on their birth certificate: (1) applying to ADHS for a “correction”; (2) applying
 12 to ADHS for an “amendment”; or (3) petitioning a court for an order, then—if the court
 13 grants the petition—applying to ADHS for an “amendment.” See Ex. 5 (60:17–61:2, 78:3–
 14 13, 89:3–10); ADHS policy titled “Corrections to Birth Records,” attached as Exhibit 9 to
 15 the Proksel Decl.; ADHS policy titled “Corrections to Birth Records,” dated , attached as
 16 Exhibit 10 to the Proksel Decl.; ADHS policy titled “Bureau of Vital Records Desk
 17 Procedure for Corrections and Amendments” attached as Exhibit 11 to the Proksel Decl.;
 18 ADHS policy titled “Amendments to Birth Records,” attached as Exhibit 12 to the Proksel
 19 Decl.; ADHS policy titled “Amendments to Birth Records,” attached as Exhibit 13 to the
 20 Proksel Decl.; ADHS policy titled “Amendments to Birth Records” attached as Exhibit 14
 21 to the Proksel Decl.; ADHS policy titled “Court Orders and Subpoenas,” attached as Exhibit
 22 15 to the Proksel Decl.; ADHS policy titled “Court Orders and Subpoenas,” attached as
 23 Exhibit 16 to the Proksel Decl.^[footnote omitted]

24 **Objection: Defendant objects to this contention as phrased because it misstates**
 25 **Arizona law. Defendant does not object to the following alternative phrasing:**
 26 **“Arizona law allows individuals to change information on their birth certificate by**
 27 **applying to ADHS for either a correction or an amendment, and some amendments**
 28 **require a court order.” Defendant believes that this alternative phrasing is a more**

1 accurate description of the cited evidence and Arizona law. *See* A.R.S. §§ 36-323, 36-
2 337; A.A.C. R9-19-207; A.A.C. R9-19-208. Further, A.R.S. §§ 36-323, 36-337, R9-19-
3 207, and R9-19-208 speak for themselves, and Plaintiffs’ characterizations of those
4 provisions are not facts.

5 28. Once submitted, ADHS processes all applications for changes to the sex listed
6 on an individual’s birth certificate under the same “desk procedure,” which is “the actual
7 process that [ADHS] follows” and “applies to any requests to change a sex marker on a
8 birth certificate.” Ex. 5 (77:11–78:13; 115:8–118:8); *see also* Ex. 11.

9 **Objection: Defendant objects to this contention as phrased because it**
10 **inaccurately describes the evidence. Defendant does not object to the following**
11 **alternative phrasing: “ADHS processes all applications to correct or amend a birth**
12 **certificate, including requests to amend the sex field, using the same procedure.”**
13 **Defendant believes that this alternative phrasing is a more accurate description of the**
14 **cited evidence and Arizona law. *See* A.A.C. R9-19-207; A.A.C. R9-19-208.**

15 29. While the vast majority of non-transgender people born in Arizona will never
16 need to change their sex markers on their birth certificates, Arizona law permits them to
17 apply for a “correction” to their sex marker if it reflects a typographical error. *See* Ex. 5
18 (66:17–67:9); Ex. 9; Ex. 10.

19 **Objection: Defendant objects to this contention as phrased because it misstates**
20 **Arizona law. Defendant does not object to the following alternative phrasing:**
21 **“Although most non-transgender people born in Arizona will never need to amend the**
22 **sex field on their birth certificate, any person may apply for a correction to the sex**
23 **field on their birth certificate if it reflects a typographical error.” Defendant believes**
24 **that this alternative phrasing is a more accurate description of the cited evidence and**
25 **Arizona law. (Dkt. 233-2 at 339–340.) *See* A.R.S. § 36-301(6); A.A.C. R9-19-207.**

26 30. ADHS provides a private administrative process for applicants seeking a
27 “correction” that involves submitting a confidential request directly either to ADHS or the
28 applicant’s county vital records office. *See* Ex. 5 (80:11–81:2); Ex. 9; Ex. 10.

1 **Objection: Defendant objects to this contention as phrased because it misstates**
2 **and inaccurately describes Arizona law. Defendant does not object to the following**
3 **alternative phrasing: “R9-19-207 provides a process to correct a birth certificate that**
4 **requires a person to submit to the State Registrar or a local registrar a written request**
5 **to correct and certain supporting documentation.” Defendant believes that this**
6 **alternative phrasing is a more accurate description of the cited evidence and Arizona**
7 **law. Further, ADHS’s regulations speak for themselves, and Plaintiffs’**
8 **characterizations of those provisions are not facts.**

9 31. If such a request is made within 90 days of birth, ADHS does not require the
10 applicant to provide an evidentiary document attesting to their correct sex. *See* Exhibit 5
11 (73:6–16); Ex. 9 at 5–6; Ex. 10 at 5–6.

12 **Objection: Defendant objects to this contention as phrased because it is an**
13 **inaccurate description of Arizona law. Defendant does not object to the following**
14 **alternative phrasing: “Requests for corrections to a birth certificate made within 90**
15 **days of the person’s birth must be accompanied by a “written statement attesting to**
16 **the validity of the submitted correction,” completed by either a hospital administrator**
17 **or other medical professional that attended the birth, R9-19-207(B)(2), (C)(2), or an**
18 **“affidavit attesting to the validity of the submitted correction” if submitted by a parent**
19 **or guardian, R9-19-208(D), E(2). Defendant believes that this alternative phrasing is**
20 **a more accurate description of the cited evidence and Arizona law. (Dkt. 233-2 at 338.)**
21 **Further, ADHS’s regulations speak for themselves, and Plaintiffs’ characterizations**
22 **of those provisions are not facts.**

23 32. If such a request is made after 90 days of birth, the applicant must provide a
24 medical record or a physician’s letter that attests to their sex. *See* Ex. 5 (73:17–18); Ex. 9 at
25 6–7; Ex. 10 at 6–7.

26 **Objection: Defendant objects to this contention as phrased because it is an**
27 **inaccurate description of Arizona law. Defendant does not object to the following**
28 **alternative phrasing: “Requests for corrections to a birth certificate made more than**

1 **90 days after the person’s birth must also be accompanied by “an evidentiary**
2 **document that includes the specific information to be corrected.” Defendant believes**
3 **that this alternative phrasing is a more accurate description of the cited evidence and**
4 **Arizona law. See A.A.C. R9-19-207(E)(4). Further, ADHS’s regulations speak for**
5 **themselves, and Plaintiffs’ characterizations of those provisions are not facts.**

6 33. If ADHS grants the requested “correction,” it seals the record. *See* Ex. 5
7 (80:11–81:2).

8 **Objection: Defendant objects to this contention as phrased because it is an**
9 **inaccurate description of the evidence and Arizona law. Defendant does not object to**
10 **the following alternative phrasing: “[A]nything submitted by an applicant,” “the**
11 **information about the request,” and “the outcome of the request” are sealed.”**
12 **Defendant believes that this alternative phrasing is a more accurate description of the**
13 **cited evidence and Arizona law. (Dkt. 233-2 at 345.)**

14 34. Transgender individuals born in Arizona are not permitted to “correct” the
15 sex listed on their birth certificates through this process. *See* Ex. 5 (76:7–13).

16 **Objection: Defendant objects to this contention as phrased because it misstates**
17 **Arizona law and improperly implies that an incongruence between a person’s gender**
18 **identity and the sex field on their birth certificate is a “typographical error.”**
19 **Defendant does not object to the following alternative phrasing: “Any individual born**
20 **in Arizona may request a correction to their birth certificate pursuant to R9-19-207,**
21 **and ADHS will grant the correction if based on a typographical error.” Defendant**
22 **believes that this alternative phrasing is a more accurate description of the cited**
23 **evidence and Arizona law. (DCSOF ¶¶ 1, 2, 6, 7, and 8 above.) See A.R.S. § 36-301(6);**
24 **A.A.C. R9-19-207. Further, ADHS’s regulations speak for themselves, and Plaintiffs’**
25 **characterizations of those regulations are not facts.**

26 35. Transgender individuals born in Arizona seeking to apply to ADHS to change
27 the sex listed on their birth certificate must instead satisfy the Surgical Requirement that
28 governs applications for “amendments” under A.R.S. § 36-337(A)(3) (“Subsection

1 (A)(3)”). *See* Ex. 5 (89:3–10); Ex. 11 at 2; Ex. 12 at 14–15; Arizona Revised Statutes
2 Section 36-337(A)(3), attached as Exhibit 17 to the Proksel Decl.

3 **Objection: Defendant objects to this contention as phrased because it misstates**
4 **Arizona law and improperly implies that a person born in Arizona may only amend**
5 **the sex field on their birth certificate by submitting a physician’s verification of a “sex**
6 **change operation.” Defendant does not object to the following alternative phrasing:**
7 **“A.R.S. § 36-337(A)(3) requires ADHS to amend the sex field in a birth certificate**
8 **upon receipt of proof that the individual had a “sex-change operation” or has a**
9 **chromosomal count that establishes that their sex is different from that recorded on**
10 **their birth certificate, or receipt of a court order requiring the amendment.”**
11 **Defendant believes that this alternative phrasing is a more accurate description of the**
12 **cited evidence and Arizona law. *See* A.R.S. §§ 36-337(A)(3), (4); A.A.C. R9-19-208.**
13 **Further, §§ 36-337(A)(3) and (A)(4) and R9-19-208 speak for themselves, and**
14 **Plaintiffs’ characterization of those statutes and supporting regulations are not facts.**

15 36. Under Subsection (A)(3) and its implementing regulation, A.A.C. § R9-19-
16 208(O), transgender individuals born in Arizona who have had a surgical operation may
17 submit a confidential application directly to ADHS (but not their county vital records office)
18 and a letter from a physician attesting that they have undergone a “sex change operation.”
19 *See* Ex. 5 (83:6–84:21, 89:3–95:7, 100:16–104:7); Ex. 12 at 14–15; Ex. 17; Arizona
20 Administrative Code Section R9-19-208(O), attached as Exhibit 18 to the Proksel Decl.

21 **Objection: Defendant objects to this contention as phrased because it misstates**
22 **Arizona law and improperly implies that a person born in Arizona may only amend**
23 **the sex field on their birth certificate by submitting a physician’s verification of a “sex**
24 **change operation.” Defendant does not object to the following alternative phrasing:**
25 **“Any person born in Arizona who has “undergone a sex change operation” or who**
26 **has “a chromosomal count that establishes the sex of the person as different than in**
27 **the registered birth certificate” may submit to ADHS a “written statement on a**
28 **physician’s letterhead paper, signed and dated by the physician” verifying either the**

1 “sex change operation” or the “chromosomal count” as support for a request to amend
2 the sex field on their birth certificate, which must also include a written request to
3 amend and the administrative fee.” Defendant believes that this alternative phrasing
4 is a more accurate description of the cited evidence and Arizona law. *See* A.R.S. § 36-
5 337(A)(3); A.A.C. R9-19-208(O). Further, § 36-337(A)(3) and A.A.C. R9-19-208(O)
6 speak for themselves, and Plaintiffs’ characterizations of those provisions are not
7 facts.

8 37. If ADHS determines the application is complete, it is mandated to grant the
9 “amendment.” *See* Ex. 5 (83:6–85:12); Ex. 17.

10 **Objection:** Defendant objects to this contention as phrased because it is an
11 inaccurate description of the cited evidence and Arizona law. Defendant does not
12 object to the following alternative phrasing: “ADHS must amend an individual’s birth
13 certificate if “the State Registrar ... determines ... that the information and
14 evidentiary documents in the request for amendment supports the amendment” of the
15 individual’s birth certificate or pursuant to court order.” Defendant believes that this
16 alternative phrasing is a more accurate description of the cited evidence and Arizona
17 law. *See* A.A.C. R9-19-208(P). Further, R9-19-208(P) speaks for itself, and Plaintiffs’
18 characterization of that regulation is not a fact.

19 38. This private administrative process does not create a public record and, if
20 ADHS grants the amendment, the documents are sealed, making them inaccessible absent
21 a court order. *See* Ex. 5 (118:9–20).

22 **Objection:** Defendant objects to this contention as phrased because it misstates
23 Arizona law and the cited evidence and improperly implies that ADHS only seals
24 certain amendment requests. Defendant does not object to the following alternative
25 phrasing: “If the State Registrar or a local registrar amends a birth certificate, the
26 State Registrar or local registrar must seal the original birth record and evidentiary
27 documents submitted to support the amendment.” Defendant believes that this
28 alternative phrasing is a more accurate description of the cited evidence and Arizona

1 **law. See A.A.C. R9-19-208(R). Further, R9-19-208(R) speaks for itself, and Plaintiffs’**
2 **characterization of that regulation is not a fact.**

3 39. Transgender individuals born in Arizona who have not had surgery, including
4 those younger than 18 years of age, may not obtain an amendment using this private
5 administrative process. *See* Ex. 5 (148:14–24, 150:17–151:24); Ex. 11 at 2; Ex. 12 at 14–
6 15; Ex. 17.

7 **Objection: Defendant objects to this contention as phrased because it misstates**
8 **Arizona law and the cited evidence and improperly implies that ADHS uses different**
9 **processes for certain amendment requests. Defendant does not object to the following**
10 **alternative phrasing: “Any person born in Arizona who has “undergone a sex change**
11 **operation” or who has “a chromosomal count that establishes the sex of the person as**
12 **different than that in the registered birth record” may submit written verification of**
13 **the “sex change operation” or the “chromosomal count” as support for a request to**
14 **amend the sex field on their birth certificate. A.R.S. § 36-337(A)(3); A.A.C. R9-19-**
15 **208(O). Any person born in Arizona may petition the superior court to order ADHS**
16 **to amend any information on their birth certificate, including the sex field, and may**
17 **submit a court order directing ADHS to amend their birth certificate as support for a**
18 **request to amend their birth certificate.” Defendant believes that this alternative**
19 **phrasing is a more accurate description of the cited evidence and Arizona law. See**
20 **A.R.S. § 36-337(A)(4); A.A.C. R9-19-208(B). Further, § 36-337(A) and A.A.C. R9-19-**
21 **208 speak for themselves and Plaintiffs’ characterizations of those statutes and**
22 **regulations are not facts.**

23 40. Neither Arizona law nor ADHS policy define the term “sex change
24 operation.” *See* Ex. 5 (88:15–21, 91:3–6, 94:8–14); Ex. 17; Arizona Revised Statutes
25 Section 36-301, attached as Exhibit 19 to the Proksel Decl.; Defendant’s Responses to
26 Plaintiffs’ First Set of Requests for Production, at 9, attached as Exhibit 20 to the Proksel
27 Decl.

28 **Not disputed.**

1 41. When determining whether to grant an amendment requested by a transgender
2 individual born in Arizona, ADHS assesses whether the physician’s letter contains language
3 that “matches” Subsection (A)(3) or otherwise “indicate[s] a sex change operation.” *See Ex.*
4 *5* (84:10–16, 130:11–131:11, 148:11–150:24, 154:18–155:9, 164:3–8).

5 **Objection:** Defendant objects to this contention as phrased because it
6 inaccurately describes Arizona law and the cited evidence. Defendant does not object
7 to the following alternative phrasing: “When any person submits a request for an
8 amendment under A.R.S. § 36-337(A)(3), ADHS determines whether the request and
9 supporting documentation, including the physician’s letter, comply with R9-19-
10 208(O).” Defendant believes that this alternative phrasing is a more accurate
11 description of the cited evidence and Arizona law. How that assessment is done on a
12 case-by-case basis is not material to Plaintiffs’ facial challenge to the statute and
13 supporting regulation.

14 42. To make that assessment, ADHS may seek advice from its “administrative
15 counsel,” but does not consult with medical professionals, medical organizations, or
16 transgender people. *See Ex. 5* (142:5–25, 150:3–15).

17 **Objection:** Defendant does not dispute that ADHS may seek advice from its
18 administrative counsel in determining whether a physician’s letter submitted under
19 A.R.S. § 36-337(A)(3) complies with R9-19-208(O), however, this contention is not
20 material to Plaintiff’s facial challenge to the statute and supporting regulation.

21 43. As a result, ADHS has denied applications filed with physician’s letters that
22 attest that an applicant is receiving “appropriate clinical treatment for transition to
23 male/female” or is “irrevocably committed to the gender change process” because ADHS
24 determined that these letters do not satisfy the Surgical Requirement. *See Ex. 5* (150:17–
25 24; 163:17–23); ADHS “Gender Transition Approval/Denials” email from ADHS
26 employee, at 2, attached as Exhibit 21 to the Proksel Decl.

27 **Objection:** Defendant does not dispute that ADHS is required to deny
28 amendment requests that are not accompanied by a physician’s letter that comports

1 **with A.R.S. § 36-337(A)(3) and R9-19-208(O), however, this contention is not material**
2 **to Plaintiff’s facial challenge to the statute and supporting regulation.**

3 44. Individuals born in Arizona can also petition a court for changes to their birth
4 certificate under A.R.S. § 36-337(A)(4) (“Subsection (A)(4)”). *See* Ex. 15 at 1; Ex. 16 at 1;
5 Ex. 17.

6 **Not disputed.**

7 45. Subsection (A)(4)’s court-order process is not specifically designed for
8 transgender people seeking to correct their birth certificates; instead, it is a general provision
9 that authorizes Arizona courts to order ADHS to change *any* information on a birth
10 certificate. *See* Ex. 5 (177:5–178:3); Ex. 17; Arizona Department of Health Services’
11 Objection to Order to Amend Applicant’s Registered Birth Certificate at 3–4, attached as
12 Exhibit 22 to the Proksel Decl.

13 **Objection: Defendant objects to this contention as phrased because it misstates**
14 **Arizona law. Defendant does not object to the following alternative phrasing: “A.R.S.**
15 **§ 36-337(A)(4) allows any person born in Arizona to file a petition asking the superior**
16 **court to amend any information on their birth certificate, including the sex field.”**
17 **Defendant believes that this alternative phrasing is a more accurate description of the**
18 **cited evidence and Arizona law. Further, § 36-337(A)(4) speaks for itself, and**
19 **Plaintiffs’ characterizations of the statute are not facts.**

20 46. To comply with Subsection (A)(4), transgender applicants seeking to change
21 the sex listed on their birth certificate must prepare a court petition, pay a fee, file it with
22 the court, and are often required to appear in person in open court, thereby publicly
23 disclosing their transgender status. If they wish their case to be confidential, they must
24 prepare and file a separate motion to seal the documents, which a court is not obligated to
25 grant. *See* Ex. 4 (57:14–17); Ex. 6 (83:19–84:6, 87:7–101:9); Ex. 7 (93:20–105:14); Petition
26 For Change of Name of a Minor And an Order Correcting Documents, attached as Exhibit
27 24 to the Proksel Decl.; Petition For Change of Name of a Minor And an Order Correcting
28 Documents, attached as Exhibit 25 to the Proksel Decl.

1 **Objection:** Defendant objects to this contention as phrased because it
2 inaccurately describes Arizona law and the cited evidence. Defendant does not object
3 to the following alternative phrasing: “A person seeking to obtain a court order
4 directing ADHS to amend the sex field on their birth certificate typically must prepare
5 and file a court petition, pay a filing fee (unless the fee is waived or deferred, *see* A.R.S.
6 § 12-302), and attend a court hearing. A person filing such a request may, but is not
7 required to, file a request to seal their case, including the case-initiating document,
8 Ariz. R. Civ. P. 5.4(c)(i), and may request a closed hearing. No provision of Arizona
9 law mandates that the superior court grant any motion to seal, but the superior court
10 has broad discretion to seal documents and proceedings.” Defendant believes that this
11 alternative phrasing is a more accurate description of the cited evidence and Arizona
12 law. Further, § 36-337(A)(4) and Ariz. R. Civ. P. 5.4 speak for themselves, and
13 **Plaintiffs’ characterizations of those laws are not facts.**

14 47. For transgender people, invasions of privacy of this nature exacerbate gender
15 dysphoria and lead to an erosion of coping mechanisms. Such experiences can precipitate
16 the onset of major psychiatric disorders, including, but not limited to, posttraumatic stress
17 disorder, major depressive disorder, and even suicidality. *See* Ex. 1 ¶ 37.

18 **Objection:** Defendant does not dispute that for some transgender people
19 involuntary disclosure of their transgender status may exacerbate their gender
20 dysphoria and contribute to mental health issues, however, Defendant objects to the
21 contention as phrased to the extent Plaintiffs intended for it to imply that § 36-
22 337(A)(4) is, on its face, an “invasion of privacy,” or requires any person to disclose
23 their transgender status. Further, although court proceedings in Arizona, including
24 petitions filed pursuant to § 36-337(A)(4), are generally matters of public record,
25 litigants may file requests to seal documents related to a case, including case-initiating
26 documents. Ariz. R. Civ. P. 5.4(c)(i). A.R.S. § 36-337(A)(4) and Rule 5.4 speak for
27 themselves, and **Plaintiffs’ characterizations of those provisions are not facts.**
28

1 48. In order to navigate the requirements of Subsection (A)(4), many applicants
2 hire attorneys, adding further cost and burden. *See* Ex. 6 (87:17–24); Ex. 7 (97:3–9, 109:4–
3 21).

4 **Objection: Defendant objects to this contention as phrased because it misstates**
5 **Arizona law and the cited evidence. Defendant does not object to the following**
6 **alternative phrasing: “Persons filing petitions pursuant to A.R.S. § 36-337(A)(4) may:**
7 **(1) pay money to hire a private attorney to represent them in connection with their**
8 **petition; (2) obtain pro bono representation through a volunteer lawyer program or**
9 **legal aid clinic; or (3) represent themselves.” Defendant believes that this alternative**
10 **phrasing is a more accurate description of the cited evidence and Arizona law.**
11 **Further, § 36-337(A)(4) speaks for itself, and Plaintiffs’ characterizations of that**
12 **statute are not facts.**

13 49. These burdens are compounded for transgender individuals born in Arizona
14 who live in other states, who may be legally or practically unable to file a petition in Arizona
15 state court. *See* transcript of the deposition of Rachel Voe, taken on November 10, 2023
16 (102:3–111:13), attached as Exhibit 26 to the Proksel Decl.

17 **Objection: Defendant objects to this contention as phrased because it misstates**
18 **Arizona law and improperly implies that Defendant or Arizona law generally restricts**
19 **any person from filing a petition pursuant to § 36-337(A)(4). Defendant does not**
20 **object to the following alternative phrasing: “Persons born in Arizona but who now**
21 **live in other states may be unable to access in-person filing options, however,**
22 **efile.azcourts.gov may be used to electronically file documents in civil cases in all**
23 **Arizona counties and can be accessed from outside of Arizona, and any person born**
24 **in Arizona may invoke the jurisdiction of the superior court to file a petition to amend**
25 **their Arizona birth certificate regardless of where they reside.” Defendant believes**
26 **that this alternative phrasing is a more accurate description of the cited evidence and**
27 **Arizona law. Further, § 36-337(A)(4) and Arizona laws relating to the jurisdiction of**
28

1 **the superior court speak for themselves, and Plaintiffs’ characterizations of those laws**
2 **are not facts.**

3 50. Unlike the “correction” and “amendment” process under Subsection (A)(3),
4 Subsection (A)(4) does not contain specific standards for when a court may or must grant a
5 petition. *See* Ex. 5 (168:14–169:5); Ex. 17.

6 **Objection: Defendant objects to this contention as phrased because it**
7 **inaccurately describes Arizona law. Defendant does not object to the following**
8 **alternative phrasing: “A.R.S. § 36-337(A)(4) does not contain specific standards for**
9 **when a court may or must grant a petition, however, Arizona courts have broad**
10 **authority to order amendments to birth certificates under A.R.S. § 36-337(A)(4).”**
11 **Defendant believes that this alternative phrasing is a more accurate description of the**
12 **cited evidence and Arizona law. *See McLaughlin v. Swanson*, 476 P.3d 336, 338 ¶¶ 9–**
13 **10 (Ariz. App. 2020). Further, § 36-337(A)(3) and (A)(4) speak for themselves, and**
14 **Plaintiffs’ characterizations of those provisions are not facts.**

15 51. In practice, when a transgender person seeks to petition a court under
16 Subsection (A)(4) to obtain a corrected sex marker, Arizona courts have imposed the same
17 Surgical Requirement as in Subsection (A)(3), based in part on ADHS’s prior publicly-
18 stated position that Arizona courts lack the authority under Subsection (A)(4) to issue orders
19 amending the sex listed on an Arizona birth certificate. *See* Ex. 6 (83:19–84:6, 94:4–96:16);
20 Ex. 22 at 3–5 (arguing that, “[a]bsent specific authority, the Court lacks original jurisdiction
21 to amend or correct birth certificates” and “where this specific authority does exist, the
22 courts are limited in the changes they are able to order to birth [] certificates”); Maricopa
23 County form titled “Amend/Correct Birth Certificate for a Minor” at 1, attached as Exhibit
24 27 to the Proksel Decl. (instructing individuals that they “may use these forms” to petition
25 for a court order to correct information on a birth certificate if, among other things, “[t]he
26 Arizona Office of Vital Records was unable to make the correction”).

27 **Objection: Defendant objects to this contention as phrased because it does not**
28 **accurately describe the cited evidence. Defendant does not dispute that the court**

1 assigned to adjudicate Laura Poe’s petition to amend the sex field on James Poe’s birth
2 certificate suggested that it could not grant the petition without evidence establishing
3 compliance with A.R.S. § 36-337(A)(3). Defendant notes, however, that a state court
4 Administrative Law Judge ruled in 2017 that the documentation required by A.R.S. §
5 36-337(A)(3) and R9-19-208(O) is not required to secure a court order under § 36-
6 337(A)(4) and R9-19-208(B), and that ADHS has received and honored court orders
7 to change the sex field on a person’s birth certificate. (Dkt. 231, ¶¶ 7–8.)

8 52. Even if a court grants a petition, to obtain an amended birth certificate,
9 applicants must still file the court order with an application to ADHS. *See* Ex. 15 at 1–4;
10 Ex. 16 at 1–6.

11 **Objection: Defendant objects to this contention as phrased because it does not**
12 **accurately describe ADHS regulations. Defendant does not object to the following**
13 **alternative phrasing: “A person seeking to amend their birth certificate under § 36-**
14 **337(A)(4) must submit the court order to the State Registrar. A.A.C. R9-19-208(B).**
15 **They do not need to file the court order. *Id.*” Defendant believes that this alternative**
16 **phrasing is a more accurate description of the cited evidence and Arizona law.**

17 53. Plaintiffs Helen Roe, James Poe, and Carl Voe (together, the “Named
18 Plaintiffs”) are three transgender people, all younger than age eighteen, who were born in
19 Arizona. *See* Ex. 6 (21:13–18, 22:9–10); Ex. 7 (17:5–9, 18:6–7); Ex. 26 (18:2–8, 20:11–
20 12).

21 **Not disputed.**

22 54. Named Plaintiffs have been diagnosed with gender dysphoria. *See* Ex. 6,
23 (22:3-8); Ex. 7 (18:1–5); Ex. 26 (20:6–10).

24 **Not disputed.**

25 55. Each has undergone appropriate, necessary steps to better align their body,
26 appearance, and lived experience with their gender identity. *See* Ex. 6 (26:2–13); Ex. 7
27 (27:8–12); Ex. 26 (25:11–16); Letter from Tanque Verde Pediatrics regarding Plaintiff
28 James Poe, attached as Exhibit 28 to the Proksel Decl.; Letter from El Rio Health regarding

1 Plaintiff Helen Roe, attached as Exhibit 29 to the Proksel Decl.; Letter from Chase Brexton
2 Health Care regarding Plaintiff Carl Voe, attached as Exhibit 30 to the Proksel Decl.

3 **Not disputed.**

4 56. Due to their age, they are not permitted under Arizona law to undergo surgery
5 to treat their gender dysphoria. *See* A.R.S. § 32–3230(A) (“A physician may not provide
6 irreversible gender reassignment surgery to any individual who is under eighteen years of
7 age.”); Ex. 6 (82:6–13); Ex. 2 ¶ 38.

8 **Objection: Defendant objects to this contention as phrased because it**
9 **inaccurately describes Arizona law. Defendant does not object to the following**
10 **alternative phrasing: “A.R.S. § 32-3230(A) states that a “physician may not provide**
11 **irreversible gender reassignment surgery,” which is defined in A.R.S. § 32-3230(C)(4),**
12 **“to any individual who is under eighteen years of age.”” Defendant believes that this**
13 **alternative phrasing is a more accurate description of the cited evidence and Arizona**
14 **law. Further, § 32-3230 speaks for itself, and Plaintiffs’ characterizations of the**
15 **statute are not facts.**

16 57. They may never need surgery to alleviate their gender dysphoria. *See* Ex. 1,
17 ¶¶ 52–53; Ex. 2 ¶¶ 32–35; 39–40.

18 **Not disputed.**

19 58. Named Plaintiffs’ birth certificates are inaccurate because they list a sex
20 different than their gender identities. Every time Named Plaintiffs attempt to use their birth
21 certificates, they risk disclosing private medical information and intensely personal aspects
22 of their identities. They are thus faced with an impossible choice: risk disclosure to
23 participate in normal childhood activities—from in-person schooling to recreational
24 sports—or forgo participation altogether. Either outcome negatively affects their overall
25 health, development, and well-being and limits their interest and ability to engage in those
26 everyday activities. *See* Ex. 6 (57:22–58:6, 69:18–71:9); Ex. 7 (53:15–22, 88:12–21); Ex.
27 26 (39:20–42:24, 46:20–47:10, 80:20–83:6); Ex. 1 ¶¶ 14, 44, 59; Ex. 2 ¶ 45; Ex. 4, (93:4–
28 10, 98:9–100:13, 101:17–23, 103:4–104:4).

1 **Objection:** Defendant objects to this contention as phrased because it
2 improperly implies that Plaintiffs’ Arizona birth certificates are rendered
3 “inaccurate” because the sex field is inconsistent with Plaintiffs’ gender identities. The
4 sex field on an Arizona birth certificate records only an observation made at the time
5 of birth; it does not, nor could it, contain any information about a person’s gender
6 identity. (Dkt. 231, ¶¶ 2, 9; DCSOF ¶¶ 1, 2, 6, 7, and 8, above.) Notwithstanding the
7 foregoing, Defendant does not dispute: (1) that the sex field on Plaintiffs’ birth
8 certificates is incongruent with their gender identifies; (2) if they show their birth
9 certificate to another person, they believe they risk disclosing private medical
10 information and intensely personal aspects of their identities; and (3) because of their
11 concerns, they believe they have only two choices: disclose that private medical
12 information and potentially reveal their transgender status to participate in the
13 activity that requires a birth certificate to participate or forgo participation in the
14 activity. This contention, however, is not material to Plaintiffs’ facial challenge to the
15 statute and supporting regulation.

16 59. Named Plaintiffs wish to change the sex markers on their Arizona birth
17 certificates to accurately reflect their gender identity. *See* Ex. 6 (79:23–80:2); Ex. 7, (87:21–
18 88:4, 95:9–14); Ex. 26 (88:14–21); Ex. 24; Ex. 25.

19 **Not disputed.**

20 60. Plaintiffs Helen Roe and James Poe, through their parents, attempted to
21 petition for a court order under Subsection (A)(4), but the state court judges denied both
22 petitions because they found that the Surgical Requirement would also apply under
23 Subsection (A)(4). *See* Ex. 6 (83:24–84:6, 94:13–19); Ex. 7 (93:20–24); Ex. 24; Ex. 25.

24 **Objection:** Defendant objects to this contention as phrased because it does not
25 accurately describe the cited evidence. (DCSOF ¶ 51, above.) Defendant does not
26 dispute that the judges assigned to adjudicate Megan Roe’s and Laura Poe’s petitions
27 to amend the sex fields on Helen Roe’s and James Poe’s birth certificates either
28 expressly or impliedly denied their petitions because they did not comply with § 36-

1 **337(A)(3), however, this contention is not material to Plaintiffs’ facial challenge to the**
2 **statute or supporting regulation.**

3 61. Plaintiff Carl Voe’s mother did not file a petition for a court order because
4 she understood it would be denied without proof of a “sex change operation.” *See* Ex. 26
5 (97:8–21, 101:4–7).

6 **Objection: Defendant objects to this contention to the extent that it suggests**
7 **that Carl Voe’s mother’s understanding or interpretation of Arizona law is correct.**
8 **Defendant does not dispute that Carl Voe’s mother testified that she did not file a**
9 **petition under A.R.S. § 36-337(A)(4) because “[i]t’s a private matter” and she did not**
10 **want to subject Carl to that “experience.” Defendant also does not dispute that Carl**
11 **Voe’s mother may have subjectively believed that any such petition would have been**
12 **denied unless she provided proof of a “sex change operation.” But Defendant disputes**
13 **that that is an accurate characterization of Arizona law. A.R.S. § 36-337(A)(4) speaks**
14 **for itself, and Plaintiffs’ characterizations of the statute are not facts.**

15 62. Defendant would not have accepted Plaintiffs’ applications, and would not
16 have amended the sex listed on their birth certificates, under Subsection (A)(3) because
17 Plaintiffs are transgender people who have not undergone surgery. *See* Ex. 5 (128:13–131:6,
18 148:14–24, 150:17–151:24, 155:12–20, 163:17–164:2); Ex. 12 at 14–15; Ex. 21 at 2; Ex.
19 28; Ex. 29; Ex. 30.

20 **Objection: Defendant objects to this contention as phrased because it**
21 **speculates about events that did not occur. Defendant does not object to the following**
22 **alternative phrasing: “A.R.S. § 36-337(A)(3) requires ADHS to accept a “written**
23 **statement by a physician that verifies” the person has either “undergone a sex change**
24 **operation or has a chromosomal count that establishes the sex of the person as**
25 **different than in the registered birth certificate” as supporting documentation for a**
26 **request to amend the sex field on a birth certificate, and if person does not submit such**
27 **a written statement with their application to amend the sex field on their birth**
28 **certificate, ADHS would be unable to process such an application.” Defendant**

1 **believes that this alternative phrasing is a more accurate description of the cited**
2 **evidence and Arizona law. Further, § 36-337 and R9-19-208 speak for themselves,**
3 **and Plaintiffs’ characterizations of those provisions are not facts.**

4 63. In contrast, non-transgender people—the vast majority of whom ADHS has
5 provided accurate birth certificates pursuant to Arizona law—either will never need to
6 change their sex markers or, if they do, are entitled to apply for a “correction” through a
7 private administrative process with no more than a physician’s letter attesting to their birth-
8 assigned sex. *See* Ex. 5 (71:2–12, 75:3–76:13, 100:11–14, 125:6–25); Ex. 9; Ex. 10; Ex. 11.

9 **Objection: Defendant objects to this contention as phrased because it misstates**
10 **Arizona law and the cited evidence. Defendant does not object to the following**
11 **alternative phrasing: “Most people born in Arizona are unlikely to request an**
12 **amendment to the sex field on their registered Arizona birth certificate because their**
13 **gender identity is congruent with the sex field recorded in their birth certificate,**
14 **however, in the event of a typographical error in the sex field, any person may submit**
15 **a request for correction to ADHS pursuant to A.A.C. R9-19-207.” Defendant believes**
16 **that this alternative phrasing is a more accurate description of the cited evidence and**
17 **Arizona law. *See* A.A.C. R9-19-207. Further, R9-19-207 speaks for itself, and**
18 **Plaintiffs’ characterization of that regulation is not a fact.**

19 64. Several federal agencies have implicitly recognized that the Surgical
20 Requirement is not necessary to ensure that identity documents are truthful, correct, and
21 complete. For example, the U.S. Department of State (for U.S. passports), the Social
22 Security Administration (for social security cards), and the U.S. Citizenship and
23 Immigration Services (for permanent resident cards) do not require proof of surgery for
24 transgender people to change the sex marker on these identity documents, instead allowing
25 applicants to self-attest to their sex. *See* U.S. Department of State Passport “Selecting Your
26 Gender Marker,” attached as Exhibit 31 to the Proksel Decl.; U.S. Social Security
27 Administration “How do I change the sex identification on my Social Security record?”
28 attached as Exhibit 32 to the Proksel Decl.; U.S. Citizenship and Immigration Services

1 “USCIS Policy Guidance on Self-Selecting a Gender Marker on Forms and Documents,”
2 attached as Exhibit 33 to the Proksel Decl.

3 **Objection: Defendant objects to this contention to the extent Plaintiffs intend**
4 **to suggest that the procedures of other government agencies are relevant to the**
5 **questions before the Court in this action. Notwithstanding the foregoing, Defendant**
6 **does not dispute that, in 2022, the U.S. Department of State and the Social Security**
7 **Administration updated their policies to allow individuals to select their gender**
8 **identity when requesting a passport application (DOS) or to update their Social**
9 **Security records (SSA). Defendant also does not dispute that, in 2023, the U.S.**
10 **Citizenship and Immigration Services updated its policy to allow individuals to select**
11 **their gender identity when requesting immigration benefits. But the suggestion that**
12 **these policy changes “recognize[] that the Surgical Requirement is not necessary to**
13 **ensure that identity documents are truthful, correct, and complete” is not supported**
14 **by the cited evidence. (See Dkt. 231, ¶ 18.) Moreover, this contention is not material**
15 **to Plaintiffs’ facial challenge to A.R.S. § 36-337 or the supporting regulation, neither**
16 **of which document a person’s gender identity (Dkt. 231, ¶ 9), but rather are intended**
17 **to preserve a historical fact at the time of the person’s birth, and which are in**
18 **accordance with NCHS regulations (Dkt. 231, ¶¶ 3–6).**

19 65. The same is true of the Arizona Department of Transportation (“ADOT”)—
20 the Arizona agency that issues driver’s licenses. Subsection G of ADOT’s *Customer*
21 *Records Policy* 4.1.1 also provides that “[i]t is *not* necessary for the customer to have
22 completed the surgical gender-change procedure” for that customer to “request that the
23 gender noted on the record be changed.” ADOT Customer Records Policy 4.1.1(G) at 2
24 (emphasis in original), attached as Exhibit 34 to the Proksel Decl.; ADOT’s Responses to
25 Plaintiffs’ First Set of Special Interrogatories at 2–3, attached as Exhibit 35 to the Proksel
26 Decl.

27 **Objection: Defendant does not dispute that Policy 4.1.1 of the Arizona**
28 **Department of Transportation states that “[i]t is not necessary for the customer to**

1 have completed the surgical gender-change procedure,” but it also states that “[a]n
2 amended Arizona birth certificate reflecting the gender change or a signed statement
3 from a licensed physician is required.” (Dkt. 233-12 at 11.) Plaintiffs also do not
4 submit any evidence suggesting that this policy “recognize[] that the Surgical
5 Requirement is not necessary to ensure that identity documents are truthful, correct,
6 and complete.” (See Dkt. 231, ¶ 18.) Moreover, this contention is not material to
7 Plaintiffs’ facial challenge to A.R.S. § 36-337 or the supporting regulation, neither of
8 which document a person’s gender identity (Dkt. 231, ¶ 9), but rather are intended to
9 preserve a historical fact at the time of the person’s birth, and which are in accordance
10 with NCHS regulations (Dkt. 231, ¶¶ 3–6). (See also DCSOF ¶ 64.)

11 66. Transgender people born in Arizona face unjustifiable hurdles to obtain
12 accurate birth certificates, forcing them to endure the constant risk of exposure, rejection,
13 discrimination, and bodily harm. See Ex. 1 ¶ 15; Ex. 4 (93:4–94:1); Ex. 6 (50:19–51:19,
14 69:18–70:15, 71:8–72:2); Ex. 7 (32:25–33:3, 53:15–22, 88:12–21); Ex. 26 (26:21–29:10,
15 76:16–20, 77:5–11, 97:12–21).

16 **Objection:** Defendant disputes this contention as phrased because it is legal
17 argument, not a factual statement. What’s more, this contention inaccurately
18 describes Arizona law and the cited evidence and improperly suggests, without
19 evidentiary support, that Defendant or ADHS/BVR are responsible for the alleged
20 conduct. Defendant incorporates her objections above, particularly in DCSOF ¶¶ 24,
21 47, and 48, because they more accurately describe the record and Arizona law.

22 67. After one’s transgender status is disclosed to a third party through an identity
23 document discordant with one’s gender identity, there are no safeguards to prevent that third
24 party from disclosing that information to others, thus further exacerbating the risk of
25 exposure, rejection, discrimination, and physical harm. See Ex. 1 ¶ 59; Ex. 2 ¶ 45; Ex. 4,
26 (98:13–99:5, 99:13–100:13, 101:17–23, 103:4–104:4); Ex. 6 (29:16–19, 71:8–72:2, 101:2–
27 6); Ex. 7 (88:14–21); Ex. 26 (33:13–18, 77:5–11, 97:12–21).

