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

16 Helen Roe, a minor, by and through her
parent and next friend Megan Roe; et al.,

17 Plaintiffs,

18 v.

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

22 Defendant.

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

**NOTICE CONCERNING AND
REPLACEMENT PAGES FOR EXHIBIT
FIVE IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

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1 Plaintiffs Helen Roe, James Poe, and Carl Voe, by and through their parents and next friends
2 Megan Roe, Laura Poe, and Rachel Voe, and each of the individuals in the class of people they
3 represent, hereby submit certain replacement pages to Exhibit 5 to Plaintiffs' Separate Statement
4 of Facts in support of their Motion for Summary Judgment (Dkt. 233), which were inadvertently
5 missing highlighting. These pages are 108, 173, 178, 184, 193, and 194, which are attached here.

6
7 Dated: January 1, 2024

OSBORN MALEDON, P.A.

8 /s/ Colin M. Proksel

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EXHIBIT 5

1 Q. Okay. And would then the BVR begin their ordinary
2 policy for what happens when they receive a request for an
3 amendment to the sex marker?

4 A. Yes.

5 Q. Okay. So it's -- it's simply another way for the
6 BVR to receive a request for an amendment?

7 A. Yes.

8 Q. Okay. Now, did -- did ADHS ever issue a public
9 statement about the change in its amendments to birth
10 records policy when it removed from county offices the --
11 the authority to issue amendments?

12 A. I don't know what you mean by public statement.

13 Q. Sorry. Did ADHS ever post anything on its website
14 saying, "We've amended our policy"?

15 A. Not that I'm aware of.

16 Q. Okay.

17 MR. ANDERSON: Go ahead and mark this as,
18 what are we on now, Exhibit 12.

19 (Deposition Exhibit No. 12 was marked for
20 identification.)

21 THE WITNESS: Thank you.

22 BY MR. ANDERSON:

23 Q. Do you recognize this?

24 A. Yes.

25 Q. And this is an e-mail -- at the top of this



1 **A. Yes.**

2 Q. Okay. And -- and I don't -- well, to confirm, if
3 you look under authority where it says Arizona revised
4 statutes, do you see in that list kind of over to the
5 right, it does say 36-337, A-4?

6 **A. Yes.**

7 Q. Okay. If you look down under "Definitions," it's
8 about -- it's -- moves over to the next page as well.

9 Do you see a definition of the phrase "sex
10 change operation" in here?

11 **A. No.**

12 Q. Okay. So if you flip over to the second page --
13 and I realize there's no page numbers on the actual
14 document so I'll refer to the Bates Numbers. Those are
15 those numbers in the lower right-hand corner.

16 **A. Okay.**

17 Q. So this is the document ending in 87 -- or the
18 page ending in 8717. It says -- under where it says
19 "Policy," I'm sorry. Backing right up to -- right above
20 that, "Division Primary Position of Responsibility,"
21 that's -- that lists your position there; is that right?

22 **A. Correct.**

23 Q. So you were responsible for enforcing this policy?

24 **A. Yes.**

25 Q. And then under the policy it says, "A court order



1 under previous guidance before, we had a case that changed
2 the decision that we did not accept court orders to change
3 the sex on a record, then we had litigation and now we do.

4 BY MR. ANDERSON:

5 Q. Okay. So now ADHS does accept court orders
6 without doctor's letters?

7 A. Correct.

8 Q. Is that change reflected in any ADHS policy that
9 you can think of?

10 A. I would have to go back through all of them and
11 compare them.

12 Q. Okay. So sitting here, you can't -- you can't
13 name one off the top of your head?

14 A. No.

15 Q. Okay. Is it reflected in any ADHS or BVR
16 procedure?

17 A. Again, without comparing what was prior to that
18 date and after, I -- I can't answer that.

19 Q. Okay. Did ADHS ever issue a public statement
20 saying that now it accepts court orders without an
21 accompanying doctor's note?

22 A. Not a public statement, no.

23 MR. STRUCK: Belated objection to form.

24 MR. ANDERSON: Okay. I think that we are at
25 a good spot for a break.



1 **A. No, that is not right.**

2 **Q. Nonbinary is an option now on birth certificates?**

3 **A. There are birth certificates that list nonbinary.**

4 Q. Okay. Would -- if -- if an applicant submitted an
5 application to amend a birth certificate under Subsection
6 A-3 today, could they request a nonbinary gender sex
7 marker?

8 MR. STRUCK: Object to the form.

9 **THE WITNESS: That would be something that I**
10 **have to talk to administrative -- or legal counsel about.**
11 **The requests that we have received for nonbinary have been**
12 **court orders, they have not been based on a physician**
13 **statement.**

14 BY MR. ANDERSON:

15 Q. So the nonbinary sex markers have been adopted
16 only under Subsection A-4?

17 **A. Correct.**

18 Q. Okay. Can you tell me about how many have been
19 amended under that?

20 **A. Less than five.**

21 Q. Okay. If you look at this chain, let's go up --
22 flip back a page to the one ending in 47421. And in the
23 middle of that page is an e-mail -- I'm sorry. I'll wait
24 until you're there.

25 **A. Yes.**



1 the goals are?

2 A. What position on the goals? No. In general, ADHS
3 is not in the position to -- to have a position or have a
4 goal based on what the legislature decides. We are just
5 the enactors of what we are given.

6 Q. Okay. Now, as you know from reviewing the
7 interrogatories, the defendant in this case has indicated
8 that there's a "'governmental interest in maintaining and
9 ensuring" -- and I'm reading now from Topic Number 9 -- a
10 "'governmental interest in maintaining and ensuring the
11 truthfulness, completeness, and correctness of information
12 in vital records and statistics."

13 Are you familiar with that alleged
14 governmental interest?

15 A. Yes.

16 Q. And we've spent some time today talking about
17 completeness, truthfulness, accuracy. So I want to ask you
18 just a few more questions about those.

19 A. Okay.

20 Q. Before we do, though, are you aware of any other
21 governmental interest that the department has in enforcing
22 Subsection A-3?

23 MR. STRUCK: Form.

24 THE WITNESS: No.

25 BY MR. ANDERSON:



1 Q. Okay. So truthfulness, completeness, correctness,
2 that's the governmental interest that the department has
3 identified for enforcing Subsection A-3?

4 A. Yes.

5 Q. Let's take them one by one starting with
6 truthfulness.

7 What does truthfulness mean in the context of
8 a birth certificate?

9 MR. STRUCK: Object to the form.

10 THE WITNESS: That the information that is on
11 the record is true and complete to the best of our
12 knowledge.

13 BY MR. ANDERSON:

14 Q. So truthfulness, would it -- is it fair to say
15 that -- that it is information actually pertaining to the
16 person that it's purportedly about?

17 Is that fair?

18 MR. STRUCK: Form.

19 THE WITNESS: All vital records are
20 information about the registrant.

21 BY MR. ANDERSON:

22 Q. Uh-huh. So when -- how is truthfulness, as a
23 concept, advanced by requiring an individual to submit a
24 doctor's note that says that they've undergone a sex change
25 operation?

