

**EXHIBIT 19**



### 36-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative order" means a written decision issued by an administrative law judge or quasi-judicial entity.
2. "Amend" means to make a change, other than a correction, to a registered certificate by adding, deleting or substituting information on that certificate.
3. "Birth" or "live birth" means the complete expulsion or extraction of an unborn child from the child's mother, irrespective of the duration of the pregnancy, that shows evidence of life, with or without a cut umbilical cord or an attached placenta, such as breathing, heartbeat, umbilical cord pulsation or definite voluntary muscle movement after expulsion or extraction of the unborn child.
4. "Certificate" means a record that documents a birth or death.
5. "Certified copy" means a written reproduction of a registered certificate that a local registrar, a deputy local registrar or the state registrar has authenticated as a true and exact written reproduction of a registered certificate.
6. "Correction" means a change made to a registered certificate because of a typographical error, including misspelling and missing or transposed letters or numbers.
7. "Court order" means a written decision issued by:
  - (a) The superior court, an appellate court or the supreme court or an equivalent court in another state.
  - (b) A commissioner or judicial hearing officer of the superior court.
  - (c) A judge of a tribal court in this state.
8. "Current care" means that a health care provider has examined, treated or provided care for a person for a chronic or acute condition within eighteen months preceding that person's death. Current care does not include services provided in connection with a single event of emergency or urgent care. For the purposes of this paragraph, "treated" includes prescribing medication.
9. "Custody" means legal authority to act on behalf of a child.
10. "Department" means the department of health services.
11. "Electronic" means technology that has electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or technology with similar capabilities.
12. "Evidentiary document" means written information used to prove the fact for which the document is presented.
13. "Family member" means:
  - (a) A person's spouse, natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin.
  - (b) The natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin of the person's spouse.
14. "Fetal death" means the cessation of life before the complete expulsion or extraction of an unborn child from the child's mother that is evidenced by the absence of breathing, heartbeat, umbilical cord pulsation or definite

voluntary muscle movement after expulsion or extraction.

15. "Final disposition" means the interment, cremation, removal from this state or other disposition of human remains.

16. "Foundling" means:

(a) A newborn infant left with a safe haven provider pursuant to section 13-3623.01.

(b) A child whose father and mother cannot be determined.

17. "Funeral establishment" has the same meaning prescribed in section 32-1301.

18. "Health care institution" has the same meaning prescribed in section 36-401.

19. "Health care provider" means:

(a) A physician licensed pursuant to title 32, chapter 13 or 17.

(b) A doctor of naturopathic medicine licensed pursuant to title 32, chapter 14.

(c) A midwife licensed pursuant to chapter 6, article 7 of this title.

(d) A nurse midwife certified pursuant to title 32, chapter 15.

(e) A nurse practitioner licensed and certified pursuant to title 32, chapter 15.

(f) A physician assistant licensed pursuant to title 32, chapter 25.

(g) A health care provider who is licensed or certified by another state or jurisdiction of the United States and who works in a federal health care facility.

20. "Human remains" means a lifeless human body or parts of a human body that permit a reasonable inference that death occurred.

21. "Issue" means:

(a) To provide a copy of a registered certificate.

(b) An action taken by a court of competent jurisdiction, administrative law judge or quasi-judicial entity.

22. "Legal age" means a person who is at least eighteen years of age or who is emancipated by a court order.

23. "Medical certification of death" means the opinion of the health care provider who signs the certificate of probable or presumed cause of death that complies with rules adopted by the state registrar of vital records and that is based on any of the following that is reasonably available:

(a) Personal examination.

(b) Medical history.

(c) Medical records.

(d) Other reasonable forms of evidence.

24. "Medical examiner" means a medical examiner or alternate medical examiner as defined in section 11-591.

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36-301 - Definitions

25. "Name" means a designation that identifies a person, including a first name, middle name, last name or suffix.
26. "Natural causes" means those causes that are due solely or nearly entirely to disease or the aging process.
27. "Presumptive death" means a determination by a court that a death has occurred or is presumed to have occurred but the human remains have not been located or recovered.
28. "Register" means to assign an official state number and to incorporate into the state registrar's official records.
29. "Responsible person" means a person listed in section 36-831.
30. "Seal" means to bar from access.
31. "Submit" means to present, physically or electronically, a certificate, evidentiary document or form provided for in this chapter to a local registrar, a deputy local registrar or the state registrar.
32. "System of public health statistics" means the processes and procedures for:
  - (a) Tabulating, analyzing and publishing public health information derived from vital records data and other sources authorized pursuant to section 36-125.05 or section 36-132, subsection A, paragraph 3.
  - (b) Performing other activities related to public health information.
33. "System of vital records" means the statewide processes and procedures for:
  - (a) Electronically or physically collecting, creating, registering, maintaining, copying and preserving vital records.
  - (b) Preparing and issuing certified and noncertified copies of vital records.
  - (c) Performing other activities related to vital records.
34. "Unborn child" has the same meaning prescribed in section 36-2151.
35. "Vital record" means a registered birth certificate or a registered death certificate.

**EXHIBIT 20**

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13 *Attorneys for Defendant*

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, et al.,

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.

NO. 4:20-cv-00484-JAS

**DEFENDANT’S RESPONSES TO  
PLAINTIFFS’ FIRST SET OF  
REQUESTS FOR PRODUCTION**

24 Pursuant to Federal Rule of Civil Procedure 34, Defendant Don Herrington  
25 (“Defendant”), through counsel, hereby responds to Plaintiffs’ First Set of Requests for  
26 Production as follows. Defendant reserves the right to supplement these responses as  
27 necessary and as discovery continues.  
28

1 given that Plaintiffs' Amended Complaint is devoid of allegations regarding conduct  
2 and/or events that occurred before approximately 2019 and none of the named minor  
3 Plaintiffs were born before 2011. Defendant objects to the extent any documents  
4 responsive to this Request were destroyed pursuant to ADHS's three-year document  
5 retention policy. Defendant also objects to the extent this Request seeks information  
6 protected by the attorney-client privilege, the work product doctrine, the deliberative  
7 process privilege, and/or any other applicable privilege. Defendant objects to this Request  
8 as it seeks production of ESI which can only be discovered through an email or system  
9 search and where the parties have not conferred or attempted to reach an agreement on a  
10 search protocol, including appropriate search terms and queries, file type and date  
11 restrictions, data sources, and custodians. Defendant further objects that this Request is  
12 vague, ambiguous, overbroad, unduly burdensome, irrelevant, and not proportional to the  
13 needs of this case because "all" documents and communications concerning "considering,  
14 developing, drafting, adopting, or otherwise creating subsections (O) or (P) of Arizona  
15 Administrative Code section R9-19-208, or when considering, developing, drafting,  
16 adopting, or otherwise creating any CHANGES to those subsections" is not reasonably  
17 limited in scope.

18 Without waiving these objections, *see* A.R.S. § 36-301, A.R.S. § 36-337, and  
19 A.A.C. § R9-19-208, as well as prior versions of A.A.C. Title 9, Chapter 19, which are on  
20 file with the Arizona Secretary of State. *See also* National Association for Public Health  
21 Statistics and Information Systems ("NAPHSIS") Model State Vital Statistics  
22 Regulations, 1992 Revision produced as ADHS000180 – ADHS000219 and 2011  
23 Revision produced as ADHS000220 – ADHS000286. Defendant will supplement this  
24 response with any non-privileged rulemaking documents that might exist. Defendant has  
25 not conducted a search of available ESI but will do so once the parties have agreed to a  
26 search protocol.

27 **REQUEST FOR PRODUCTION NO. 5:**

28 All DOCUMENTS and COMMUNICATIONS CONCERNING the term "sex

1 change operation” as used in subsection (A)(3) of Arizona Revised Statutes section 36-  
2 337.

3 **RESPONSE:**

4       Objection: Overbroad, unduly burdensome, and irrelevant as to the time period  
5 between January 1, 2004 to the present because Plaintiffs’ Amended Complaint is devoid  
6 of allegations pertaining to conduct and/or events that occurred before approximately  
7 2019 and none of the named minor Plaintiffs were born before 2011, and therefore this  
8 Request is not proportional to the needs of this case. Defendant objects to the extent any  
9 documents responsive to this Request were destroyed pursuant to ADHS’s three-year  
10 document retention policy. Defendant further objects that this Request is overbroad,  
11 unduly burdensome, irrelevant, and not proportional to the needs of this case because “all”  
12 documents and communications “concerning” the term “sex change operation” is not  
13 reasonably limited in scope. Defendant objects to the extent this Request seeks  
14 information protected by the attorney-client privilege, the work product doctrine, the  
15 deliberative process privilege, and/or any other applicable privilege. Defendant further  
16 objects to the Request as it seeks production of ESI which can only be discovered through  
17 an email or system search and where the parties have not conferred or attempted to reach  
18 an agreement on a search protocol, including appropriate search terms and queries, file  
19 type and date restrictions, data sources, and custodians.

20       Without waiving these objections, when interpreting and implementing statutes to  
21 draft administrative rules, ADHS follows general rules of statutory construction, including  
22 but not limited to those that are stated in A.R.S. Title 1, Chapter 2, Article 2. The term  
23 “sex change operation” is not defined in any applicable statute, regulation, or  
24 administrative rule, and Defendant is not in possession of any document that defines this  
25 term. Defendant has not conducted a search of available ESI but will do so once the  
26 parties have agreed to a search protocol.

27 **REQUEST FOR PRODUCTION NO. 6:**

28       All DOCUMENTS and COMMUNICATIONS CONCERNING any POLICY of



1 responsive to this Request aside from what has already been produced by all parties.

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DATED this 6<sup>th</sup> day of December 2021.

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

By 

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1 The foregoing was emailed this 6<sup>th</sup> day  
2 of December 2021 to:

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27 *Attorneys for Plaintiffs and Proposed Class*

28   
\_\_\_\_\_

**EXHIBIT 21**

**From:** [REDACTED]  
**To:** [Thomas Salow](#)  
**Subject:** Gender Transition Approvals/Denials  
**Date:** Friday, August 9, 2019 11:01:02 AM  
**Attachments:** Gender Transition.docx

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[REDACTED]  
Arizona Department of Health Services  
150 North 18th Ave, Phoenix, AZ 85007  
[REDACTED]

CONFIDENTIALITY NOTICE: This e-mail is the property of the Arizona Department of Health Services and contains information that may be PRIVILEGED, CONFIDENTIAL, or otherwise exempt from disclosure by applicable law. It is intended only for the person(s) to whom it is addressed. If you have received this communication in error, please do not retain or distribute it. Please notify the sender immediately by e-mail at the address shown above and delete the original message. Thank you.



### **Accepted:**

- “Female to Male Gender Reassignment Surgery”
- “Sex Reassignment Surgery”
- “I have doctor/patient relationship”
- “Have reviewed/evaluated the patient’s medical history and they have has appropriate medical treatment for transition to the new sex” (male/female)
- “Appropriate clinical treatment for gender transition to the new gender (male/female), including both hormone therapy and sex reassignment surgery”
- “Irreversible Reassignment Surgery”

### **Denied:**

- “Confirmation Chest Masculinization Surgery” –without any statement of Reassignment Surgery
- Where the surgery was performed/what it is in compliance with
- “Appropriate clinical treatment for gender transition”
- “Sex Reassignment Surgery was not medically necessary”
- Listing any surgeries without any statement of Reassignment Surgery

**EXHIBIT 22**

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13 *Attorneys for Arizona Department of Health Services,*  
14 *Bureau of Vital Records*

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
12 IN AND FOR THE COUNTY OF PIMA

13 In re the Matter of:

14 [REDACTED], a minor,  
15 Applicant

[REDACTED]

Arizona Department of Health Services’  
Objection to Order to Amend Applicant’s  
Registered Birth Certificate

(Honorable [REDACTED])

18 The Arizona Department of Health Services, Bureau of Vital Records  
19 (“Department”), by and through its undersigned attorney, responds to the [REDACTED]  
20 [REDACTED] Order issued by [REDACTED] of the Pima County Superior Court (“Order”), to  
21 amend the sex on Applicant’s registered birth certificate. The Department informs this  
22 Court, Petitioner, and Applicant that the Order is not sufficient to permit the  
23 Department to amend the sex on Applicant’s Arizona birth certificate pursuant to

1 Arizona Revised Statutes (“A.R.S.”) § 36-337,<sup>1</sup> due to lack of jurisdiction and the  
2 failure of Petitioner to exhaust administrative remedies.

3 **MEMORANDUM OF FACTS AND LAW**

4 **I. Statutory Authority of the Department to Amend Birth Certificates**

5 The statutes that established the Arizona vital records system give the authority  
6 to the Department to adopt rules and implement a statewide system of vital  
7 records. More specifically, A.R.S. § 36-323(A) provides that the state registrar shall  
8 amend a registered certificate (birth or death) pursuant to Chapter 3 of Title 36 and the  
9 rules adopted by the Department. The pertinent rules are found at Arizona  
10 Administrative Code (A.A.C.) Title 9, Chapter 19. The rules establish the procedures  
11 and standards for correcting and amending birth certificates. *See* A.A.C. R9-19-207  
12 and -208. This process requires a request for a change or amendment be submitted to  
13 the Department, together with required evidentiary documents supporting the correction  
14 or amendment. *Id.* That application is reviewed regarding the established standards to  
15 determine whether the requested amendment may be approved. Due process rights  
16 attach if an application is denied; an administrative hearing is provided, if requested;  
17 and ultimately, a final decision of the Department follows. A.R.S. § 41-1092, *et seq.* A  
18 final decision of the Department is then subject to the appellate jurisdiction of the  
19 Superior Courts pursuant to the Administrative Review Act. *See* A.R.S. Title 12,  
20 Chapter 7, Article 6. While the Courts do have some original jurisdiction to order birth  
21 certificate changes, e.g. adoption, paternity and name change, under the existing  
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<sup>1</sup> Accordingly, the Department recognizes and respects that A.R.S. § 12-601 gives  
25 specific jurisdiction to this Court to hear a petition for a name change and issue the  
26 appropriate order allowing this amendment to a birth certificate.



1 statutory scheme for vital records, all other changes must first be submitted to the  
2 Department, with Court jurisdiction only upon appeal.

3 **II. Superior Courts Have Limited Jurisdiction to Order Amendments to**  
4 **Birth Certificates.**

5 The Courts are not the proper venue for a person to initiate just any amendment  
6 to a vital record. As explained above, for most changes, the request must be initiated by  
7 filing a request for the amendment with the Department. Absent specific authority, the  
8 Court lacks original jurisdiction to amend or correct birth certificates. And where this  
9 specific authority does exist, the courts are limited in the changes they are able to order  
10 to birth and death certificates. Specifically, these areas are limited to determinations of  
11 maternity and paternity under A.R.S. § 25-801 *et seq.*, adoptions pursuant to A.R.S. 80-  
12 § 8-101 *et seq.*, and name changes under A.R.S. § 12-601 *et seq.* However, the superior  
13 courts have appellate jurisdiction over all final decisions of the Department regarding  
14 applications to amend or correct birth certificates pursuant to the Administrative  
15 Review Act. *See* A.R.S. Title 12, Chapter 7, Article 6.

16 The Department believes the language at A.R.S. § 36-337(A)(4) that provides  
17 that the Department “shall amend the birth certificate for a person born in this state  
18 when the state registrar receives . . . [a] court order ordering an amendment to a birth  
19 certificate” does not endow the courts with original jurisdiction to correct all errors or  
20 omissions in birth certificates. It is the Department’s position that the language found  
21 in (A)(4) is a “catchall” provision, in that it follows three enumerated circumstances  
22 under which the Department shall amend a birth certificate. Rather than creating a  
23 broad grant to the courts to amend birth certificates that would circumvent the  
24 procedures and standards established by the Department for amendments and  
25 corrections, the Department believes the provision only acknowledges that there may be  
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1 other provisions in law under which courts may have authority to amend birth  
2 certificates and requires the Department to comply when presented with such orders.  
3 An example of this is an order issued by the Superior Court to remove the “unknown”  
4 designation from the “father” field in the case of a child conceived through anonymous  
5 sperm.

6 A review of constitutional and statutory provisions regarding the jurisdiction of  
7 the superior courts does not otherwise disclose a statement of original jurisdiction over  
8 all requests by petitioners to amend or correct birth certificates. The existing statutory  
9 scheme for vital records and the attendant rules adopted by the Department require that  
10 requests to amend or correct birth certificates ordinarily be initiated by filing a request  
11 with the Department.

### 12 **III. Exhaustion of Administrative Remedies**

13 A person desiring to make an amendment or correction to a birth certificate must  
14 submit an application and provide the required documentary evidence in compliance  
15 with A.R.S. Title 36, Chapter 3 and A.A.C. R9-19-207 and -208, unless otherwise  
16 provided by law. In the present matter, the Petitioner must initiate the request to change  
17 the sex on the birth certificate by filing an application to the Department requesting this  
18 change, in order that they exhaust the administrative remedies allotted by means of  
19 statute and rule.

20 In *Coconino County v. Antco, Inc.*, 214 Ariz. 82 (App. 2006), the Court of  
21 Appeals stated:

22 The purpose of the exhaustion of remedies doctrine is “to  
23 allow an administrative agency to perform functions within  
24 its special competence-to make a factual record, to apply its  
25 expertise, and to correct its own errors so as to moot judicial  
26 controversies.” In this way, the exhaustion of remedies  
doctrine promotes judicial economy as well as

1 administrative agency autonomy, preventing “premature  
2 judicial intervention in inchoate administrative  
3 proceedings.”

4 *Id.* at 86, ¶ 9(citing *Moulton v. Napolitano*, 205 Ariz. 506, 511, ¶ 10 (App.2003).

5 The Court also stated that when a statute grants an administrative agency original  
6 jurisdiction over a dispute, the exhaustion of remedies doctrine requires the parties to  
7 utilize all available administrative processes before seeking the aid of a court. *Id.* at 86,  
8 ¶ 8. The Court pointed out that the doctrine does not apply “when the administrative  
9 remedy prescribed by statute is merely permissive, when the jurisdiction of the agency  
10 is being contested, when the agency's expertise is unnecessary, or when exhausting  
11 administrative remedies would cause irreparable harm or be futile.” *Id.*

12 The administrative process and remedy provided in the State’s vital records  
13 statutes and rules and the Uniform Administrative Hearing Procedures are not  
14 permissive, the Department’s expertise is essential; and, there will be no irreparable  
15 harm to the Petitioner and no futility in following the required procedures. Petitioner  
16 must exhaust available administrative remedies regarding his request to amend or  
17 correct a birth certificate before seeking relief from the Court.

18 According to A.R.S. § 36-337(A), the Department shall amend a registered  
19 certificate when the Department receives the proper court order or documents to  
20 support the amendment. Specifically, in order to amend the sex on a registered  
21 certificate “[f]or a person who has undergone a sex change operation or has a different  
22 chromosomal count that establishes their sex as different than the sex identified on the  
23 registered birth certificate,” the Department must receive a written request from the  
24 registrant, or a parent or legal guardian of a minor, and “[a] written statement by a  
25 physician that verifies the sex change operation or chromosomal count.” *Id.*  
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1 The Department's position in accordance with amending the sex on a registered  
2 certificate is to require the registrant, or their parent or guardian, to initially apply  
3 directly with the Department and present the physician's written statement as required  
4 in A.R.S. § 36-337(A)(3)(b).<sup>2</sup> The Department has historically recognized that the  
5 Arizona Legislature placed this very specific requirement in section (A)(3)(b) to ensure  
6 that this particular type of amendment is accurately documented. This aligns directly  
7 with A.R.S. § 36-337(G) which directs the following: "If the state registrar amends a  
8 registered birth certificate, the state registrar shall seal the previously registered birth  
9 certificate and the evidentiary documents provided to amend the registered birth  
10 certificate."

#### 11 IV. The Application and Denial

12 [REDACTED] (Petitioner), mother of [REDACTED]  
13 (Applicant), petitioned the Court to issue an Order Correcting Documents to reflect  
14 Applicant's gender identity. Finding good cause to grant the petition, the Court issued  
15 the Order requiring Applicant's name be changed [REDACTED]  
16 [REDACTED]; and "that a birth certificate be issued showing  
17 Applicant's new name and gender identity: male." Order at 1:20-24. Further, the Order  
18 stated that "Petitioner and Applicant may correct the gender designation on Applicant's  
19 birth certificate...to reflect his correct gender identity." *Id.* at 1:25-2:1.

20 On [REDACTED], Petitioner filed an Affidavit to Correct or Amend a Birth  
21 Certificate with the Department to change Applicant's name and sex, along with a  
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24 <sup>2</sup> Indeed, Petitioner may still apply directly with the Department. The application is  
25 available at [http://www.azdhs.gov/licensing/vital-records/index.php#corrections-](http://www.azdhs.gov/licensing/vital-records/index.php#corrections-amendments-birth-certificate)  
26 [amendments-birth-certificate.](http://www.azdhs.gov/licensing/vital-records/index.php#corrections-amendments-birth-certificate)

1 request for a copy of the new birth certificate.<sup>3</sup> Due to the statutory limitations  
2 referenced above, the Department could not comply with the Order or with Petitioner’s  
3 request regarding the amendment of registrant’s sex from female to male.

4 While the Department has amended the birth certificate to reflect the name as  
5 [REDACTED], they have not, and cannot, amend the sex as requested.  
6 Petitioner has been notified of this fact as of the date of this Objection. As noted, supra,  
7 the Petitioner has been informed in writing of their rights to appeal the denial of the  
8 amendment and have a hearing before an Administrative Law Judge pursuant to A.R.S.  
9 § 41-1092 *et seq.*

10 **Conclusion**

11 Based on the foregoing, the Department will not amend the birth certificate for  
12 the registrant and objects to the portion of this Court’s order regarding that amendment.  
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23 <sup>3</sup> The Department is acting on the application filed by Petitioner to amend the sex of the  
24 Applicant’s birth certificate. However, in addition to the legal requirements of A.R.S. §  
25 36-337(A)(3), an Arizona birth certificate requires the “sex” of the registrant, pursuant  
26 to A.A.C. R9-19-201(A)(3). There is no field on an Arizona birth records regarding  
“gender” or “gender identity” of the registrant.

1 DATED this 15<sup>th</sup> day of February, 2017.

2 MARK BRNOVICH  
3 Arizona Attorney General

4  
5  
6 /s/ Molly Bonsall  
7 Patricia LaMagna  
8 Molly Bonsall  
9 Assistant Attorneys General  
10 *Attorneys for Arizona Department of Health*  
11 *Services/Bureau of Vital Records*  
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**CERTIFICATE OF SERVICE**

I certify that on this 15<sup>th</sup> day of January, 2017, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Pima County, using the Arizona Turbo Court ECF System.

**COPY** of the foregoing mailed this 15<sup>th</sup> day of February, 2017, to:



**COPY** of the foregoing emailed this 15<sup>th</sup> day of February, 2017, to:

Clerk of the Department  
Arizona Department of Health Services  
[ACR@azdhs.gov](mailto:ACR@azdhs.gov)

Bureau of Vital Records  
Krystal Colburn  
Bureau Chief  
Robin Rodriguez  
Operations Office Chief  
Arizona Department of Health Services  
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By: /s/ Natasha Culbertson  
Natasha Culbertson, Legal Secretary II

Doc: #5543667

**EXHIBIT 23**



- 1 • Colby Bower, former Assistant Director of Licensing Services and former  
2 Assistant Director for Policy and Intergovernmental Affairs, ADHS
- 3 • Robert Lane, Chief Administrative Counsel, ADHS
- 4 • Krystal Colburn, Bureau Chief and Assistant State Registrar, ADHS
- 5 • Thomas Salow, former Deputy Assistant Director of Licensing and Branch  
6 Chief, and Interim Assistant Director of Licensing Services, ADHS
- 7 • Robin Rodriguez, former Operations Chief and Fraud Manager, BVR,  
8 ADHS
- 9 • Toni Miller, Policy Manager and Community Partner Liaison, BVR, ADHS

10 **INTERROGATORY NO. 9:**

11 Describe and explain YOUR purported governmental interest(s) or other  
12 justification(s) under the Equal Protection Clause of the Fourteenth Amendment of the  
13 United States Constitution for denying transgender individuals who have not undergone a  
14 “sex change operation” the ability to CHANGE the sex listed on their BIRTH RECORDS  
15 under subsection (A)(3) of Arizona Revised Statute section 36-337.

16 **RESPONSE:**

17 Objection: Vague and ambiguous as to “purported governmental interest(s)” and  
18 “other justification(s).” Defendant objects to this interrogatory as improper because it  
19 requires Defendant to respond with a legal argument and an ultimate legal conclusion, and  
20 improperly seeks the mental impressions and legal conclusions of counsel for Defendant,  
21 which is protected by the attorney-client privilege and/or work-product doctrine. This  
22 interrogatory is vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH  
23 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time  
24 and scope and encompasses documentation and/or information that is not relevant to the  
25 claims or defenses in this lawsuit and is therefore unduly burdensome and not  
26 proportional to the needs of this case. Defendant also objects to this interrogatory to the  
27 extent it seeks information concerning a “CHANGE,” as Plaintiffs’ definition of  
28 “CHANGE” is vague, confusing, irrelevant, and overbroad, and includes information

1 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),  
2 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue  
3 in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,  
4 and irrelevant as to the timeframe from January 1, 2004 to the present, which  
5 encompasses information that is not relevant to the claims or defenses in this lawsuit or  
6 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid  
7 of allegations regarding conduct and/or events that occurred before approximately 2019  
8 and none of the named minor Plaintiffs were born before 2011.

9 Moreover, a response to this interrogatory requires an assumption that Plaintiffs’  
10 equal protection rights have been violated when they have not. In addition, Defendant  
11 denies that transgender individuals who have not undergone a “sex change operation” are  
12 prevented, excluded, or otherwise barred from amending the sex marker listed on their  
13 registered birth certificates. All transgender individuals in the State of Arizona have the  
14 opportunity to amend the sex listed on their registered birth certificates by seeking a court  
15 order pursuant to A.R.S. § 36-337(A)(4).

16 Finally, this interrogatory seeks information regarding legislative intent, and the  
17 creation, construction, and adoption of relevant Arizona statutes, as a “governmental  
18 interest” and/or “other justification” could only have been considered by the Arizona  
19 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,  
20 construction, and adoption of Arizona statutes is not a function of ADHS, and neither  
21 ADHS, nor Defendant, were involved in or have ever been involved in this process.  
22 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature  
23 and cannot be answered by Defendant.

24 *Without waiving any objection, in 1967 the Arizona Legislature passed House*  
25 *Bill 137 into law. Upon information and belief, the 1967 law contained an early*  
26 *iteration of A.R.S. § 36-337(A)(3), in that it created a process whereby intersex*  
27 *individuals could seek an amendment of their birth certificates by providing*  
28 *documentation from a physician attesting that the individual was intersex.*

1           *In 1988, the Arizona Legislature enacted A.R.S. § 36-326. A.R.S. § 36-326(A)(4)*  
2 *states in relevant part: “The state registrar shall establish a new certificate of birth for a*  
3 *person born in this state when he receives any of the following:...(4) A sworn statement*  
4 *from a licensed physician in good standing that he has performed a surgical operation*  
5 *or a chromosomal count on a person and that by reason of this operation or count the*  
6 *sex of the person has been established as different from that in the original document.*  
7 *The state registrar may reserve the right to require further proof if deemed necessary,*  
8 *or to seek independent professional evaluation of the evidence offered before creating a*  
9 *new certificate.” A.R.S. § 36-326(A)(4). Upon information and belief, the language*  
10 *contained in the 1988 statute was largely replicated from the 1967 statute.*

11           *In 2004, Arizona State Legislators Cheryl Chase, Amanda Aguirre, and Deb*  
12 *Gullett introduced and sponsored a bipartisan bill, House Bill 2200 (“HB2200”).*  
13 *HB2200’s purpose was to reorganize, clarify, and amend vital statistics statutes, and it*  
14 *contained the current version of A.R.S. § 36-337. Numerous persons from various*  
15 *entities and medical associations supported HB2200, including Eleanor Eisenberg,*  
16 *Executive Director of the Arizona Civil Liberties Union (AzCLU). HB2200 was passed*  
17 *in April 2004, and A.R.S. § 36-337 was enacted.*

18           *Thus, given that HB2200 was supported by the Executive Director of the AzCLU,*  
19 *paired with its legislative history, the purpose of this statute was altruistic, and enacted*  
20 *for transgender and/or intersex people who had undergone a sex change operation by*  
21 *allowing them to bypass the court order process in (A)(4)—since evidence of a sex*  
22 *change operation is sufficient to ensure accurate and complete reporting—to make it*  
23 *easier for them to seek an amendment of their birth certificates. The purpose of*  
24 *HB2200 (and A.R.S. § 36-337(A)(3)) was not to discriminate against those individuals*  
25 *who had not undergone a sex change operation, as all other individuals—including*  
26 *those involved in adoptions, paternity determinations, name changes, and transgender*  
27 *individuals who have not undergone a sex change operation—are required to obtain a*  
28 *court order to seek an amendment pursuant to A.R.S. § 36-337(A)(4).*

1           *Moreover, the court order requirement in Subsection (A)(4) complied with the*  
2 *Model State Vital Statistics Act and Regulations (1992) promulgated by the Centers for*  
3 *Disease Control and Prevention and the National Center for Health Statistics in effect*  
4 *at the time. (See ADHS000198.) The model regulations do not contain a provision*  
5 *similar to (A)(3), which bolsters Defendant’s position that (A)(3) was indeed meant to*  
6 *make it easier for those individuals who had obtained a sex change operation—not to*  
7 *discriminate against those who had not.*

8           *Defendant did not create, enact, or adopt this legislation. Defendant and ADHS*  
9 *are required to apply statutes as written and follow general rules of statutory*  
10 *construction, including but not limited to those that are stated in A.R.S. Title 1, Chapter*  
11 *2, Article 2. Defendant is required to comply with the laws that the Legislature has*  
12 *enacted by implementing and following the statute. He cannot choose not to implement*  
13 *this statute and must comply with the statute’s plain language.*

14           *Defendant and ADHS have a governmental interest in maintaining and ensuring*  
15 *the truthfulness, completeness, and correctness of information in vital records and*  
16 *statistics. A.R.S. § 36-321 requires that persons who submit a certificate for registration*  
17 *must make a reasonable effort to ensure that information on the certificate is correct*  
18 *and accurate. Many forms of identification (e.g., social security card, driver’s license,*  
19 *passport) require a birth certificate, which are in turn required for a variety of things*  
20 *(e.g., financial transactions, program participation, taxation, and benefits). An*  
21 *individual’s identification is also necessary to maintain accurate records, including*  
22 *judicial records. If a birth certificate or form of identification is not accurate, it opens*  
23 *the door to fraud and other forms of abuse/crimes.*

24           *Pursuant to A.R.S. § 36-337(A)(4), Defendant, ADHS, and BVR (and ADHS and*  
25 *BVR employees) cannot partake in discretionary decision-making in determining who*  
26 *can or cannot be permitted to amend their birth certificates. They do not have authority*  
27 *to amend birth certificates in a manner that the Legislature has not specifically allowed.*  
28 *They are not fact finders and they do not weigh evidence. The Legislature specifically*

1 reserved discretionary decision-making for Arizona State Courts under Subsection  
2 (A)(4). In doing so, the Arizona Legislature ensured that certain safeguarding  
3 procedures are in place to prevent inaccurate and/or incomplete reporting by Arizona  
4 citizens seeking to abuse the birth certificate amendment process. A.R.S. § 36-  
5 337(A)(4) provides Arizona State Courts with discretion in determining whether an  
6 amendment should be provided to a particular individual based on the individual  
7 circumstances and facts presented to the court. This provides necessary oversight and  
8 safeguarding and protects individuals—particularly minors—from an abuse of this  
9 process. As stated above, individuals who have undergone a sex change operation and  
10 can provide a physician’s note indicating that they have are exempt from the court  
11 order process because proof of a sex change operation is sufficient and concrete  
12 evidence that the individual has taken permanent and irreversible steps to change their  
13 gender and remains who they say they are. Thus, Defendant has a governmental  
14 interest and justification for implementing A.R.S. § 36-337 to ensure the accuracy and  
15 completeness of birth certificates, and to ensure the safeguarding against abuse of this  
16 process by requiring courts orders for those who have not undergone a sex change  
17 operation.

18 By responding to this Interrogatory as worded, Defendant does not concede that  
19 he has denied any transgender individual who has not undergone a sex change  
20 operation the ability to amend the sex listed on their birth certificate as that avenue is  
21 made available to them through A.R.S. § 36-337(A)(4) and the A.A.C. R9-19-208(B),  
22 (P) administrative process. Defendant denies that he has violated Plaintiffs’ or any  
23 transgender individual’s purported rights under the Equal Protection Clause of the  
24 Fourteenth Amendment. Defendant will continue to supplement this response as it  
25 acquires additional information.

26 **INTERROGATORY NO. 10:**

27 State all facts supporting YOUR response to Interrogatory No. 9.

28 **RESPONSE:**

1 relevant to the claims or defenses in this lawsuit or proportional to the needs of this case  
2 given that Plaintiffs' Amended Complaint is devoid of allegations regarding conduct  
3 and/or events that occurred before approximately 2019, and none of the named minor  
4 Plaintiffs were born prior to 2011. Defendant further objects that information responsive  
5 this interrogatory, if any, is irrelevant to the claims or defenses in this case.

6 Without waiving these objections, pursuant to A.R.S. § 36-322(A), when a state  
7 registrar amends an individual's registered birth certificate, the state registrar is required  
8 to seal the original birth certificate and any evidentiary documents used to support the  
9 amendment. Under A.R.S. § 36-322(B), the state registrar shall not issue a copy of a  
10 sealed certificate or other record unless required by court order and except as provided in  
11 § 36-340 (concerning adoptions).

12  
13 DATED this 17<sup>th</sup> day of October, 2022.

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1 The foregoing was emailed this 17<sup>th</sup> day  
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**Exhibit 24**  
**FILED UNDER SEAL**



**Exhibit 25**  
**FILED UNDER SEAL**

**Exhibit 26**  
**FILED UNDER SEAL**