

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ROWAN FOWLER, *et al.*,

*Plaintiffs,*

v.

KEVIN STITT, *et al.*,

*Defendants.*

No. 22-CV-00115-GKF-SH

**DEFENDANTS' MOTION TO STAY DISCOVERY PENDING RESOLUTION  
OF DEFENDANTS' MOTION TO DISMISS**

Defendants, Kevin Stitt, Keith Reed, and Kelly Baker, all in their official capacities, respectfully request this Court stay all discovery until an order is issued on Defendants' Motion to Dismiss, Doc. 24. Good cause exists for a stay of discovery because resolution of Defendants' Motion to Dismiss could dispose of all or part of Plaintiffs' claims, therefore impacting the permissible scope of discovery. Defendants will therefore experience unnecessary burden, expense, and prejudice if discovery is allowed to advance before this Court enters its ruling on the Defendants' Motion to Dismiss. In support, Defendants show the Court the following:

**BACKGROUND**

1. On March 14, 2022, Plaintiffs filed the above-styled action and on July 29, 2022, Plaintiffs filed their First Amended Complaint. *See* Doc. 2; Doc. 21.
2. On August 26, 2022, Defendants filed their Motion to Dismiss and Brief in Support, Doc. 24.
3. On August 31, 2022, the Parties filed their Joint Status Report and Discovery Plan, forecasting the dispute presented in this Motion: whether discovery should be stayed until dispositive motions are resolved. *See* Doc. 26 at 4-5.
4. On September 1, 2022, this Court entered a Minute Order in response to the Parties' Joint Status Report and Discovery Plan, finding, pursuant to Fed. R. Civ. P. 16(b)(2), "good cause for delay in issuing a scheduling order in this case until resolution of pending motions." *See* Doc. 27.

5. By October 14, 2022, Defendants' Motion to Dismiss was fully briefed and pending before the Court.

6. On January 3, 2023, Plaintiffs served their First Requests for Admission, attached as Ex. 1, First Request for Production of Documents, attached as Ex. 2, and First Set of Interrogatories, attached as Ex. 3 (collectively "Plaintiffs' First Discovery Requests").

7. Pursuant to Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A), and 36(a)(3), Defendants' response to Plaintiffs First Discovery Requests are due February 2, 2023.

8. Pursuant to LCvR7-1(c), the undersigned counsel contacted Plaintiffs' counsel to inquire whether Plaintiffs would oppose the requested relief. Plaintiffs' counsel communicated that Plaintiffs oppose the requested relief.

### **ARGUMENT AND AUTHORITIES**

The Court has wide discretion to stay discovery and pre-trial matters, incident to its inherent authority to control its own docket. *See Landis v. North American Co.*, 299 U.S. 248 (1936) (holding that "[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.") (citing *Kansas City S. Ry. Co. v. United States*, 282 U.S. 760, 763, 51 S.Ct. 304 (1931)); *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (same); *see also* Doc. 27. It is also "well settled that discovery is generally considered inappropriate while a motion that would be thoroughly dispositive of the claims in the Complaint is pending." *Chavous v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2005) (citations omitted); *see also, e.g., Vivid Techs., Inc. v. Am. Schl. & Eng'g, Inc.*, 200 F.3d 795, 804 (Fed. Cir. 1999); *Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D. Fla. 2003).

Furthermore, “[e]specially in cases of extraordinary public moment, [a party] may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted.” *Clinton*, 520 U.S. at 707 (citing *Landis*, 299 U.S. at 256). This principle is echoed by Fed. R. Civ. P. 26(c), which directs that a protective order may be issued “for good cause” to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .”

Although discovery stays are not granted as a matter of course, they are appropriate “where the case is likely to be finally concluded as a result of the ruling thereon, where the facts sought through uncompleted discovery would not affect the resolution of the motion, or where discovery on all issues of the broad complaint would be wasteful and burdensome.” *Samson Res. Co. v. J. Aron & Co.*, 08-CV-752-TCK-SAJ, 2009 WL 1606564, at \*1 (N.D. Okla. June 8, 2009) (citation omitted). This Court has further adopted five factors for evaluating whether good cause exists to stay discovery: “(1) the plaintiff’s interests in proceeding expeditiously with the civil action and the potential prejudice to the plaintiff of a delay; (2) the burden on the defendants; (3) the convenience to the court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.” *Hellard v. Mid Century Ins. Co.*, 19-CV-43-GKF-FHM, 2019 WL 11791771, at \*1 (N.D. Okla. Apr. 10, 2019) (citation omitted).

Here, all factors weigh in favor of staying discovery until this Court issues a decision on Defendants’ Motion to Dismiss. First, any prejudice from delay Plaintiffs may experience is minimal, as no scheduling order has been entered<sup>1</sup> and the case is still in its infancy. Staying discovery will not cause undue delay or prejudice, and Plaintiffs will have ample opportunity to engage in any appropriate discovery once the Motion to Dismiss is resolved. Additionally, Plaintiffs’ claims present questions of law that will require little, if any, fact-finding or discovery for resolution in the first place, further

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<sup>1</sup> In fact, this Court found good cause existed to delay the issuing of a scheduling order until resolution of pending motions. *See* Doc. 27. Thus, it is unlikely a scheduling order will be entered prior to resolution of Defendants’ Motion to Dismiss.

reducing any potential for prejudice. As a compelling example, no information obtained through discovery would be relevant to the pending motion to dismiss, which has been fully briefed and submitted to the Court. *See, e.g.*, Doc. 24 at 2 (arguing that because “Plaintiffs’ far-sweeping constitutional theories have no basis in law[,] . . . **no set of facts** could establish a plausible claim for relief, and dismissal under Fed. R. Civ. P. 12(b)(6) is proper.”) (emphasis added).

Second, the burden and cost on Defendants in conducting discovery will be significant, as illustrated by the far-sweeping nature of Plaintiffs’ First Discovery Requests. On page one of their Requests for Production, Plaintiffs define “Defendant” and “You” as the named Defendant, as well as “all agents, employees, staff, officers, directors, independent contractors, consultants, and third parties, including individuals and entities, over whom Defendants have direct or indirect control for each Defendant, . . . as well as any other person or entity acting for or on behalf of any of the Defendants.” Ex. 2 at 1. The Oklahoma Department of Health employs around 2,000 people. Further, Plaintiffs’ discovery requests demand documents such as “[a]ll electronic communications” between “any Oklahoma State Department of Health official or employee” on certain subjects since “January 1, 2015”—a temporal scope of **over eight years**. *See* Ex. 2 at 12. The amount of time and expense it would take to inquire, review, and/or produce responsive information for essentially all 2,000 employees of the Oklahoma State Department of Health over a period of eight years is immeasurable.

More importantly, in the event this Court grants all or part of Defendants’ motion to dismiss, *any burden* placed upon Defendants through discovery will be unwarranted, unreasonable, and prejudicial. In other words, discovery on all issues under the complaint at this juncture would be unnecessary, wasteful, and burdensome, given a ruling on Defendants’ motion to dismiss may limit the scope of discovery or eliminate the need for discovery altogether. *See, e.g., LaFleur v. Teen Help*, 342 F.3d 1145, 1153 (10th Cir. 2003) (affirming a magistrate judge did not abuse his discretion in staying discovery pending a ruling on a motion to dismiss, in part because “if the motion to dismiss were

granted, the depositions would be unnecessary.”). As a result, permitting discovery at this juncture would place an unreasonable and unnecessary burden on Defendants.

Third, a discovery stay will convenience this Court and the interests of judicial economy. A stay will allow this Court to focus its time and effort on the task of resolving the pending Motion to Dismiss, without the interruption of ancillary discovery disputes that will likely arise in the interim in the absence of a stay.<sup>2</sup> Finally, the interests of third parties and the public will be furthered by a discovery stay. A discovery stay would, for example, forbid the parties from inconveniencing third parties with subpoena requests until the proper scope of discovery is known through resolution of Defendants’ Motion to Dismiss. What’s more, any undue expense placed upon the State is ultimately an undue expense placed upon the taxpayers and the public. Therefore, the public interest weighs against such unnecessary burdens being placed upon the State while a dispositive motion is pending.

### **CONCLUSION**

For the same reasons good cause existed for delay in the issuing of a scheduling order in this case until resolution of pending motions, *see* Doc. 27, good cause likewise exists for a stay of all discovery until resolution of Defendants’ Motion to Dismiss. Defendants will experience unnecessary burden, expense, and prejudice if discovery were allowed to advance before this Court enters its ruling on the Motion to Dismiss. Resolution of Defendants’ Motion to Dismiss could dispose of all or part of Plaintiffs’ claims, therefore impacting the permissible scope of discovery. Accordingly, the interests of judicial economy, and the public interest, favor staying discovery pending the resolution of Defendants’ Motion to Dismiss.

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<sup>2</sup> Moreover, these discovery disputes could be affected or resolved entirely by this Court’s ruling on the Motion to Dismiss.

Respectfully submitted,

*s/ Audrey A. Weaver*

ZACH WEST, OBA #30768

*Director of Special Litigation*

AUDREY A. WEAVER, OBA #33258

*Assistant Solicitor General*

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*Counsel for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of January, 2023, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants with entries of appearance filed of record.

*s/ Audrey A. Weaver*  
\_\_\_\_\_  
Audrey A. Weaver

# Exhibit 1

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

ROWAN FOWLER, *et al.*,  
*Plaintiffs,*

v.

KEVIN STITT, *et al.*,  
*Defendants.*

Case No.: 22-CV-00115-GKF-SH

**PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and LCvR36-1 of the Local Civil Rules of Procedure of the United States District Court for the Northern District of Oklahoma, effective January 26, 2021, Plaintiffs hereby serve the following Requests for Admissions (“Requests”) on Defendants for responses within thirty (30) days of the date that appears on the attached Certificate of Service. These Requests are continuing in nature as provided in Fed. R. Civ. P. 26(e) and should be answered in accord with the following Definitions and Instructions.

**DEFINITIONS**

1. “Defendant,” “Defendants,” and “You” refer to Defendants Kevin Stitt, in his official capacity as the Governor of the State of Oklahoma and in his capacity as the person who oversees Oklahoma State Department of Health, Keith Reed, in his official capacity as the Commissioner of Health for the Oklahoma State Department of Health, and Kelly Baker, in her official capacity as State Registrar of Vital Records, and in their official capacities as government officials for the State of Oklahoma, and these terms include all agents, employees, staff, officers,

directors, independent contractors, consultants, and third parties, including individuals and entities, over whom Defendants have direct or indirect control for each Defendant, the Oklahoma State Department of Health, and the Oklahoma Office of Vital Statistics, as well as any other person or entity acting for or on behalf of any of the Defendants.

2. “Birth Certificate Policy” and “Policy” means the following: each Defendant’s policy and practice of refusing to provide transgender people with birth certificates that match their gender identity, including the refusal to correct the gender markers on transgender people’s birth certificates to match their gender identity, and/or each Defendant’s refusal to provide a birth certificate matching a transgender person’s gender identity without the inclusion of revision history that discloses a person’s transgender status, such as a person’s sex assigned at birth and former name associated with that assigned sex.

3. “Listed sex” and “sex listed,” also known as a “gender marker,” means the identification field on an Oklahoma birth certificate that refers to the sex or gender of the birth certificate subject.

4. “Change” with respect to identification fields on birth certificates, includes correct, fix, amend, modify, rectify, and all other meanings that capture an alteration from the original marking that is made for any reason including mistake, administrative error, or changed circumstances.

5. “Transgender” people refer to individuals whose gender identity differs from the sex they were assigned at birth.

6. “Gender Identity” means a person’s core internal sense of their own gender. Every person has a gender identity, whether they are transgender or not.

7. “Present” shall have the broadest possible meaning to include not only the date any request is served but also the time when any party has an ongoing duty to supplement a response.

### **INSTRUCTIONS**

1. These Requests are continuing in nature, up to and during the course of trial. This means that if, after the time of their initial responses, any Defendant learns that any response is or has become in some material respect incomplete or incorrect, Defendants must promptly supplement or amend their responses to the full extent required by Federal Rule of Civil Procedure 26(e) and the applicable local rules. Plaintiffs will object to any attempt to introduce evidence to the Court that should have been but was not disclosed in the responses or supplementation of the responses.

2. As to each Request, Defendant shall specifically admit or deny the statement contained therein. If denied, the denial must fairly meet the substance of the requested admission. If Defendant qualifies its answer or denies any part of the matter for which admission is requested, Defendant shall admit so much of the statement as is true and qualify or deny the remainder.

3. If Defendant objects that a term or phrase is vague or ambiguous, Defendant shall respond with their understanding of the term or phrase and specifically admit or deny the statement.

4. If Defendant objects to any part of a Request, Defendant shall specify each part of the Request to which Defendant objects; set forth with specificity the grounds for objecting to each such part of the Request, including the reasons; and otherwise respond to all parts of the Request to which Defendant does not object.

5. For purposes of interpreting or construing the scope of these Requests, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

- a. Construing “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural, and the plural form to include the singular;
- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term “including” to mean “including but not limited to” and construing the term “all” to mean “any and all,” and vice versa;
- e. Construing the term “each” to include “every,” and construing “every” to include “each”;
- f. Construing the use of a verb in any tense as the use of the verb in all other tenses;
- g. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.

6. Where any particular Request seeks information about a word or phrase that is contained in the Second Amended Complaint, or any later filed complaints, the Request is seeking information consistent with the meaning set forth in the operative complaint. If Defendants contend the meaning of a particular word or phrase is different than as set forth in the complaint, Defendants should include their intended meaning for the word or phrase.

### **REQUEST FOR ADMISSIONS**

1. Admit that each Defendant enforces the Birth Certificate Policy.

2. Admit that the Oklahoma State Department of Health has enforced the Birth Certificate Policy through written communications to transgender people denying their request to change the sex listed on their birth certificate to match their male or female gender identity.

3. Admit that each Defendant enforces the Birth Certificate Policy regardless of whether a transgender individual has presented a court order directing that the individual's birth certificate be amended to match that individual's gender identity.

4. Admit that Defendants refuse to change the sex listed on Plaintiffs' birth certificates to conform to their gender identity.

5. Admit that Defendants refuse to change the sex listed on the birth certificates of transgender people born in Oklahoma to conform to their male or female gender identity.

6. Admit that, apart from any restriction on non-binary designations on Oklahoma birth certificates, Defendants have enforced Executive Order 2021-24 to prohibit transgender men and women from changing the sex listed on their Oklahoma birth certificates to match their male or female gender identity.

7. Admit that Governor Stitt has instructed the Oklahoma State Department of Health that it cannot change the sex listed on the birth certificates of transgender people to reflect their male or female gender identity.

8. Admit that the Oklahoma Department of Public Safety allows transgender people to change the sex listed on their driver's licenses to match their male or female gender identity.

9. Admit that a reason why Defendants provide individuals with copies of their own Oklahoma birth certificates is so that they can prove their identity.

10. Admit that Defendants do not prohibit Oklahoma residents who were born outside Oklahoma from using their birth certificates to prove their identity.

11. Admit that the Oklahoma State Department of Health stopped changing the sex listed on the Oklahoma birth certificates of transgender men and women to match their gender identity because of actions taken by Governor Stitt, including issuance of Executive Order 2021-24.

12. Admit that Executive Order 2021-24 was issued because of the Oklahoma State Department of Health's actions with respect to *Lorelied v. Frye*, 5:20-cv-00619 (W.D. Okla.).

13. Admit that the Oklahoma State Department of Health did not change the birth certificate of the plaintiff in *Lorelied v. Frye*, 5:20-cv-00619 (W.D. Okla.) to either male or female.

14. Admit that, before Executive Order 2021-24, the Oklahoma State Department of Health changed the listed sex on the birth certificates of transgender individuals born in Oklahoma.

Respectfully submitted,

/s/ Christina Paek

Christina S. Paek\*

Peter C. Renn\*

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*Attorneys for Plaintiffs*

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**CERTIFICATE OF SERVICE**

I hereby certify that January 3, 2023, a true and exact copy of this Request for

Admissions has been served by email pursuant to the agreement of the parties:

Zach West, OBA #30768  
*Solicitor General*  
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# Exhibit 2

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

ROWAN FOWLER, *et al.*,  
*Plaintiffs,*

v.

KEVIN STITT, *et al.*,  
*Defendants.*

Case No.: 22-CV-00115-GKF-SH

**PLAINTIFFS’ FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiffs request that all Defendants produce the documents and items requested below for inspection and copying and serve copies to counsel for Plaintiffs within thirty (30) days of the date that appears on the attached Certificate of Service. This request is continuing in nature as provided in Fed. R. Civ. P. 26(e) and should be answered in accord with the following Definitions and Instructions.

**DEFINITIONS**

1. “Defendant,” “Defendants,” and “You” refer to Defendants Kevin Stitt, in his official capacity as the Governor of the State of Oklahoma and in his capacity as the person who oversees Oklahoma State Department of Health, Keith Reed, in his official capacity as the Commissioner of Health for the Oklahoma State Department of Health, and Kelly Baker, in her official capacity as State Registrar of Vital Records, and in their official capacities as government officials for the State of Oklahoma, and these terms include all agents, employees, staff, officers, directors, independent contractors, consultants, and third parties, including individuals and entities, over whom Defendants have direct or indirect control for each Defendant, the Oklahoma

State Department of Health, and the Oklahoma Office of Vital Statistics, as well as any other person or entity acting for or on behalf of any of the Defendants.

2. “Identify” has the following meanings:
  - a. When used in reference to an individual, it means to state a person’s full name, present or last known business address and business telephone number, present or last known employer and job title, e-mail address, and, if no business address or telephone number is available, present or last known home address and home telephone number.
  - b. When used in reference to an oral communication, it means to describe the communication by stating the date and place where it was made; to identify the maker and each recipient in addition to all the other persons present; to summarize the substance of the communication, and to indicate the method of communication (in person, telephonic, etc.). Please note that when identifying the date of an oral communication, the precise date must be given. If only an approximate date is given, it will be presumed that Defendants have no specific knowledge as to the exact date.
  - c. When used in reference to a document or documentary evidence, it means to state the type of document (e.g., letter, memorandum, email, chart), its author and originator, its date or dates, all addressees and recipients, its present location or custodian, the topics dealt with therein with a degree of particularity sufficient for a demand for production, and any identifying marks, numerals, code words or letters distinguishing it from other like documents. If any such document was, but no longer is, in any Defendant’s possession or subject to any Defendant’s

custody or control, state what disposition was made of it—for example, destruction or transfer to a different named individual or entity. Documents to be identified shall include all documents in any Defendant’s possession, custody, or control and all of the documents of which any Defendant has knowledge. Defendants may supply a document in lieu of identifying it, so long as they clearly label the Document to indicate the Interrogatory to which the Document responds.

3. “Person” shall mean any natural person or business, non-profit, legal or governmental entity or association.

4. The terms “concerning,” “showing,” “regarding,” and “relating to” include referring to, alluding to, responding to, connected with, commenting on, in respect of, about, discussing, summarizing, showing, describing, reflecting, analyzing, constituting, or in any which way relevant to the specified subject within the meaning of Fed. R. Civ. P. 26.

5. “Document” has the full scope and meaning of the term appearing in the Federal Rules of Civil Procedure and any applicable local rules and also means the original, each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) and (if the original is not in existence or subject to any Defendant’s control) each copy, regardless of origin or location, of any handwritten, typewritten, printed, recorded, transcribed, punched, taped, tape recorded, photocopied, photostatic, telex, filmed, microfilmed or otherwise prepared material, however produced or reproduced, which is in any Defendant’s possession, custody or control, or in the possession, custody and control over whom any Defendant has the right of control, including, but not limited to, all papers, letters, correspondence, electronic mail, catalogs, advertisements, telegrams, telexes, cables, memoranda, or minutes of meetings of

conversations (personal or telephonic), desk pads, calendars, diaries, telephone pads, travel and expense records, reports, summaries, surveys, analyses, ledgers, journals and other formal or informal books of record or account, bulletins, instructions, agreements, legal documents, billing records, telephone toll records, drafts, notebooks, worksheets, attorneys' and accountants' invoices, audits and audit records, purchase orders, accounting worksheets, time records, canceled checks, vouchers, check stubs and writing of every description, including drawings, post-it notes, graphs, charges, photographs, films, recordings, transcriptions of recordings, computer tapes and printouts, and other data or compilations from which information can be obtained and translated, if necessary, by any Defendant into a reasonably usable form.

6. "Birth Certificate Policy" and "Policy" mean the following: each Defendant's policy and practice of refusing to provide transgender people with birth certificates that match their gender identity, including the refusal to correct the gender markers on transgender people's birth certificates to match their gender identity, and/or each Defendant's refusal to provide a birth certificate matching a transgender person's gender identity without the inclusion of revision history that discloses a person's transgender status, such as a person's sex assigned at birth and former name associated with that assigned sex.

7. "Listed sex" and "sex listed," also known as a "gender marker," mean the identification field on an Oklahoma birth certificate that refers to the sex or gender of the birth certificate subject.

8. "Change" with respect to identification fields on birth certificates, includes correct, fix, amend, modify, rectify, and all other meanings that capture an alteration from the original marking that is made for any reason including mistake, administrative error, or changed circumstances.

9. “Transgender” people refer to individuals whose gender identity differs from the sex they were assigned at birth.

10. “Gender Identity” means a person’s core internal sense of their own gender. Every person has a gender identity, whether they are transgender or not.

11. “Present” shall have the broadest possible meaning to include not only the date any document request, response, and production is served but also the time when any party has an ongoing duty to supplement a response or production.

### **INSTRUCTIONS**

1. Defendants are hereby instructed to produce the requested documents, including all electronically stored information, subject to this Request for Production of Documents, in the form they are kept in the usual course of business.

2. These Requests are continuing in nature, up to and during the course of trial. This means that if, after the time of their initial responses, any Defendant learns that any response is or has become in some material respect incomplete or incorrect, Defendants must promptly supplement or amend their responses to the full extent required by Federal Rule of Civil Procedure 26(e) and the applicable local rules. Plaintiffs will object to any attempt to introduce evidence to the Court that should have been but was not disclosed in the responses or supplementation of the responses.

3. Each request seeks the requested documents in their entirety, without abbreviation or redaction, including all attachments or other matters affixed to them, except that names of non-party applicants for a change of the sex listed on their birth certificate, social security numbers, taxpayer identification numbers, financial account numbers, and addresses may be redacted.

4. Original and all non-identical copies of responsive documents, including all drafts, must be produced. If any Defendant is unable to produce the original of any document, that Defendant is requested to produce the best available copy and all non-identical copies, including drafts.

5. For all documents produced, please identify the names of the person from whose files the documents were produced.

6. No portion of a Document Request may be left unanswered because an objection is interposed to another part of that request. If any Defendant objects to any portion of a document request, that Defendant must state with specificity the grounds for the objection. Any objection based on unstated ground will be waived.

7. If any Defendant claims that Defendant is entitled wholly or partially to withhold a requested document because of a rule, privilege, immunity, or other reason, then that Defendant is requested to provide the following information for each document that is wholly or partially withheld:

- a. Identify the document by date, name, and title of the author; name(s) of the recipient(s); title of the document; and a description of the document without revealing information for which the privilege is claimed;
- b. State the basis for any privilege(s) pursuant to which production is refused; and
- c. In the case of any document concerning a meeting or conversation, state the date, place and subject matter of such meeting or conversation, and identify the persons who attended the meeting or participated in the conversation.

8. In the event that a responsive document has been destroyed or passed out of the custody or control of any Defendant, please provide the following information with respect to each such document:

- a. Title;
- b. Date;
- c. Author(s);
- d. Sender(s);
- e. Recipient(s);
- f. Current or last known custodian;
- g. All persons having knowledge or who had knowledge of the document;
- h. The type or topic of information that was contained in the document; and
- i. The full circumstances surrounding the document's disposition from Defendant's possession or control.

9. For purposes of interpreting or construing the scope of these Requests, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

- a. Construing "and" as well as "or" in the disjunctive or conjunctive, as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural, and the plural form to include the singular;
- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term "including" to mean "including but not limited to" and construing the term "all" to mean "any and all," and vice versa;

- e. Construing the term “each” to include “every,” and construing “every” to include “each”;
  - f. Construing the use of a verb in any tense as the use of the verb in all other tenses;
  - g. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.
10. Where any particular Request seeks information about a word or phrase that is contained in the Second Amended Complaint, or any later filed complaints, the Request is seeking information consistent with the meaning set forth in the operative complaint. If Defendants contend the meaning of a particular word or phrase is different than as set forth in the complaint, Defendants should include their intended meaning for the word or phrase.

### **DOCUMENT REQUESTS**

- 1. All documents regarding or relating to the Birth Certificate Policy.
- 2. All documents regarding or relating to the creation of the Birth Certificate Policy and the reasons for its creation, including all documents consulted, reviewed, exchanged, or relied upon in the course of its development.
- 3. All documents regarding or relating to the statement issued by Governor Stitt on or about October 21, 2021, in which he stated, “I believe that people are created by God to be male or female. Period.”
- 4. All documents regarding or relating to the implementation of the Birth Certificate Policy, including all documents relating to interpretation of the Policy, enforcement of the Policy, compliance with the Policy, and the monitoring of compliance with the Policy.

5. All documents regarding or relating to the implementation and enforcement of the Birth Certificate Policy as to transgender people seeking to change the sex listed on their birth certificates from male to female or from female to male.

6. All documents regarding or relating to any policy alternatives to the Birth Certificate Policy that any Defendant considered, including prior to the implementation of the Birth Certificate Policy through the present.

7. All documents regarding or relating to any revision or contemplated revision to the Birth Certificate Policy after its creation through the present.

8. All documents regarding or relating to Executive Order 2021-24, including but not limited to:

- a. All documents regarding or relating to OSDH's compliance with the instruction in Executive Order 2021-24 to "[c]ease amending birth certificates that is in any way inconsistent with 63 O.S. § 1-321."
- b. All documents regarding or relating to OSDH's compliance with the instruction in Executive Order 2021-24 to "remov[e] from its website any reference to amending birth certificates that is inconsistent with its authority under 63 O.S. § 1-321."
- c. All documents regarding or relating to OSDH's compliance with the instruction in Executive Order 2021-24 to "[i]nform the Governor's office of any pending litigation that is related to amending birth certificates in Oklahoma," and
- d. All documents regarding or relating to OSDH's compliance with the instruction in Executive Order 2021-24 to "[p]rovide the Governor's office with any other information that OSDH feels is responsive to this Executive Order."

9. All documents constituting, regarding, or relating to any Defendant's communications with any other Oklahoma government official, including their agents, related to the Birth Certificate Policy.

10. All documents constituting, regarding, or relating to any Defendant's communications with any other Oklahoma government official, including their agents, related to Senate Bill 1100.

11. All documents reflecting any Defendant's communications with any other Oklahoma government official related to legislation "that changes in sex or gender on a birth certificate or a designation of non-binary is contrary to Oklahoma Law," as described in Executive Order 2021-24.

12. All documents supporting or otherwise relating to Defendants' contention that the Birth Certificate Policy serves a government interest in "protecting the integrity and accuracy of vital records, including by documenting birth information and classifying individuals based on the two sexes."

13. All documents supporting or otherwise relating to Defendants' contention that the Policy serves a government interest in "protect[ing] the interests of women."

14. All documents supporting or otherwise relating to any government interest that Defendants contend the Birth Certificate Policy serves.

15. All documents, including communications, concerning any connection between (a) the "resignation" of Lance Frye as Commissioner of the Oklahoma State Department of Health and (b) OSDH's actions with respect to *Lorelied v. Frye*, 5:20-cv-00619 (W.D. Okla.) or OSDH's policies or practices changing the listed sex on the birth certificates of transgender individuals to conform to their gender identity, on the other hand.

16. All documents regarding or relating to any policy or practice prior to the Birth Certificate Policy, whether formal or informal, governing whether or how to change the listed sex on Oklahoma birth certificates.

17. All documents referring or relating to each instance when Defendants have changed the listed sex on an Oklahoma birth certificate.

18. Every request that Defendants have received to change the listed sex on an Oklahoma birth certificate.

19. Every court order that Defendants have received ordering the change of the listed sex on an Oklahoma birth certificate.

20. Every Oklahoma birth certificate on which Defendants have changed the listed sex and all documents related to that change.

21. Every birth certificate for which Defendants have refused to change the listed sex after a request, and all documents related to that change having been considered or rejected.

22. Every Oklahoma birth certificate that Defendants have issued on which the listed sex is anything other than male or female.

23. For every Oklahoma birth certificate that Defendants have issued on which the listed sex is anything other than male or female, all documents referring or relating to the decision to use a listed sex other than male or female.

24. All documents regarding or relating to *Lorelied v. Frye*, 5:20-cv-00619 (W.D. Okla.), including its relationship to or connection with the Birth Certificate Policy.

25. Documents sufficient to show the organizational structure of the Oklahoma State Department of Health, including, but not limited to, organizational charts or other documents that identify the hierarchy of authority among positions and the responsibilities and duties associated

with each position, and the names and titles of employees who presently hold those positions and who held those positions over the last ten years.

26. All electronic communications—including emails, text messages, instant messages, chat messages, and internal messages on software platforms like Teams—sent on or after January 1, 2015 by or to any Oklahoma State Department of Health official or employee containing the words or phrases (singular and plural) “transgender,” “transsexual,” “nonbinary,” “intersex,” “gender transition,” “gender reassignment,” “sex reassignment,” “gender identity,” “gender dysphoria,” “sex designation,” “gender designation,” “gender marker,” “sex marker,” “gender change,” “sex transition,” “cross dresser,” “transvestite,” or “sex change” within the same communication as the words or phrases “birth record,” “certificate,” or “vital statistics”—whether sent from or received in their official public accounts or their personal accounts but used in their official capacity.

27. All documents and communications regarding or relating to Plaintiffs.

28. All documents referenced in Defendants’ initial disclosures.

29. All documents reviewed, consulted, or relied upon in the course of answering Plaintiffs’ interrogatories.

Respectfully submitted,

/s/ Christina Paek

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**CERTIFICATE OF SERVICE**

I hereby certify that January 3, 2023, a true and exact copy of this Request for Production of Documents has been served by email pursuant to the agreement of the parties:

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# Exhibit 3

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

ROWAN FOWLER, *et al.*,  
*Plaintiffs,*

v.

KEVIN STITT, *et al.*,  
*Defendants.*

Case No.: 22-CV-00115-GKF-SH

**PLAINTIFFS’ FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and LCvR33-1 of the Local Civil Rules of Procedure of the United States District Court for the Northern District of Oklahoma, effective January 26, 2021, Plaintiffs request that all Defendants answer the following Interrogatories, in writing and under oath, and serve the answers and any objections on counsel for Plaintiffs within thirty (30) days of the date that appears on the attached Certificate of Service. These Interrogatories are continuing in nature as provided in Fed. R. Civ. P. 26(e) and should be answered in accord with the following Definitions and Instructions.

**DEFINITIONS**

1. “Defendant,” “Defendants,” and “You” refer to Defendants Kevin Stitt, in his official capacity as the Governor of the State of Oklahoma and in his capacity as the person who oversees Oklahoma State Department of Health, Keith Reed, in his official capacity as the Commissioner of Health for the Oklahoma State Department of Health, and Kelly Baker, in her

official capacity as State Registrar of Vital Records, and in their official capacities as government officials for the State of Oklahoma, and these terms include all agents, employees, staff, officers, directors, independent contractors, consultants, and third parties, including individuals and entities, over whom Defendants have direct or indirect control for each Defendant, the Oklahoma State Department of Health, and the Oklahoma Office of Vital Statistics, as well as any other person or entity acting for or on behalf of any of the Defendants.

2. “Identify” has the following meanings:
  - a. When used in reference to an individual, it means to state a person’s full name, present or last known business address and business telephone number, present or last known employer and job title, e-mail address, and, if no business address or telephone number is available, present or last known home address and home telephone number.
  - b. When used in reference to an oral communication, it means to describe the communication by stating the date and place where it was made; to identify the maker and each recipient in addition to all the other persons present; to summarize the substance of the communication, and to indicate the method of communication (in person, telephonic, etc.). Please note that when identifying the date of an oral communication, the precise date must be given. If only an approximate date is given, it will be presumed that Defendants have no specific knowledge as to the exact date.

c. When used in reference to a document or documentary evidence, it means to state the type of document (e.g., letter, memorandum, email, chart), its author and originator, its date or dates, all addressees and recipients, its present location or custodian, the topics dealt with therein with a degree of particularity sufficient for a demand for production, and any identifying marks, numerals, code words or letters distinguishing it from other like documents. If any such document was, but no longer is, in any Defendant's possession or subject to any Defendant's custody or control, state what disposition was made of it—for example, destruction or transfer to a different named individual or entity. Documents to be identified shall include all documents in any Defendant's possession, custody, or control and all of the documents of which any Defendant has knowledge. Defendants may supply a document in lieu of identifying it, so long as they clearly label the Document to indicate the Interrogatory to which the Document responds.

3. "Person" shall mean any natural person or business, non-profit, legal or governmental entity or association.

4. The terms "concerning," "showing," "regarding," and "relating to" include referring to, alluding to, responding to, connected with, commenting on, in respect of, about, discussing, summarizing, showing, describing, reflecting, analyzing, constituting, or in any which way relevant to the specified subject within the meaning of Fed. R. Civ. P. 26.

5. “Document” has the full scope and meaning of the term appearing in the Federal Rules of Civil Procedure and any applicable local rules and also means the original, each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) and (if the original is not in existence or subject to any Defendant’s control) each copy, regardless of origin or location, of any handwritten, typewritten, printed, recorded, transcribed, punched, taped, tape recorded, photocopied, photostatic, telex, filmed, microfilmed or otherwise prepared material, however produced or reproduced, which is in any Defendant’s possession, custody or control, or in the possession, custody and control over whom any Defendant has the right of control, including, but not limited to, all papers, letters, correspondence, electronic mail, catalogs, advertisements, telegrams, telexes, cables, memoranda, or minutes of meetings of conversations (personal or telephonic), desk pads, calendars, diaries, telephone pads, travel and expense records, reports, summaries, surveys, analyses, ledgers, journals and other formal or informal books of record or account, bulletins, instructions, agreements, legal documents, billing records, telephone toll records, drafts, notebooks, worksheets, attorneys’ and accountants’ invoices, audits and audit records, purchase orders, accounting worksheets, time records, canceled checks, vouchers, check stubs and writing of every description, including drawings, post-it notes, graphs, charges, photographs, films, recordings, transcriptions of recordings, computer tapes and printouts, and other data or compilations from which information can be obtained and translated, if necessary, by any Defendant into a reasonably usable form.

6. “Birth Certificate Policy” and “Policy” mean the following: each Defendant’s policy and practice of refusing to provide transgender people with birth certificates that match

their gender identity, including the refusal to correct the gender markers on transgender people's birth certificates to match their gender identity, and/or each Defendant's refusal to provide a birth certificate matching a transgender person's gender identity without the inclusion of revision history that discloses a person's transgender status, such as a person's sex assigned at birth and former name associated with that assigned sex.

7. "Listed sex" and "sex listed," also known as a "gender marker" means the identification field on an Oklahoma birth certificate that refers to the sex or gender of the birth certificate subject.

8. "Change" with respect to identification fields on birth certificates, includes correct, fix, amend, modify, rectify, and all other meanings that capture an alteration from the original marking that is made for any reason including mistake, administrative error, or changed circumstances.

9. "Transgender" people refer to individuals whose gender identity differs from the sex they were assigned at birth.

10. "Gender Identity" means a person's core internal sense of their own gender. Every person has a gender identity, whether they are transgender or not.

11. "Present" shall have the broadest possible meaning to include not only the date any interrogatory is served but also the time when any party has an ongoing duty to supplement a response.

## INSTRUCTIONS

1. Defendants are hereby instructed to provide complete and truthful answers, under oath, to these Interrogatories.

1. These Interrogatories are continuing in nature, up to and during the course of trial. This means that if, after the time of their initial responses, any Defendant learns that any response is or has become in some material respect incomplete or incorrect, Defendants must promptly supplement or amend their responses to the full extent required by Federal Rule of Civil Procedure 26(e) and the applicable local rules. Plaintiffs will object to any attempt to introduce evidence to the Court that should have been but was not disclosed in the responses or supplementation of the responses.

2. If Defendants cannot respond to any of the Interrogatories in full, then they are hereby instructed to respond to the extent possible, and to specify the reasons why each is unable to respond in full, and to provide whatever information Defendants do have concerning the Interrogatory, including the source(s) from which the information may be obtained.

3. No portion of any Interrogatory may be left unanswered because an objection is interposed to another part of that Interrogatory. If any Defendant objects to any portion of an Interrogatory, that Defendant must state with specificity the grounds for the objection. Any objection based on unstated grounds will be waived.

4. If any Defendant claims that Defendant is entitled wholly or partially to withhold an answer to an Interrogatory because of a rule, privilege, immunity, or other reason, that

Defendant is requested to provide the following information for each answer that is wholly or partially withheld:

- a. State the basis for privilege(s) pursuant to which the answer is refused;
- b. In the case of any answer relating to an oral communication, state the date, the place, and subject matter of such communication, and identify the persons who spoke and listened, and all other persons present; and
- c. If privilege is claimed as to a document, identify the document with sufficient particularity that it may be the subject of a motion to compel.

5. For purposes of interpreting or construing the scope of these Interrogatories, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

- a. Construing “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the Interrogatory more inclusive;
- b. Construing the singular form of the word to include the plural, and the plural form to include the singular;
- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term “including” to mean “including but not limited to” and construing the term “all” to mean “any and all,” and vice versa;
- e. Construing the term “each” to include “every,” and construing “every” to include “each”;
- f. Construing the use of a verb in any tense as the use of the verb in all other tenses;

g. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.

6. Where any particular Interrogatory seeks information about a word or phrase that is contained in the Second Amended Complaint, or any later filed complaints, the Interrogatory is seeking information consistent with the meaning set forth in the operative complaint. If Defendants contend the meaning of a particular word or phrase is different than as set forth in the complaint, Defendants should include their intended meaning for the word or phrase.

### **INTERROGATORIES**

1. Explain the exact process for the Oklahoma State Department of Health to change the sex listed on an Oklahoma birth certificate, including any requirements.

2. Set forth and explain in detail any and all circumstances in which Defendants will change the sex listed on Oklahoma birth certificates, including for the purpose of correcting an error.

3. Set forth and explain in detail any and all circumstances in which Defendants will change the information reflected on an individual's Oklahoma birth certificate, including whether the certificate is marked as amended.

4. Identify and specifically describe every instance in which a change to the sex listed on any Oklahoma birth certificate affected any interest that Defendants contend is served by the Birth Certificate Policy.

5. Set forth and explain in detail any and all government interests that Defendants contend that the Birth Certificate Policy serves.

6. Define precisely what Defendants contend constitutes “biological sex” in its position that the sex listed on Oklahoma birth certificates must reflect a biological sex designation.

7. Set forth and specifically describe what Defendants regard as “an error or misstatement of fact as to any non-medical information,” Okla. Admin. Code 310:105-4-4, including any circumstance where that encompasses a change to the listed sex on an Oklahoma birth certificate.

8. Identify all current or former government officials involved in any change to the listed sex on an Oklahoma birth certificate from January 1, 2007 through the present.

9. Identify all persons who were and/or are now involved in the creation, implementation, or enforcement of the Birth Certificate Policy, including specifying these persons’ roles.

10. Identify all persons who prepared or contributed to Defendants’ responses to Plaintiffs’ discovery requests (including interrogatories and requests for documents or admissions), the manner in which each person prepared or contributed to the response, including identifying the documents they reviewed, and the specific aspect of each request for which each person prepared or contributed to the response.

11. State, by year, the number of individuals for whom the Oklahoma State Department of Health changed the listed sex on their Oklahoma birth certificates.

12. State, by year, the number of transgender individuals for whom the Oklahoma State Department of Health changed the listed sex on their Oklahoma birth certificates. For purposes of

this interrogatory, a transgender individual includes any person who communicated information to the Oklahoma State Department of Health that reasonably indicates they are transgender.

Respectfully submitted,

/s/ Christina Paek

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**CERTIFICATE OF SERVICE**

I hereby certify that January 3, 2023, a true and exact copy of this Set of Interrogatories has been served by email pursuant to the agreement of the parties:

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