

1 **Kathleen E. Brody – 026331**
2 **Molly Brizgys – 029216**
3 **ACLU FOUNDATION OF ARIZONA**
4 3707 North 7th Street, Suite 235
5 Phoenix, Arizona 85014
6 Telephone: (602) 650-1854
7 Email: kbrody@acluaz.org
8 Email: mbrizgys@acluaz.org

9 **Joshua A. Block****
10 **Leslie Cooper****
11 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**
12 125 Broad Street, Floor 18
13 New York, New York 10004
14 Telephone: (212) 549-2650
15 E-Mail: jblock@aclu.org
16 E-Mail: lcooper@aclu.org
17 ****Admitted Pro hac vice**

18 **James Burr Shields - 011711**
19 **Heather A. Macre - 026625**
20 **Natalie B. Virden - 031609**
21 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**
22 2390 East Camelback Road, Suite 400
23 Phoenix, Arizona 85016
24 Telephone: (602) 248-8203
25 E-Mail: burr@aikenschenk.com
26 E-Mail: ham@aikenschenk.com
27 E-Mail: nbv@aikenschenk.com

28 *Attorneys for Plaintiff Russell B. Toomey*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman**, in his official capacity as chair of the Arizona Board Of Regents; **Larry Penley**, in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna**, in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour**, in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson**, in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson**, in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler**, in his official capacity as Member of the Arizona Board of Regents; **Fred Duval**, in his official capacity as Member of the Arizona Board of Regents; **Gilbert Davidson**, in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

Case No. 4:19-cv-00035 LCK

**PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION**

INTRODUCTION

1
2 Plaintiff moves the Court for an order certifying this case as a class action under
3 Fed. R. Civ. P. 23(b)(2) and appointing Plaintiff's counsel as class counsel under Rule
4 23(g). The State of Arizona provides health care coverage to its employees through a self-
5 funded healthcare plan controlled by the Arizona Department of Administration.
6 (Complaint, Exhibit A, Doc. 1-2). The Plan categorically excludes "gender reassignment
7 surgery," regardless of whether the surgery qualifies as medically necessary. (Complaint,
8 Exhibit A at pg. 56). Plaintiff asserts that this categorical exclusion discriminates on the
9 basis of sex in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et*
10 *seq.* and the Equal Protection Clause of the Fourteenth Amendment. (Complaint at pg. 5,
11 Doc. 1). Like Dr. Toomey, other transgender individuals enrolled in the State's Plan do not
12 have the opportunity to demonstrate that their transition related care is medically necessary.
13 In support of this Motion, Plaintiff submits his own declaration about his medical claim,
14 as well as information about his connections to the transgender community in Arizona that
15 make him uniquely well-situated to represent the interests of the classes.
16
17

BACKGROUND

Transgender individuals and gender dysphoria

18
19
20 Gender identity is a well-established medical concept, referring to one's sense of
21 oneself as belonging to a particular gender. Typically, people who are designated female
22 at birth based on their external anatomy identify as girls or women, and people who are
23 designated male at birth identify as boys or men. For transgender individuals, however, the
24 sense of one's gender identity differs from the sex assigned to them at birth. Transgender
25 men are men who were assigned "female" at birth, but have a male gender identity.
26 Transgender women are women who were assigned "male" at birth, but have a female
27
28

1 gender identity. Although the precise origins of each person’s gender identity is not fully
2 understood, experts agree that it likely results from a combination of biological factors as
3 well as social, cultural, and behavioral factors.

4 Being transgender is not a mental disorder. Men and women who are transgender
5 have no impairment in judgment, stability, reliability, or general social or vocational
6 capabilities solely because of their transgender status. Transgender men and women may
7 require treatment for “gender dysphoria,” the diagnostic term for the clinically significant
8 emotional distress experienced as a result of the incongruence of one’s gender with their
9 assigned sex and the physiological developments associated with that sex. The criteria for
10 diagnosing gender dysphoria are set forth in the Diagnostic and Statistical Manual of
11 Mental Disorders (DSM-V) (302.85).

12 The widely accepted standards of care for treating gender dysphoria are published
13 by the World Professional Association for Transgender Health (“WPATH”).¹ Under the
14 WPATH standards, medically necessary treatment for gender dysphoria may require
15 medical steps to affirm one’s gender identity and transition from living as one gender to
16 another. This treatment, often referred to as transition-related care, may include hormone
17 therapy, surgery (sometimes called “sex reassignment surgery” or “gender confirmation
18 surgery”), and other medical services that align individuals’ bodies with their gender
19 identities. Under the WPATH standards, the exact medical treatment varies based on the
20 individualized needs of the person. Under each patient’s treatment plan, the goal is to
21 enable the individual to live all aspects of one’s life consistent with one’s gender identity,
22 thereby eliminating the distress associated with the incongruence.
23
24

25 ¹ Eli Coleman Et. Al., *Standards of Care for the Health of Transsexual, Transgender, and*
26 *Gender-nonconforming People* (2012), The World Professional Association for
27 *Transgender Health, available at*
https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care%20V7%20Full%20Book_English.pdf.

1 In the past, public and private insurance companies excluded coverage for
2 transition-related care based on the assumption that such treatments were cosmetic or
3 experimental. Today, however, transition-related surgical care is routinely covered by
4 private insurance programs. The American Medical Association, the American
5 Psychological Association, the American Psychiatric Association, the American College
6 of Obstetricians and Gynecologists, and other major medical organizations have issued
7 policy statements and guidelines supporting healthcare coverage for transition-related care
8 as medically necessary under contemporary standards of care. (*See* Exhibits 1 to 4). No
9 major medical organization has taken the position that transition-related care is not
10 medically necessary or advocated in favor of a categorical ban on insurance coverage for
11 transition-related procedures.
12

13 **The Self-Funded Health Plan’s “Gender Reassignment” Exclusion**

14 Dr. Toomey is a man who is transgender, which means that he has a male gender
15 identity, but the sex assigned to him at birth was female. (Declaration of Russell Toomey,
16 pg. 3). Dr. Toomey transitioned to live consistently with his male identity in 2003. (*Id.*)
17 Since 2003, Dr. Toomey has received testosterone as a medically necessary treatment for
18 gender dysphoria. (*Id.*). He also received medically necessary chest reconstruction surgery
19 in 2004. (*Id.*). In accordance with the WPATH Standards of Care, Dr. Toomey’s treating
20 physicians have recommended that he receive a hysterectomy as a medically necessary
21 treatment for gender dysphoria. (*Id.* at 4).
22

23 Dr. Toomey’s healthcare coverage is provided and paid for by the State of Arizona
24 through the Plan. (Complaint, Exhibit A, pg. 1-3). Individuals enrolled in the Plan must
25 choose to receive benefits through a Network Provider. (Complaint, Exhibit A pg. 101).
26 The Plan generally provides coverage for medically necessary care, which the Plan defines
27 as “services, supplies and prescriptions, meeting all of the following criteria”: (1) ordered
28

1 by a physician; (2) not more extensive than required to meet the basic health needs; (3)
2 consistent with the diagnosis of the condition for which they are being utilized; (4)
3 consistent in type, frequency and duration of treatment with scientifically based guidelines
4 by the medical-scientific community in the United States of America; (5) required for
5 purposes other than the comfort and convenience of the patient or provider; (6) rendered
6 in the least intensive setting that is appropriate for their delivery; and (7) have demonstrated
7 medical value. (Complaint, Exhibit A, pg.100). In the event that the Plan denies coverage
8 for a treatment based on purported lack of medical necessity, the Plan provides a right to
9 appeal the decision to an independent reviewer at the third-party claims administrator and,
10 if necessary, to further appeal to an external independent review organization. If an
11 independent reviewer concludes that the treatment is medically necessary, that decision is
12 binding, and the Plan must immediately authorize coverage for the treatment. (Complaint,
13 Exhibit A pg. 69-72).

14
15 The Plan does not apply these generally applicable standards and procedures to
16 surgical care for gender dysphoria. Instead, the Plan categorically denies all coverage for
17 “[g]ender reassignment surgery” regardless of whether the surgery qualifies as medically
18 necessary. (Complaint Exhibit A pg. 56). Transgender individuals enrolled in the Plan
19 have no meaningful opportunity to demonstrate that their transition-related care is
20 medically necessary as it is specifically excepted from the terms of the Plan. Likewise,
21 those same individuals also lack a meaningful opportunity to appeal any adverse
22 determination to an independent reviewer as it isn’t clear that the Plan’s independent
23 review organization can overrule an exception to the Plan, particularly as the independent
24 review may come from Arizona’s Department of Insurance, which promulgates the Plan.²
25

26 ² Blue Cross and Blue Shield of Arizona, *Member Appeal and Grievance Process*,
27 <https://www.azblue.com/~media/azblue/files/about/standardappealpacket.pdf> (last visited
28 April 4, 2019).

1 As a result of the Plan’s categorical exclusion for “gender reassignment surgery,”
2 Dr. Toomey was denied preauthorization for a hysterectomy on August 10, 2018.
3 (Complaint, Exhibit G.). The denial was based solely on the Plan’s exclusion for “gender
4 reassignment surgery.”

5 **Claims for Relief**

6 Dr. Toomey challenges the facial validity of the Plan’s “gender reassignment
7 surgery” exclusion, which denies transgender individuals an equal opportunity to
8 demonstrate that their transition-related surgical care is medically necessary. As alleged in
9 the Complaint, Dr. Toomey contends that the “gender reassignment surgery” exclusion
10 facially violates Title VII of the Civil Rights Act of 1964 and the Equal Protection Clause
11 of the Fourteenth Amendment.

12 Dr. Toomey seeks class-wide injunctive and declaratory relief on behalf of two
13 classes. The first class is defined as:

14
15 Employees of the Arizona Board of Regents enrolled in the self-funded Plan
16 controlled by the Arizona Department of Administration who have or will
17 have medical claims for transition-related surgical care.

18 Dr. Toomey asserts a Title VII claim against the State of Arizona and the Arizona Board
19 of Regents and an equal protection claim against officers and members of the Arizona
20 Board of Regents in their official capacities on behalf of this class.

21 The second class is defined as:

22 Individuals (including Arizona State employees and their dependents)
23 enrolled in the self-funded Plan controlled by the Arizona Department of
24 Administration who have medical claims or will have claims for transition-
25 related surgical care.

26 Dr. Toomey asserts an equal protection claim against Gilbert Davidson and Paul
27 Shannon in their official capacity on behalf of this class.

ARGUMENT

1
2 This is the paradigmatic case for class certification, as it challenges the Plan’s
3 blanket exclusion for transition related surgery that results in unlawful discrimination
4 against Dr. Toomey and all the class members he seeks to represent. The Plan’s “gender
5 reassignment exclusion” applies across the board to all Plan members seeking this kind of
6 medical care and removing the exclusion would provide relief to all class members,
7 regardless of their individual circumstances.

8 9 **I. The Proposed Class Meets All the Rule 23(a) Requirements.**

10 **A. Numerosity**

11 “A proposed class satisfies the numerosity requirement if members are so numerous
12 that joinder would be impracticable. There is no fixed threshold, but courts in this circuit
13 generally have held that classes of 40 or more satisfy the numerosity requirement.”
14 *Valenzuela v. Ducey*, No. CV-16-03072-PHX-DGC, 2017 WL 6033737, at *4 (D. Ariz.
15 Dec. 6, 2017) (internal quotation marks and citations omitted). “Where ‘the exact size of
16 the class is unknown, but general knowledge and common sense indicate that it is large,
17 the numerosity requirement is satisfied.’” 1 Alba Cone & Herbert B. Newberg, *Newberg*
18 *on Class Actions* § 3.3 (4th ed. 2002); *see Valenzuela v. Ducey*, No. CV-16-03072-PHX-
19 DGC, 2017 WL 6033737, at *5 (D. Ariz. Dec. 6, 2017); *see also Orantes-Hernandez v.*
20 *Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982).

21
22 Plaintiff does not know the precise number of transgender individuals who are
23 employed by the Arizona Board of Regents or who are enrolled in Arizona’s self-funded
24 health plan. But, the Plaintiff does not need not state the exact number of potential class
25 members, nor is a specific number of class members required for numerosity. *Arnold v.*
26 *United Artists Theater Circuit Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994). Dr. Toomey is
27 personally aware of at least six employees who are currently ineligible for gender
28

1 reassignment surgery because of the exclusion. (Declaration of Russell Toomey, pg.4).
2 Demographic data indicates that the total number of class-members could be over 1,000.
3 According to a 2016 study from the Williams Institute, approximately 0.62% of Arizonans
4 identify as transgender.³ As of 2016, the Board of Regents employed 35,612 individuals
5 working at Arizona’s public universities.⁴ According to the Arizona Department of
6 Administration, approximately 136,000 individuals receive healthcare through the State’s
7 self-funded plan.⁵ If those groups of individuals identify as transgender at the same rate as
8 the rest of the Arizona population, then approximately 220 transgender individuals work
9 for the Board of Regents and 843 transgender individuals receive healthcare through the
10 State’s self-funded Plan.

11
12 Moreover, class certification is particularly appropriate in this case because the class
13 includes both current and future members. *See Ali v. Ashcroft*, 213 F.R.D. 390, 408 (W.D.
14 Wash.), *aff’d*, 346 F.3d 873 (9th Cir. 2003), *opinion withdrawn on denial of reh’g sub*
15 *nom. Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005), *as amended on reh’g* (Oct. 20, 2005)
16 (citations omitted); *Pederson v. La. State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000)
17 (“the fact that the class includes unknown, unnamed future members also weighs in favor
18 of certification”); *Henderson v. Thomas*, 289 F.R.D. 506, 510 (M.D. Ala. 2012) (“[T]he
19

20
21 ³ Andrew R. Flores Et. Al., *How Many Adults Identify as Transgender in the United States*
22 (2016), The Williams Institute, *available at*

23 <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

24 ⁴ Arizona Board of Regents, University System Quick Facts,
25 <https://www.azregents.edu/universtiy-system-quick-facts> (last visited April 4, 2019).

26 ⁵ Arizona Department of Administration Benefits, *Health Insurance Trust Fund Annual*
27 *2017 Report* (2017), *available at*
28 http://www.benefitoptions.az.gov/sites/default/files/media/LEGI_HITF_2017_Annual_Report.pdf.

1 fluid nature of a plaintiff class—as in the prison-litigation context—counsels in favor of
2 certification of all present and future members.”) (citing *Kilgo v. Bowman Transp., Inc.*,
3 789 F.2d 859, 878 (11th Cir. 1986).

4 **B. Commonality**

5 The proposed class also satisfies the requirement of commonality. “In a civil rights
6 suit, ‘commonality is satisfied where the lawsuit challenges a system-wide practice or
7 policy that affects all of the putative class members.’” *Ortega-Melendres v. Arpaio*, 836 F.
8 Supp. 2d 959, 989 (D. Ariz. 2011) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th
9 Cir. 2001)), *aff’d*, 695 F.3d 990 (9th Cir. 2012).

10 Dr. Toomey’s challenge easily meets that test. He brings a facial challenge, which
11 does not depend on whether each class member’s medical claim is ultimately proven to be
12 medically necessary. Instead, Dr. Toomey merely seeks declaratory and injunctive relief
13 to provide that all class members have the opportunity to have their claims for transition-
14 related surgery evaluated for medical necessity under the same standards and procedures
15 that the Plan applies to other medical treatments. The denial of that equal opportunity is
16 an injury in fact that can be resolved on a class-wide basis. As the Supreme Court has
17 explained: “When the government erects a barrier that makes it more difficult for members
18 of one group to obtain a benefit than it is for members of another group,” the “injury in
19 fact” is “the denial of equal treatment resulting from the imposition of the barrier, not the
20 ultimate inability to obtain the benefit.” *See Ne. Fla. Chapter of Associated Gen.
21 Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993). *See Valenzuela
22 v. Ducey*, No. CV-16-03072-PHX-DGC, 2017 WL 6033737, at *5 (D. Ariz. Dec. 6, 2017)
23 (granting class certification “the relevant injury is not the denial of driver’s licenses, but
24 the fact that the State imposes requirements on class members that it does not impose on
25 other[s]”); *Wit v. United Behavioral Health*, 317 F.R.D. 106, 127 (N.D. Cal. 2016)
26
27
28

1 (granting class certification in challenge to insurance company’s mental health coverage
2 guidelines because “Plaintiffs do not ask the Court to make determinations as to whether
3 class members were *actually* entitled to benefits. Instead, Plaintiffs seek only an order that
4 [the insurance company] develop guidelines that are consistent with generally accepted
5 standards and reprocess claims for coverage that were denied under the allegedly faulty
6 guidelines.”).⁶

7 C. Typicality

8 Under Rule 23(a)(3) the representative party must have claims or defenses that are
9 “typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality is
10 satisfied “when each class member’s claim arises from the same course of events, and each
11 class member makes similar legal arguments to prove the defendants’ liability.” *Rodriguez*
12 *v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (citations omitted). This requirement is
13 “permissive and requires only that the representative’s claims are reasonably co-extensive
14 with those of the absent class members; they need not be substantially identical.” *Hanlon*
15 *v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Reasonably coextensive claims
16 with absent class members will satisfy the typicality requirement, but the class must be
17 limited to “those fairly encompassed by the named plaintiff’s claims.” *Wal-Mart Stores,*
18 *Inc. v. Dukes*, 564 U.S. 338, 348, 131 S. Ct. 2541, 2550, 180 L. Ed. 2d 374 (2011). In this
19 case Dr. Toomey is challenging the blanket exclusion for all “gender reassignment
20
21

22
23 ⁶ In analogous cases, courts have routinely held that prisoners may bring class actions
24 challenging unlawful class-wide policies regarding inadequate medical treatment. *See,*
25 *e.g., Gray v. Cnty. of Riverside*, No. EDCV 13-00444-VAP (OPx), 2014 U.S. Dist. LEXIS
26 150884, at *109 (C.D. Cal. Sept. 2, 2014) (commonality satisfied where class challenged
27 systemic policies —both written and unwritten—that governed the provision of medical
28 and mental health care in County jails; *see also Brown v. Plata*, 131 S. Ct. 1910 (2011)
(affirming class-wide injunctive relief to remedy inadequate medical and mental health
care in all California prisons).

1 surgery,” and merely seeks the opportunity to demonstrate that transition related surgical
2 care is medically necessary. It is not relevant what kind of treatment each class member is
3 seeking, nor whether each individual’s surgical care is ultimately deemed medically
4 necessary, because it is the chance to demonstrate that need that is being categorically
5 denied to class members under the Plan’s discriminatory policy. For this reason, Dr.
6 Toomey’s claim is not only typical of the class claims, but is exactly the same as each class
7 member’s claim for relief.

8 **D. Adequacy of Representation**

9 **1. The class representative’s interests are not antagonistic to the**
10 **interests of the class**

11 Dr. Toomey is a transgender male who is a tenured professor at the University of
12 Arizona in the department of Family Studies and Human Development. (Declaration of Dr.
13 Russell Toomey pg. 3). Dr. Toomey’s academic research focuses on the discrimination
14 LGBTQ youth face in their families, schools, and communities and seeks to identify ways
15 to mitigate the association between LGBTQ discrimination and poor health outcomes.
16 (*Id.*). Dr. Toomey is a member of the Transgender Studies Research Cluster at the
17 University of Arizona and serves as a faculty fellow at the University of Arizona’s LGBTQ
18 Resource Center. (*Id.*). Dr. Toomey is also deeply connected to the wider transgender
19 community in Arizona. He is on the steering committee of Camp Born this Way, an
20 Arizona camp for transgender youth and their families. (*Id.* at 3-4). He has served on the
21 Board of the Southern Arizona Gender Alliance (SAGA) which provides support,
22 education, resources, and advocacy for Southern Arizona’s community of transgender and
23 gender non-conforming individuals. (*Id.* at 4). Given his academic expertise on these issues
24 as well as a deep personal connection to many of the foremost transgender community
25 groups in Arizona, Dr. Toomey is well situated to represent the interests of the class and to
26 communicate with them about issues in the case.
27

1 Dr. Toomey's interests are aligned with all members of the class. Because the
2 complaint does not turn on each individual medical treatment but instead turns on the
3 opportunity for each class member to demonstrate that their transition-related care is
4 medically necessary or to appeal any adverse determination to an independent reviewer,
5 the class members' interests are commensurate with each other.

6 **2. Counsel are well qualified to represent the class**

7 Plaintiff's counsel are experienced class action and civil rights practitioners. The
8 litigation team includes (1) Kathleen Brody, legal director of the ACLU of Arizona, who
9 represents classes in at least four other matters, (2) Molly Brizgys of the ACLU of Arizona,
10 who represents a class in one matter, (3) Joshua Block of the ACLU who has represented
11 several classes challenging discrimination against LGBT people and has represented other
12 transgender individuals in discrimination suits regarding access to transition-related health
13 care, and (4) James Burr Shields, Heather Macre, and Natalie Virden of Aiken Schenk
14 Hawkins & Ricciardi P.C. who have extensive employment discrimination litigation and
15 healthcare law experience. (*See* Declarations of Brody, Block and Shields).
16

17 **II. Dr. Toomey's Claims Should Be Certified Under Rule 23(b)(2).**

18 Dr. Toomey brings this action on behalf of himself and a class of similarly situated
19 individuals pursuant to Fed. R. Civ. P. 23(b)(2), which authorizes class actions when "the
20 party opposing the class has acted or refused to act on grounds that apply generally to the
21 class, so that final injunctive relief or corresponding declaratory relief is appropriate
22 respecting the class as a whole."
23

24 The key to the (b)(2) class is the indivisible nature of the injunctive or
25 declaratory remedy warranted—the notion that the conduct is such that it can
26 be enjoined or declared unlawful only as to all of the class members or as to
27 none of them. In other words, Rule 23(b)(2) applies only when a single
28 injunction or declaratory judgment would provide relief to each member of
the class.

1 *Dukes*, 564 U.S. at 360-61 (quotation marks and citations omitted). “Civil rights cases
2 against parties charged with unlawful, class-based discrimination are prime examples” of
3 cases suitable for certification under Rule 23(b)(2). *Amchem Products, Inc. v. Windsor*,
4 521 U.S. 591, 614 (1997).

5 Dr. Toomey’s facial challenge under Title VII and the Equal Protection Clause falls
6 squarely within the scope of Rule 23(b)(2). Through the “gender reassignment surgery”
7 exclusion, Defendants have “acted or refused to act on grounds that apply generally to the
8 class, so that final injunctive relief or corresponding declaratory relief is appropriate
9 respecting the class as a whole.” Rule 23(b)(2). As discussed above, class certification is
10 appropriate because Dr. Toomey challenges the facial validity of the Plan’s “gender
11 reassignment surgery” exclusion, which denies transgender individuals an equal
12 opportunity to demonstrate that their transition-related surgical care is medically necessary.
13 The denial of that equal opportunity is an injury in fact that can be resolved on a class-wide
14 basis. *Valenzuela v. Ducey*, No. CV-16-03072-PHX-DGC, 2017 WL 6033737, at *5 (D.
15 Ariz. Dec. 6, 2017); *see also Parsons v. Ryan*, 754 F. 3d 657, 688 (9th Cir. 2014)(classes
16 that were proposed were a paradigmatic example of (b)(2) classes because they primarily
17 ‘seek uniform injunctive [and] declaratory relief from policies or practices that are
18 generally applicable to the class[es] as a whole.’”).

20 **III. Conclusion**

21 Plaintiff has satisfied all prerequisites to and requirements of Rule 23 and, therefore,
22 respectfully requests that the Court certify the proposed classes, approve the named
23 Plaintiff as a class representative, and appoint Plaintiff’s counsel to represent the class.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 5th day of April, 2019.

ACLU FOUNDATION OF ARIZONA

By /s/ Molly Brizgys
Kathleen E. Brody
Molly Brizgys

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Joshua A. Block
Leslie Cooper

AIKEN SCHENK HAWKINS & RICCIARDI P.C.
James Burr Shields
Heather A. Macre
Natalie B. Virden

Attorneys for Plaintiff Russell B. Toomey

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019 I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court’s electronic filing system or by mail as indicated on the Notice of Electronic Filing.

/s/ Molly Brizgys
Molly Brizgys