

1 **ACLU FOUNDATION OF ARIZONA**

2 **3707 North 7th Street, Suite 235**

3 **Phoenix, Arizona 85014**

4 **Telephone: (602) 650-1854**

5 **Facsimile: (602) 650-1376**

6 **Email: [kbrody@acluaz.org](mailto:kbrody@acluaz.org)**

7 **Email: [mbrizgys@acluaz.org](mailto:mbrizgys@acluaz.org)**

8 **Kathleen E. Brody – 026331**

9 **Molly Brizgys – 029216**

10 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**

11 **125 Broad Street, Floor 18**

12 **New York, New York 10004**

13 **Telephone: (212) 549-2650**

14 **Facsimile: (212) 549-2627**

15 **E-Mail: [jblock@aclu.org](mailto:jblock@aclu.org)**

16 **E-Mail: [lcooper@aclu.org](mailto:lcooper@aclu.org)**

17 **Joshua A. Block**

18 *(pro hac vice motion to follow)*

19 **Leslie Cooper**

20 *(pro hac vice motion to follow)*

21 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**

22 **2390 East Camelback Road, Suite 400**

23 **Phoenix, Arizona 85016**

24 **Telephone: (602) 248-8203**

25 **Facsimile: (602) 248-8840**

26 **E-Mail: [jbs@aikenschenk.com](mailto:jbs@aikenschenk.com)**

27 **E-Mail: [ham@aikenschenk.com](mailto:ham@aikenschenk.com)**

28 **E-Mail: [nbv@aikenschenk.com](mailto:nbv@aikenschenk.com)**

**James Burr Shields - 011711**

**Heather A. Macre - 026625**

**Natalie B. Virden - 031609**

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. \_\_\_\_\_

**COMPLAINT**

1 Plaintiff Russell B. Toomey, on behalf of himself and all others similarly situated,  
2 brings this action against Defendants State of Arizona, Arizona Board of Regents, d/b/a  
3 University of Arizona, Ron Shoopman, Larry Penley, Ram Krishna, Bill Ridenour,  
4 Lyndel Manson, Karrin Taylor Robson, Jay Heiler, Fred DuVal, Gilbert Davidson, and  
5 Paul Shannon, for violations of Title VII of the Civil Rights Act of 1964 and the Equal  
6 Protection Clause of the Fourteenth Amendment.  
7  
8

### 9 INTRODUCTION

10 1. The State of Arizona provides healthcare coverage to State employees  
11 through a self-funded health plan controlled by the Arizona Department of  
12 Administration (“the Plan”). (Exhibit A.)  
13

14 2. The Plan generally provides coverage for medically necessary care, but  
15 singles out transgender employees for unequal treatment by categorically denying all  
16 coverage for “[g]ender reassignment surgery” regardless of whether the surgery qualifies  
17 as medically necessary treatment. As a result, transgender individuals enrolled in the  
18 Plan have no opportunity to demonstrate that their transition-related care is medically  
19 necessary, and they have no opportunity to appeal any adverse determination to an  
20 independent reviewer.  
21  
22

23 3. In the past, some public and private insurance companies excluded  
24 coverage for treatment of gender dysphoria (or “transition-related care”), including  
25 surgical treatments, based on the erroneous assumption that such treatments were  
26  
27  
28

1 cosmetic or experimental. Today, however, every major medical organization to address  
2 the issue has recognized that such exclusions have no basis in medical science and that  
3 transition-related care is effective, safe and medically necessary for treatment of gender  
4 dysphoria.  
5

6  
7 4. Plaintiff Russell Toomey, Ph.D., is a man who is transgender. He is  
8 employed as an Associate Professor at the University of Arizona. As a result of the Plan's  
9 discriminatory exclusion, Dr. Toomey has been blocked from receiving a medically  
10 necessary hysterectomy prescribed by his physician in accordance with the widely  
11 accepted standards of care for treating gender dysphoria. The Plan provides coverage for  
12 the same hysterectomies when prescribed as medically necessary treatment for other  
13 medical conditions. But, the Plan categorically excludes coverage for hysterectomies  
14 when they are medically necessary for purposes of "[g]ender reassignment."  
15  
16  
17

18 5. If the discriminatory exclusion were removed, Dr. Toomey would have an  
19 opportunity to prove that his surgery is medically necessary under the Plan's generally  
20 applicable standards for establishing medical necessity.  
21

22 6. If the discriminatory exclusion were removed, Dr. Toomey would also have  
23 the right to appeal any adverse determination to an independent reviewer within the third-  
24 party claims administrator and, if necessary, to an independent review organization.  
25  
26  
27

1 7. On its face, the Plan discriminates against Dr. Toomey and other  
 2 transgender employees “because of . . . sex” in violation of Title VII of the Civil Rights  
 3 Act of 1964 and deprives Dr. Toomey and other transgender employees of equal  
 4 treatment under the Equal Protection Clause of the Fourteenth Amendment.  
 5

6 8. Dr. Toomey brings this Complaint on behalf of himself and a proposed  
 7 class of similarly situated individuals for declaratory and injunctive relief requiring  
 8 Defendants to remove the Plan’s categorical exclusion of coverage for “[g]ender  
 9 reassignment surgery” and evaluate whether transgender individuals’ surgical care for  
 10 gender dysphoria is “medically necessary” in accordance with the Plan’s generally  
 11 applicable standards and procedures.  
 12

13  
 14 **JURISDICTION AND VENUE**

15 9. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
 16 § 2000e *et seq.* (“Title VII”), the Constitution of the United States, and 42 U.S.C. § 1983.  
 17

18 10. This Court has jurisdiction pursuant to Article III of the United States  
 19 Constitution; 28 U.S.C. §§ 1331, 1343; and 42 U.S.C. § 2000e-5(f)(3).  
 20

21 11. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.  
 22

23 12. Venue lies with this Court pursuant to 42 U.S.C. § 2000e-5(f)(3) because  
 24 the unlawful employment practice was committed in the State of Arizona.  
 25

26 **PARTIES**

27 13. Plaintiff Russell Toomey, Ph.D., resides in Tucson, Arizona.  
 28

1           14. Dr. Toomey is employed by Defendant, the Arizona Board of Regents, as  
2 an Associate Professor at the University of Arizona.  
3

4           15. The Arizona Board of Regents provides healthcare to its employees,  
5 including Dr. Toomey, through a self-funded plan controlled by the Arizona Department  
6 of Administration.  
7

8           16. Defendant Ron Shoopman is sued in his official capacity as Chair of the  
9 Arizona Board of Regents.  
10

11           17. Defendant Ram Krishna is sued in his official capacity as Secretary of the  
12 Arizona Board of Regents.  
13

14           18. Defendant Bill Ridenour is sued in his official capacity as Treasurer of the  
15 Arizona Board of Regents.  
16

17           19. Defendants Larry Penley, Lyndel Manson, Karrin Taylor Robson, Jay  
18 Heiler, and Fred DuVal are sued in their official capacities as Members of the Arizona  
19 Board of Regents.  
20

21           20. Defendant Gilbert Davidson is sued in his official capacity as Interim  
22 Director of the Arizona Department of Administration.  
23

24           21. Defendant Paul Shannon is sued in his official capacity as Acting Assistant  
25 Director of the Benefits Services Division of the Arizona Department of Administration.  
26  
27  
28

**EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

22. On August 15, 2018, Dr. Toomey timely filed a charge with the Equal Employment Opportunity Commission against the Arizona Board of Regents for sex discrimination in violation of Title VII.

23. On December 14, 2018, the Department of Justice issued a right-to-sue letter to Dr. Toomey, which was received on December 27, 2018. (Exhibit B.)

**FACTUAL ALLEGATIONS**

**Transgender individuals and gender dysphoria**

24. Gender identity is a well-established medical concept, referring to one’s sense of oneself as belonging to a particular gender. Typically, people who are designated female at birth based on their external anatomy identify as girls or women, and people who are designated male at birth identify as boys or men. For transgender individuals, however, the sense of one’s gender identity differs from the sex assigned to them at birth.

25. Transgender men are men who were assigned “female” at birth, but have a male gender identity. Transgender women are women who were assigned “male” at birth, but have a female gender identity.

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

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

12           28. The widely accepted standards of care for treating gender dysphoria are  
13 published by the World Professional Association for Transgender Health (“WPATH”).  
14 Under the WPATH standards, medically necessary treatment for gender dysphoria may  
15 require medical steps to affirm one’s gender identity and transition from living as one  
16 gender to another. This treatment, often referred to as transition-related care, may include  
17 hormone therapy, surgery (sometimes called “sex reassignment surgery” or “gender  
18 confirmation surgery”), and other medical services that align individuals’ bodies with  
19 their gender identities.  
20  
21  
22  
23

24           29. Under the WPATH standards, the exact medical treatment varies based on  
25 the individualized needs of the person. Under each patient’s treatment plan, the goal is to  
26  
27



1 enable the individual to live all aspects of one's life consistent with one's gender identity,  
2 thereby eliminating the distress associated with the incongruence.  
3

4 30. In the past, public and private insurance companies excluded coverage for  
5 transition-related care based on the assumption that such treatments were cosmetic or  
6 experimental. Today, however, transition-related surgical care is routinely covered by  
7 private insurance programs. The American Medical Association, the American  
8 Psychological Association, the American Psychiatric Association, the American College  
9 of Obstetricians and Gynecologists, and other major medical organizations have issued  
10 policy statements and guidelines supporting healthcare coverage for transition-related  
11 care as medically necessary under contemporary standards of care. No major medical  
12 organization has taken the position that transition-related care is not medically necessary  
13 or advocated in favor of a categorical ban on insurance coverage for transition-related  
14 procedures.  
15  
16  
17  
18  
19

20 31. Medicare began covering transition-related surgery in 2014 after an  
21 independent medical board in the U.S. Department of Health & Human Services  
22 rescinded an old Medicare policy that had excluded surgery from Medicare coverage.  
23 The decision explained that the Medicare surgery exclusion was based on a medical  
24 review conducted in 1981 and failed to take into account subsequent developments in  
25 surgical techniques and medical research. Medicare now provides coverage for  
26  
27  
28

1 transition-related surgical care for gender dysphoria on a case-by-case basis based on  
2 individualized medical need.

3  
4 **The Self-Funded Health Plan’s “Gender Reassignment” Exclusion**

5 32. Dr. Toomey’s healthcare coverage is provided and paid for by the State of  
6 Arizona through the Plan.

7  
8 33. Individuals enrolled in the Plan must choose to receive benefits through a  
9 Network Provider. In 2018, the four Network Providers were Aetna, Blue Cross Blue  
10 Shield of Arizona, Cigna, and UnitedHealthcare. Dr. Toomey’s Network Provider is Blue  
11 Cross Blue Shield of Arizona.

12  
13  
14 34. The Plan generally provides coverage for medically necessary care, which  
15 the Plan defines as “services, supplies and prescriptions, meeting all of the following  
16 criteria”: (1) ordered by a physician; (2) not more extensive than required to meet the  
17 basic health needs; (3) consistent with the diagnosis of the condition for which they are  
18 being utilized; (4) consistent in type, frequency and duration of treatment with  
19 scientifically based guidelines by the medical-scientific community in the United States  
20 of America; (5) required for purposes other than the comfort and convenience of the  
21 patient or provider; (6) rendered in the least intensive setting that is appropriate for their  
22 delivery; and (7) have demonstrated medical value.  
23  
24  
25  
26  
27

1           35. In the event that the Plan denies coverage for a treatment based on  
2 purported lack of medical necessity, the Plan provides a right to appeal the decision to an  
3 independent reviewer at the third-party claims administrator and, if necessary, to further  
4 appeal to an external independent review organization. If an independent reviewer  
5 concludes that the treatment is medically necessary, that decision is binding, and the Plan  
6 must immediately authorize coverage for the treatment.  
7

8  
9           36. The Plan does not apply these generally applicable standards and  
10 procedures to surgical care for gender dysphoria. Instead, the Plan categorically denies all  
11 coverage for “[g]ender reassignment surgery” regardless of whether the surgery qualifies  
12 as medically necessary. Transgender individuals enrolled in the Plan have no opportunity  
13 to demonstrate that their transition-related care is medically necessary or to appeal any  
14 adverse determination to an independent reviewer.  
15  
16  
17

18           37. All four of the health insurance companies who serve as Network Providers  
19 for the Plan have adopted internal policies and standards for determining when transition-  
20 related surgery for gender dysphoria is medically necessary and, thus, covered. (Exhibits  
21 C – F.) But, as a result of the Plan’s “gender reassignment” exclusion, the Network  
22 Providers do not apply those internal policies and standards when administering the Plan  
23 to Arizona State employees and, instead, automatically deny coverage of transition-  
24 related surgery.  
25  
26  
27

1                   **Dr. Toomey’s Medically Necessary Treatment for Gender Dysphoria**

2           38.    Dr. Toomey is a man who is transgender, which means that he has a male  
3  
4 gender identity, but the sex assigned to him at birth was female. Dr. Toomey transitioned  
5 to live consistently with his male identity in 2003. Since 2003, Dr. Toomey has received  
6 testosterone as a medically necessary treatment for gender dysphoria. He also received  
7 medically necessary chest reconstruction surgery in 2004.  
8

9  
10           39.    In accordance with the WPATH Standards of Care, Dr. Toomey’s treating  
11 physicians have recommended that he receive a hysterectomy as a medically necessary  
12 treatment for gender dysphoria.  
13

14           40.    The Plan provides coverage for the same surgery when prescribed as  
15 medically necessary treatment for other medical conditions, but not when the surgery is  
16 performed as part of transition-related care.  
17

18           41.    Dr. Toomey has satisfied all of the criteria for a medically necessary  
19 hysterectomy under the WPATH Standards of Care.<sup>1</sup>  
20

21  
22  
23           <sup>1</sup> Those criteria are: (a) Two referral letters from qualified mental health professionals;  
24 (b) Persistent, well documented gender dysphoria; (c) Capacity to make a fully  
25 informed decision and to consent for treatment; (d) Age of majority in a given country;  
26 (e) If significant medical or mental health concerns are present, they must be well  
27 controlled; and (f) Twelve continuous months of hormone therapy as appropriate to the  
28 patient’s gender goals (unless the patient has a medical contraindication or is otherwise  
unable or unwilling to take hormones).

1           42. All four of the Network Providers for the Plan have adopted internal  
2 policies and guidelines that authorize hysterectomies as medically necessary treatments  
3 for gender dysphoria based on the same criteria used by the WPATH Standards of Care.  
4

5           43. As a result of the Plan’s categorical exclusion for “gender reassignment  
6 surgery,” Dr. Toomey’s Network Provider—Blue Cross Blue Shield of Arizona—denied  
7 preauthorization for Dr. Toomey’s hysterectomy on August 10, 2018. (Exhibit G.).  
8

9           44. In denying preauthorization, Blue Cross Blue Shield of Arizona did not  
10 apply its own internal guidelines for determining whether the hysterectomy is a medically  
11 necessary treatment for gender dysphoria. The denial was based solely on the Plan’s  
12 exclusion for “gender reassignment surgery.”  
13

14           45. The denial letter from Blue Cross Blue Shield of Arizona stated:  
15

16 [W]e cannot approve this request because the laparoscopic total  
17 hysterectomy with removal of tubes and ovaries surgery, for your diagnosis  
18 of transsexualism and gender identity disorder is considered a gender  
19 reassignment surgery, which is a benefit exclusion. This finding is based on  
20 your benefit plan booklet on pages 56 & 57 under the heading of  
21 “Exclusions and General Limitations” which states:

22           10.1 Exclusions and General Limitations

23           “In addition to any services and supplies specifically excluded in any other  
24 Article of the Plan Description, any services and supplies which are not  
25 described as covered are excluded. In addition, the following are  
26 specifically excluded Services and Supplies:

- 27           • Gender reassignment surgery.”

1 If you choose to get the laparoscopic total hysterectomy with removal of  
2 tubes and ovaries surgery, BCBSAZ will not cover the costs of this service.

3 (Ex. G at 1.)

4 **CLASS ALLEGATIONS**

5  
6 46. Dr. Toomey brings this action on behalf of himself and a class of similarly  
7 situated individuals pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.  
8 Through the “gender reassignment surgery” exclusion, Defendants have “acted or refused  
9 to act on grounds that apply generally to the class, so that final injunctive relief or  
10 corresponding declaratory relief is appropriate respecting the class as a whole.” Rule  
11 23(b)(2).  
12

13  
14 47. Class certification is appropriate because Dr. Toomey challenges the facial  
15 validity of the Plan’s “gender reassignment surgery” exclusion, which denies transgender  
16 individuals an equal opportunity to demonstrate that their transition-related surgical care  
17 is medically necessary. The denial of that equal opportunity is an injury in fact that can  
18 be resolved on a class-wide basis.  
19

20  
21 48. Dr. Toomey seeks a declaratory judgment and injunction requiring  
22 Defendants to remove the Plan’s categorical exclusion of coverage for “[g]ender  
23 reassignment surgery” and evaluate whether transgender individuals’ surgical care for  
24  
25  
26  
27

1 gender dysphoria is “medically necessary” in accordance with the Plan’s generally  
2 applicable standards and procedures.

3  
4 49. Dr. Toomey proposes two classes based on the claims against each  
5 Defendant.

6  
7 50. With respect to (a) the Title VII claim against the State of Arizona and the  
8 Arizona Board of Regents and (b) the equal protection claim against Defendants Ron  
9 Shoopman, Ram Krishna, Bill Ridenour, Larry Penley, Lyndel Manson, Karrin Taylor  
10 Robson, Jay Heiler, and Fred DuVal in their official capacities: the proposed class  
11 consists of all employees of the Arizona Board of Regents enrolled in the self-funded  
12 Plan controlled by the Arizona Department of Administration who have medical claims  
13 for transition-related surgical care.  
14  
15

16  
17 51. With respect to the equal protection claim against Defendants Gilbert  
18 Davidson and Paul Shannon in their official capacities: the proposed class consists of all  
19 individuals (including Arizona State employees and their dependents) enrolled in the self-  
20 funded Plan controlled by the Arizona Department of Administration who have medical  
21 claims for transition-related surgical care.  
22  
23

24 52. Each of the proposed classes is so numerous that joinder of all members is  
25 impracticable.  
26

1           53. For each of the proposed classes, there are questions of law or fact common  
2 to the class. Because Dr. Toomey brings a facial challenge, the class claims do not  
3 depend on whether a particular individual’s transition-related surgery is ultimately proven  
4 to be medically necessary. Dr. Toomey merely seeks declaratory relief and an injunction  
5 providing all class members the opportunity to have their claims for transition-related  
6 surgery evaluated for medical necessity under the same standards and procedures that the  
7 Plan applies to other medical treatments.  
8  
9  
10

11           54. For each of the proposed classes, the claims or defenses of the  
12 representative parties are typical of the claims or defenses of the class.  
13

14           55. For each of the proposed classes, Dr. Toomey will fairly and adequately  
15 protect the interests of the class.  
16

17   **COUNT I**  
18   **VIOLATION OF TITLE VII**  
19   **(Against State of Arizona and Arizona Board of Regents)**

20           56. Title VII of the Civil Rights Act of 1964 provides that employers may not  
21 “discriminate against any individual with respect to his compensation, terms, conditions,  
22 or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-  
23 2(a)(1).  
24

25           57. The State of Arizona and the Arizona Board of Regents are employers as  
26 that term is defined in Title VII, 42 U.S.C. § 2000e-(a) and (b).  
27



1           58. An employer-sponsored health plan is part of the “compensation, terms,  
2 conditions, or privileges of employment.” 42 U.S.C. § 2000e-2(a)(1).  
3

4           59. Discrimination on the basis of transgender status or gender nonconformity  
5 is discrimination on the basis of “sex” under Title VII.  
6

7           60. The employer-sponsored health plan provided by the State of Arizona and  
8 the Arizona Board of Regents facially discriminates based on transgender status and  
9 gender nonconformity by categorically excluding coverage for all medically necessary  
10 “gender reassignment surger[ies].”  
11

12           61. Because medical transition from one sex to another inherently transgresses  
13 gender stereotypes, denying medically necessary coverage based on whether surgery is  
14 performed for purposes of “gender reassignment” constitutes impermissible  
15 discrimination based on gender nonconformity.  
16  
17

18           62. Because the need to undergo gender transition is a defining aspect of  
19 transgender status, discrimination based on gender transition is discrimination against  
20 transgender individuals as a class.  
21

22           63. By categorically excluding all coverage for “[g]ender reassignment  
23 surgery,” the Plan deprives Dr. Toomey and other transgender employees of an equal  
24 opportunity to prove that their transition-related surgery is medically necessary under the  
25 same standards and procedures that apply to other medical conditions.  
26  
27

1           64. By providing a facially discriminatory employer-sponsored health plan, the  
2 State of Arizona and the Arizona Board of Regents have unlawfully discriminated—and  
3 continue to unlawfully discriminate—against Dr. Toomey and members of the proposed  
4 class “with respect to [their] compensation, terms, conditions, or privileges of  
5 employment, because of . . . sex.” 42 U.S.C. § 2000e-2(a)(1).

6  
7  
8                               **COUNT II**  
9                               **VIOLATION OF THE EQUAL PROTECTION CLAUSE**  
10                              **(Against Defendants Shoopman, Krishna, Ridenour, Penley, Manson, Robson,**  
11                              **Heiler, DuVal Davidson and Shannon in their official capacities)**

12           65. At all relevant times, Defendants Shoopman, Krishna, Ridenour, Penley,  
13 Manson, Robson, Heiler, DuVal, Davidson and Shannon have acted under color of State  
14 law.

15  
16           66. Pursuant to 42 U.S.C. § 1983, Defendants Shoopman, Krishna, Ridenour,  
17 Penley, Manson, Robson, Heiler, DuVal, Davidson and Shannon, in their official  
18 capacities, are liable for declaratory and injunctive relief for violations of the Equal  
19 Protection Clause.  
20

21  
22           67. In their official capacity as officers and members of the Arizona Board of  
23 Regents, Defendants Shoopman, Krishna, Ridenour, Penley, Manson, Robson, Heiler,  
24 and DuVal are responsible for the terms and conditions of employment at the University  
25 of Arizona.  
26

1           68. In his official capacity as Interim Director of the Arizona Department of  
2 Administration, Defendant Gilbert Davidson is responsible for “determin[ing] the type,  
3 structure, and components of the insurance plans made available by the Department [of  
4 Administration].” Ariz. Admin. Code R2-6-103.  
5

6           69. In his official capacity as Acting Assistant Director of Benefit Services  
7 Division of the Arizona Department of Administration, Defendant Paul Shannon  
8 Shannon has direct oversight and responsibility for administering the benefits insurance  
9 programs for State employees, including employees of the Arizona Board of Regents.  
10

11           70. The Equal Protection Clause of the Fourteenth Amendment provides: “No  
12 State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”  
13

14           71. Arizona State employees are protected by the Equal Protection Clause.  
15

16           72. The employer-sponsored health plan provided by the State of Arizona and  
17 the Arizona Board of Regents facially discriminates based on transgender status and  
18 gender nonconformity by categorically excluding coverage for all medically necessary  
19 “gender reassignment surgery.”  
20

21           73. Because medical transition from one sex to another inherently transgresses  
22 gender stereotypes, denying medically necessary coverage for based on whether surgery  
23 is performed for purposes of “gender reassignment” constitutes impermissible  
24 discrimination based on gender nonconformity.  
25

1           74. Because the need to undergo gender transition is a defining aspect of  
2 transgender status, discrimination based on gender transition is discrimination against  
3 transgender individuals as a class.  
4

5           75. By categorically excluding all coverage for “[g]ender reassignment  
6 surgery,” the Plan deprives Dr. Toomey and other transgender employees of an equal  
7 opportunity to prove that their transition-related surgical is medically necessary under the  
8 same standards and procedures that apply to other medical conditions.  
9  
10

11           76. By providing a facially discriminatory employer-sponsored health plan, the  
12 State of Arizona and the Arizona Board of Regents, by and through Defendants  
13 Shoopman, Krishna, Ridenour, Penley, Manson, Robson, Heiler, DuVal, Davidson and  
14 Shannon, acting in their respective official capacities, have unlawfully discriminated—  
15 and continue to unlawfully discriminate—against Dr. Toomey and members of the  
16 proposed class on the basis of gender, which is subject to heightened scrutiny under the  
17 Equal Protection Clause.  
18  
19  
20

21           77. By providing a facially discriminatory employer-sponsored health plan, the  
22 State of Arizona and the Arizona Board of Regents, by and through Defendants  
23 Shoopman, Krishna, Ridenour, Penley, Manson, Robson, Heiler, DuVal, Davidson and  
24 Shannon, acting in their respective official capacities, have unlawfully discriminated—  
25 and continue to unlawfully discriminate—against Dr. Toomey and members of the  
26  
27  
28

1 proposed class on the basis of transgender status, which is independently subject to  
2 heightened scrutiny under the Equal Protection Clause.

3  
4 a. Men and women who are transgender, as a class, have historically  
5 been subject to discrimination.

6  
7 b. Men and women who are transgender, as a class, have a defining  
8 characteristic that bears no relation to an ability to perform or  
9 contribute to society.

10  
11 c. Men and women who are transgender, as a class, exhibit immutable  
12 or distinguishing characteristics that define them as a discrete group.

13  
14 d. Men and women who are transgender, as a class, are a minority with  
15 relatively little political power.

16  
17 78. The Plan's discriminatory exclusion is not narrowly tailored to serve a  
18 compelling governmental interest.

19  
20 79. The Plan's discriminatory exclusion is not substantially related to an  
21 important governmental interest.

22  
23 80. The discriminatory exclusion cannot be justified by a governmental interest  
24 in limiting coverage to medically necessary treatments because the Plan's general  
25 provisions limiting healthcare to "medically necessary" treatments already serves that  
26 interest. The only function of the categorical exclusion is to exclude medical care that  
27

1 would otherwise qualify as medically necessary under the Plan’s generally applicable  
2 standards.

3  
4 81. The Plan’s discriminatory exclusion lacks any rational basis and is  
5 grounded in sex stereotypes, discomfort with gender nonconformity and gender  
6 transition, and moral disapproval of people who are transgender.  
7

8 **RELIEF REQUESTED**

9  
10 For the foregoing reasons, Plaintiff respectfully requests that the Court grant the  
11 following relief to Dr. Toomey and members of the proposed classes:

12 A. Declaratory relief, including but not limited to a declaration that Defendants  
13 State of Arizona and the Arizona Board of Regents violated Title VII and that Defendants  
14 Shoopman, Krishna, Ridenour, Penley, Manson, Robson, Heiler, DuVal, Davidson and  
15 Shannon, in their official capacities, violated the Equal Protection Clause;  
16  
17

18 B. Permanent injunctive relief with respect to all Defendants, requiring  
19 Defendants to remove the Plan’s categorical exclusion of coverage for “[g]ender  
20 reassignment surgery” and evaluate whether Dr. Toomey and the proposed classes’  
21 surgical care for gender dysphoria is “medically necessary” in accordance with the Plan’s  
22 generally applicable standards and procedures;  
23  
24

25 C. Plaintiffs’ reasonable costs and attorneys’ fees pursuant to Title VII and 42  
26 U.S.C. § 1988; and  
27

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

D. Such other relief as the Court deems just and proper.

DATED this 23<sup>rd</sup> day of January, 2019.

ACLU FOUNDATION OF ARIZONA

By       /s/ Kathleen E. Brody        
Kathleen E. Brody  
Molly Brizgys  
3707 North 7th Street, Suite 235  
Phoenix, Arizona 85014

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
Joshua A. Block  
(pro hac vice motion to follow)  
Leslie Cooper  
(pro had vice motion to follow)  
125 Broad Street, Floor 18  
New York, New York 10004

AIKEN SCHENK HAWKINS & RICCIARDI P.C.  
James Burr Shields  
Heather A. Macre  
Natalie B. Virden  
2390 East Camelback Road, Suite 400  
Phoenix, Arizona 85016

Attorneys for Plaintiff Russell B. Toomey