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7 *Ron Shoopman, Larry Penley, Ram Krishna,*  
8 *Bill Ridenour, Lyndel Manson, Karrin Taylor Robson,*  
*Jay Heiler, and Fred DuVal*

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 **Russell B. Toomey,**

12 Plaintiff,

13 v.

14  
15 **State of Arizona; Arizona Board of**  
16 **Regents, d/b/a University of Arizona,** a  
17 governmental body of the State of  
18 Arizona; **Ron Shoopman,** in his official  
19 capacity as Chair of the Arizona Board of  
20 Regents; **Larry Penley,** in his official  
21 capacity as Member of the Arizona Board  
22 of Regents; **Ram Krishna,** in his official  
23 capacity as Secretary of the Arizona Board  
24 of Regents; **Bill Ridenour,** in his official  
25 capacity as Treasurer of the Arizona  
26 Board of Regents; **Lyndel Manson,** in her  
27 official capacity as Member of the  
28 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;  
**Andy Tobin,** in his official capacity as

Case No. CV 19-00035-TUC-RM (LAB)

**DEFENDANTS ARIZONA BOARD  
OF REGENTS, RON SHOOPMAN,  
LARRY PENLEY, RAM KRISHNA,  
BILL RIDENOUR, LYNDEL  
MANSON, KARRIN TAYLOR  
ROBSON, JAY HEILER, AND  
FRED DUVAL'S RESPONSE TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

1 Director of the Arizona Department of  
2 Administration; **Paul Shannon**, in his  
3 official capacity as Acting Assistant  
4 Director of the Benefits Services Division  
of the Arizona Department of  
Administration,

5  
6 Defendants.

7  
8 Defendants Arizona Board of Regents (“the Board”), Ron Shoopman, Larry Penley,  
9 Ram Krishna, Bill Ridenour, Lyndel Manson, Karrin Taylor Robson, Jay Heiler, and Fred  
10 DuVal (collectively, “University Defendants”) reiterate the position that they have taken  
11 from the beginning of this litigation. The University Defendants do not object to the  
12 Plaintiff’s requested preliminary or permanent injunctive relief against the State of Arizona,  
13 Andy Tobin, and Paul Shannon (collectively, “State Defendants”). [*See also* Docs. 23, 31,  
14 91 (confirming that the University Defendants do not object to the Plaintiff’s requested  
15 permanent injunctive relief against the State Defendants)].

16 In addition, the Board does not object to a preliminary or permanent injunction  
17 against it so long as: (1) the injunction entered against the Board is no greater than the  
18 injunction entered against the State Defendants; and (2) the injunction is not entered against  
19 the individually named Regents because the injunction against the Board would by  
20 operation apply to them under Federal Rule of Civil Procedure 65(d)(2)(B), and the  
21 appointees to the Board are predictably subject to change.<sup>1</sup>

22 To be clear, the Board strongly objects to a preliminary or permanent injunction  
23 entered against it but not the State Defendants. Arizona law requires the Board to “accept  
24 the benefit level, plan design, insurance providers, premium level and other terms and  
25 conditions determined by” the Arizona Department of Administration (“ADOA”). A.R.S.  
26 § 38-656(E); *see also* A.R.S. § 38-656(B) (providing that, when the Board participates in  
27

28 <sup>1</sup> For example, Regents Heiler and Krishna are no longer on the Board.

1 the health insurance plan that is controlled by ADOA, ADOA’s health insurance plan “shall  
2 be the only health . . . insurance coverage offered to” the Board’s employees). The Board  
3 thus has no reasonable authority to independently offer the health insurance coverage that  
4 the Plaintiff requests in his Complaint and Motion for Preliminary Injunction. The Board  
5 must instead offer only the health insurance coverage that ADOA permits it to offer.

6 For these reasons, the Board does not object to the Plaintiff’s requested preliminary  
7 injunction against it so long as the injunction is entered contemporaneously against the State  
8 Defendants and not against the individually named Regents because the State Defendants  
9 are the only Defendants with authority to remove the “[g]ender reassignment surgery”  
10 exclusion from the health insurance plan that is controlled by ADOA.

11  
12  
13 Dated: September 25, 2020

**PERKINS COIE LLP**

14  
15 By: *s/ Paul F. Eckstein*

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23 *Taylor Robson, Jay Heiler, and Fred DuVal*  
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1 **Certificate of Service**

2 I certify that, on September 25, 2020, I electronically transmitted the foregoing  
3 document to the Clerk's Office using the CM/ECF System for filing and transmittal of  
4 a Notice of Electronic Filing to the following CM/ECF registrants.

5 A copy was also e-mailed this September 25, 2020 to:

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28 s/ Clair Wendt