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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 D.T., a minor, by and through his parent
16 and next friend Lizette Trujillo; Jane Doe, a
17 minor, by and through her parent and next
18 friend Susan Doe; and Helen Roe, a minor,
by and through her parent and next friend
Megan Roe,

19 Plaintiffs,

20 v.

21 Dr. Cara M. Christ, in her official capacity
as State Registrar of Vital Records and
22 Director of the State of Arizona’s
Department of Health Services; Thomas
23 Salow, in his official capacity as Branch
Chief of the State of Arizona’s Division of
24 Public Health Licensing Services at the
Department of Health Services; and Krystal
25 Colburn, in her official capacity as Bureau
Chief and Assistant State Registrar of the
26 State of Arizona’s Bureau of Vital Records,

27 Defendants.
28

Case No. _____

**JANE DOE’S MOTION FOR
PRELIMINARY INJUNCTION**

ORAL ARGUMENT REQUESTED

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1 **I. INTRODUCTION**

2 Plaintiff Jane Doe¹ is a transgender girl who has endured years of pervasive bullying,
3 which has been made worse by the fact that her school records list her as male, disclosing
4 that she is transgender to anyone who sees them. Not only does this inform new people that
5 she is transgender without her consent, but the forced disclosure of her transgender status
6 also fuels a constant barrage of teasing, cruel jokes, mean comments, and overtly aggressive
7 behavior from other students. The school and her teachers tried to address the bullying and
8 harassment, to no avail. Jane got a temporary reprieve from this harassment when her
9 school shifted to distance learning in response to the COVID-19 pandemic, but that will
10 soon end. As of January 2021, she is required to return to in-person schooling. Jane's
11 parents want to give her a fresh start by moving her to a new school where students and
12 staff are not made aware that she is transgender so that she can learn and grow academically
13 and socially. Unfortunately, the new school where they would like to enroll Jane requires
14 her birth certificate to complete the enrollment process. Providing Jane's current birth
15 certificate, which still lists her as male, would entirely defeat the purpose of moving schools
16 because it discloses that she is transgender. Jane's sex would be listed as male on all her
17 records, again exposing her private information to school staff and classmates and putting
18 her in the same situation that led her to change schools in the first instance.

19 The Arizona Department of Health Services has broad authority to oversee vital
20 records throughout the state, including the issuance and correction of Arizona birth
21 certificates. *See* A.R.S. § 36-302. Recognizing the importance of accurate identity
22 documents, Arizona law permits the correction or amendment of birth certificates in a wide
23 array of circumstances, including to reflect a declaration of paternity or an adoption. *See*
24 *generally* A.R.S. § 36-337. Contrary to well-established medical standards of care, Arizona
25 requires that a transgender person who uses the administrative process for correcting the
26 sex listed on their birth certificate to "ha[ve] undergone a sex change operation." A.R.S. §

27 _____
28 ¹ Concurrently with this motion, Jane Doe files: (1) a Motion to Proceed Under a Pseudonym, filed with her co-plaintiff, Helen Roe, and (2) a Motion to Seal certain supporting identifying and otherwise confidential documents.

1 36-337(A)(3); *see also* A.A.C. R9-19-208(O). Because surgery is not medically appropriate
 2 due to Jane’s age (and may never be needed due to the medical treatments she will receive
 3 to treat her gender dysphoria), this requirement bars Jane from obtaining a birth certificate
 4 that matches who she is and serves no legitimate, let alone substantial, governmental
 5 interest. Unlike other Arizona youth, she is forced to use a birth certificate that incorrectly
 6 lists her sex as male, causing her to suffer serious irreparable harms.

7 A.R.S. § 36-337(A)(3) and its implementing regulation violate Jane’s constitutional
 8 right to equal protection of the laws, privacy, and personal liberty. Because of the
 9 irreparable harm caused by that provision and its implementing regulation, Jane moves to
 10 enjoin Defendants’ continued enforcement of the surgical requirement and order
 11 Defendants to issue Jane a corrected birth certificate.²

12 **II. FACTUAL BACKGROUND**

13 **A. The ability to live authentically is critical to the healthy development and** 14 **well-being of transgender youth.**

15 Gender identity is a person’s inner sense of belonging to a particular gender, such as
 16 male or female. (Expert Declaration of Dr. Linda Hawkins (“Hawkins Decl.”) at ¶ 20.) It
 17 is a deep-seated, core component of human identity. (*Id.* ¶ 21; Expert Declaration of Dr.
 18 Daniel Shumer (“Shumer Decl.”) at ¶¶ 25–26.) Because gender identity is unknowable at
 19 birth, ordinarily newborns are assigned a sex based on external genitalia. (Hawkins Decl.
 20 ¶ 19; Shumer Decl. ¶ 23.) For most people, their gender identity aligns with the sex they
 21 were assigned at birth. (Hawkins Decl. ¶ 19.) For transgender people, however, it does not.
 22 (*Id.*) Transgender people have a gender identity that does not match their assigned sex.
 23 (*Id.*)

24 Children typically become aware of their gender identity between the ages of three
 25 and five years old. (*Id.* ¶ 24). It is critical for the health and well-being of all children to

26 ² Arizona’s surgical requirement also harms the health and well-being, and violates the
 27 constitutional rights, of D.T. and Helen. However, D.T. and Helen do not yet require
 28 immediate relief from the surgical requirement because the COVID-19 pandemic and the
 support they receive from their respective schools presently limits their exposure to those
 harms. Should their circumstances change, D.T and Helen may need to request similar
 urgent relief from this Court.

1 be able to live consistent with their gender identity. (Hawkins Decl. ¶ 22). A child who
2 realizes their gender identity does not match their sex assigned at birth may communicate
3 that they are transgender in a variety of ways—from choosing clothing or activities that
4 typically align with their gender identity to telling their parents and caregivers that they are
5 being treated as the wrong sex or were born in the wrong body. (*Id.* ¶¶ 24–25). Those
6 expressions and statements are persistent, insistent, and consistent over time, making them
7 distinguishable from mere gender nonconformity or imaginative play. (*Id.* ¶ 26.)

8 The incongruity between their assigned sex and their gender identity can cause
9 transgender children significant psychological distress. (*See id.* ¶¶ 25–27.) The severe and
10 unremitting emotional pain associated with that incongruence is known as gender
11 dysphoria. (*Id.* ¶ 28.) Gender dysphoria is a serious health condition that is broadly
12 recognized in the medical and mental health communities and covered in the Diagnostic
13 and Statistical Manual of Mental Disorders (“DSM-5”) and the World Health
14 Organization’s International Classification of Diseases. (*Id.*) Treatment of gender
15 dysphoria alleviates that distress and enables a transgender person to live consistently with
16 his or her gender identity by bringing every aspect of their lives into alignment with their
17 gender identity. (*Id.* ¶ 29; Shumer Decl. ¶ 28.)

18 The process of undergoing treatments for gender dysphoria is often referred to as a
19 “gender transition” and is guided by well-established, internationally recognized standards
20 of care developed by the World Professional Association for Transgender Health
21 (“WPATH”). (Hawkins Decl. ¶ 30; Shumer Decl. ¶¶ 30, 33.) The WPATH standards have
22 been adopted by major professional associations of healthcare providers in the United
23 States, including the American Medical Association, American Psychological Association,
24 American Psychiatric Association, the American Academy of Pediatrics, and the Pediatric
25 Endocrine Society. (Shumer Decl. ¶ 30.)

26 The standards of care do not recommend any medical or surgical treatment for
27 gender dysphoria in children. (*Id.* ¶ 35.) Before puberty, treatment for gender dysphoria
28 consists of social transition, which allows the child to live congruently with their gender

1 identity. (Hawkins Decl. ¶ 30.) Social transition includes changes in clothing and hairstyle,
2 correcting identity documents to reflect the child’s new name and correct sex marker, and
3 using different pronouns to reflect the child’s gender identity. (*Id.*) In effect, social
4 transition permits a transgender boy to live and interact with others as a boy and a
5 transgender girl to live and interact with others as a girl. (*See id.* ¶ 33.)

6 Social transition dramatically improves and protects a transgender child’s mental
7 health. (*Id.* ¶¶ 31, 36.) Enabling a child who is transgender to be themselves greatly reduces
8 the risk of other mental health conditions, such as anxiety or depression, or self-harming
9 behaviors. (*Id.*) In fact, research has shown that transgender youth who socially transition
10 have a mental health profile that is nearly identical to their non-transgender peers. (*Id.* ¶ 36;
11 *see also id.* ¶ 31 (citing Kristina Olson, et al., *Mental health of transgender children who*
12 *are supported in their identities*, 137 *Pediatrics* 1 (2016)).) Clinical experience
13 demonstrates that benefits from social transition improves a transgender young person’s
14 functioning in a wide range of other domains, from social to academic. (*Id.* ¶¶ 36, 44–45.)
15 In contrast, transgender youth who are not able to live consistently with their gender identity
16 experience high rates of psychological distress and associated mental health problems,
17 including depression and suicidality. (*Id.* ¶¶ 34–35.)

18 At the onset of puberty, a transgender young person may be prescribed puberty-
19 delaying medications to prevent their bodies from developing unwanted secondary-sex
20 characteristics that exacerbate gender dysphoria, such as breasts or widened hips (for
21 transgender boys), or facial hair and Adam’s apple (for transgender girls). (Shumer Decl.
22 ¶ 35.) That medication has two additional, and equally important, effects: (1) it improves
23 the effectiveness of hormone-replacement therapy, which transgender young people will
24 start later in adolescence to induce the puberty associated with their gender identity, and (2)
25 it inhibits the development of secondary-sex characteristics associated with their assigned
26 sex and thus obviates the need for surgery and other treatments to reverse those physical
27 changes. (*Id.* ¶ 37.) For example, a transgender boy will not need male chest reconstruction
28 surgery and a transgender girl will not need facial feminization surgery. (*Id.*)

1 **B. Accurate identity documents are critical to the well-being of transgender**
2 **young people.**

3 Being treated consistent with their gender identity is essential for the healthy
4 development and well-being of transgender young people. (Hawkins Decl. ¶¶ 31, 36, 39.)
5 This includes being referred to by the correct name and pronouns, being able to participate
6 in sex-separated activities consistent with their gender identity, and being able to maintain
7 the confidentiality of their transgender status. (*See id.* ¶¶ 39–41). Because birth certificates
8 are an almost universally required identity document for young people, that document is
9 central to ensuring that a transgender young person can live consistent with their gender
10 identity in all aspects of their life. (*Id.* ¶ 40). From enrolling in school to signing up for
11 recreational sports, an accurate birth certificate translates into accurate school records and
12 guarantees that a transgender young person is placed according to their gender identity for
13 sports and other sex-separated activities, all without being forced to disclose their
14 transgender identity or other sensitive medical information. (*Id.* ¶¶ 47–48.) The mental
15 health and developmental benefits for transgender young people are tremendous. (*Id.*)

16 Without an accurate birth certificate, transgender young people face significant
17 barriers to participating in school and other activities critical to their healthy development
18 and well-being. (Hawkins Decl. ¶¶ 41–48.) Being unable to obtain an accurate birth
19 certificate also conflicts with the medically prescribed treatment for gender dysphoria.
20 (Shumer Decl. ¶ 47.) It harms transgender youth by hindering their ability to keep their
21 transgender status private and exposing them to an increased risk of harassment,
22 discrimination, and potentially bodily harm, as well as significantly increasing the risk of
23 low self-esteem, anxiety, depression, substance use issues, self-harming behaviors, and
24 suicidal ideation. (Hawkins Decl. ¶¶ 37–38, 43–48.)

25 Despite those well-documented harms, under A.R.S. § 36-337(A)(3) and its
26 implementing regulation, A.A.C. R9-19-208(O), transgender people are required to provide
27 proof of having undergone surgical treatment for their gender dysphoria in order to correct
28 the sex listed on their birth certificate through the administrative process created by the

1 statute. Arizona law thus effectively bars transgender young people from obtaining an
2 accurate identity document that is critical to their well-being.

3 **C. Defendants’ conduct is impeding Jane’s healthy development and well-**
4 **being and causing her serious irreparable harms.**

5 Jane is a ten-year-old transgender girl. (Declaration of Jane Doe (“Jane Decl.”) ¶ 1;
6 Declaration of Susan Doe (“Susan Decl.”) Exhibit A.) She began expressing that she is a
7 girl from an early age. (Susan Decl. ¶¶ 2–3; Jane Decl. ¶¶ 2–3.) Through her clothing,
8 choice of toys, and verbal expressions, Jane made clear to her parents that she is a girl and
9 that being raised as a boy was causing her serious distress. (Susan Decl. ¶¶ 4–11.) Unlike
10 children who are simply gender non-conforming or engaging in imaginative play, Jane was
11 consistent, persistent, and insistent that she is a girl—the hallmarks of transgender identity.
12 (*See id.*) For Jane’s parents, this was unexpected, and each initially struggled with how to
13 respond. (*Id.* ¶¶ 8–10.) After trying a variety of methods to correct what they thought were
14 their own mistakes in parenting, and working through their own fears, they came to accept
15 and affirm Jane for who she is. (*Id.*)

16 With the support of her parents and healthcare professionals who specialize in
17 working with transgender young people, Jane has flourished. (*Id.* ¶¶ 12–14.) She has been
18 diagnosed with gender dysphoria and is receiving treatment consistent with the standards
19 of care. (*See id.* ¶¶ 12–14, 29 & Exhibit B, Medical Note of Patrick Goodman (“Goodman
20 Note”), at 4.) As part of that treatment, she is taking every step necessary to live as female
21 in all aspects of her life. But having an Arizona birth certificate that reflects her assigned
22 sex rather than who she is continually frustrates those efforts, causing others to treat her
23 differently than their peers and disclosing that she is transgender her without consent,
24 among other harms. (Jane Decl. ¶¶ 4–9; Susan Decl. ¶¶ 17–19.)

25 Jane started attending school as female in second grade, but because the information
26 on her school records is keyed to the birth certificate her parents provided when she enrolled
27 at the school, those records continue to identify her as male. Jane immediately became the
28 target of bullying and harassment by her peers. (Jane Decl. ¶¶ 4–5.) Jane was regularly

1 teased in class, in the hallways, and on the playground. (*Id.* ¶¶ 7–8.) Despite the school’s
2 attempts to address this issue, she continued to be bullied and harassed throughout second
3 and third grade. (*Id.* ¶ 8; Susan Decl. ¶ 20.)

4 In the summer after third grade, Jane’s parents filed a petition to correct Jane’s name
5 on her birth certificate. (Susan Decl. ¶ 24.) Jane’s mother, Susan, also wanted to correct
6 the sex listed on Jane’s birth certificate. (*Id.* ¶ 25.) She spoke with Jane’s doctor, Dr.
7 Veenod Chulani at the Phoenix Children’s Hospital’s Gender Support Program, to get a
8 letter of support from him to include with the application. (*Id.*) Dr. Chulani informed Susan
9 that ADHS required proof of surgery, even when seeking a court-ordered change to the sex
10 listed on the birth certificate. (*Id.*) Susan confirmed this information in conversations with
11 several parents raising transgender children in her area. (*Id.*) As a result, Susan did not
12 petition the Superior Court of Maricopa County to correct the sex listed on Jane’s birth
13 certificate, but did obtain an order correcting Jane’s name in July 2019. (*Id.*)

14 In the fall of Jane’s fourth-grade year, one of Jane’s classmates found the class roster
15 and discovered Jane’s name with an “M” in the gender column. (Susan Decl. ¶ 18) That
16 student shared that information and the roster with many other students. (*Id.*) Following
17 that incident, the bullying and harassment intensified significantly. (*Id.*; Jane Decl. ¶¶ 6–
18 7.) Students regularly made intimidating comments to Jane such as “I know your secret.”
19 (Susan Decl. ¶ 18.) Jane also had to hide any paper generated by the school because her
20 peers constantly tried to look over her shoulder to see whether the paper had an “M” or “F”
21 marker on it. (*Id.* ¶ 17; Jane Decl. ¶ 5.) While she was in school, Jane’s mental health
22 deteriorated; she went to the nurse’s office with a litany of psychosomatic complaints on a
23 nearly daily basis. (Susan Decl. ¶ 19; Jane Decl. ¶ 9.) Her grades and ability to learn also
24 suffered during that time. (Jane Decl. ¶ 9.) This continued until her school moved to
25 distance learning in response to the COVID-19 pandemic. (*Id.* ¶ 10; Susan Decl. ¶ 20.)

26 The reprieve from the daily bullying and harassment has allowed Jane to rediscover
27 her joy for school and improved her mental health. (Jane Decl. ¶ 10; Susan Decl. ¶ 20.)
28 But, even in the distance-learning model, Jane’s birth certificate is causing problems for

1 her. (Susan Decl. ¶ 21.) In the few months school has been in session, there has been
2 significant teacher turnover and Jane has had multiple teachers in several classes. (*Id.*) In
3 October, one of Jane’s new teachers e-mailed Susan to discuss Jane’s missing assignments
4 and referred to Jane using male pronouns, despite never being told that Jane is transgender
5 or that she was assigned male at birth. (*Id.*) Susan immediately followed up with the teacher
6 to correct the error with Jane’s pronouns, but she has not received a response. (*Id.*) This
7 has raised significant concerns for Jane’s parents that her teacher may treat Jane differently
8 because the teacher now knows she is transgender, or that the teacher will accidentally
9 disclose that information to others, especially during class. (*Id.*)

10 The move to distance learning, and the resulting improvement in Jane’s well-being,
11 made clear to Jane’s parents that she needed a fresh start. (Susan Decl. ¶¶ 22–23.) Jane’s
12 parents found a new school for Jane, but the new school requires Jane’s birth certificate as
13 part of the enrollment process. (*Id.* ¶ 23.) Providing her current birth certificate would
14 defeat the purpose of enrolling Jane in a new school as her school records would identify
15 her as male, disclosing that she is transgender and inviting the same bullying and harassment
16 she is seeking to escape. (*Id.* ¶¶ 26, 28.)

17 Jane and her parents initially held off on enrolling her in the new school because the
18 COVID-19 pandemic made the date of Jane’s return to in-person schooling uncertain. (*Id.*
19 ¶ 22.) They cannot wait any longer. Jane’s current school started modified in-person
20 classes in October, although it permitted parents to delay their child’s return to campus until
21 January 2021. All students are required to return to campus at the end of winter break. (*Id.*
22 ¶ 27.) The new school to which Jane is planning to transfer is following an identical
23 schedule for the return of their students, which means that Jane must start in-person
24 schooling in January at either school. (*Id.*)

25 Given Jane’s age, and the prevailing standards of care for the treatment of gender
26 dysphoria, she will not undergo any surgery to treat her gender dysphoria prior to January
27 2021. (Susan Decl. ¶ 25.) Thus, Jane will be unable to correct her birth certificate before
28 needing to enroll in a new school. Without a change in school, Jane’s mental health and

1 education will once again decline, which can have life-long implications for her health,
2 well-being, and ability to achieve to her full potential. (*Id.* ¶ 28.)

3 **III. ARGUMENT**

4 A party is entitled to a preliminary injunction when the party establishes that (a) they
5 are “likely to succeed on the merits,” (b) they are “likely to suffer irreparable harm in the
6 absence of preliminary relief,” (c) “the balance of equities tips in [their] favor,” and (d) “an
7 injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F. 3d 1127,
8 1131–32 (9th Cir. 2011); *United Food and Com. Workers Local 99 v. Brewer*, 817 F. Supp.
9 2d 1118, 1123 (D. Ariz. 2011). Courts balance these elements using a “‘sliding scale’
10 approach,” so that “a stronger showing of one element may offset a weaker showing of
11 another.” *United Food*, 817 F. Supp. 2d at 1123 (quoting *Wild Rockies*, 632 F.3d at 1131).
12 For example, when “the moving party demonstrate[s] a very high likelihood of
13 injury, . . . the likelihood of success on the merits may be relaxed” and “an injunction may
14 be granted when ‘serious questions going to the merits were raised’” but “the balance of
15 hardships tips sharply in the plaintiff’s favor.” *Id.* (quoting *Wild Rockies*, 632 F.3d at 1135).
16 Jane’s claims satisfy each of these elements.

17 **A. Jane is likely to succeed on the merits.**

18 *1. Preventing Jane from correcting her birth certificate violates the* 19 *Equal Protection Clause.*

20 Arizona’s requirement that transgender people must undergo surgery to correct the
21 sex listed on their birth certificate impermissibly prevents transgender youth from obtaining
22 a birth certificate that matches who they are. While Arizona law ensures that other youth
23 and other Arizonans have birth certificates that accurately reflect their sex, it excludes
24 transgender youth from that protection. In addition, while Arizona law permits Arizonans
25 to correct their birth certificate administratively for a variety of other reasons, it prevents
26 transgender youth from doing so after undergoing a gender transition. Discrimination
27 against transgender people is a form of sex discrimination. *Bostock v. Clayton Cnty., Ga.*,
28 140 S. Ct. 1731, 1737 (2020). Both before and since the Supreme Court’s decision in

1 *Bostock*, courts consistently apply heightened scrutiny to equal-protection claims brought
2 by transgender people. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 607–08 (4th Cir.
3 2020); *Adams v. Sch. Bd. of St. Johns Cty.*, 968 F.3d 1286, 1296 (11th Cir. 2020); *Whitaker*
4 *v. Kenosha Unified Sch. Dist. No. 1*, 858 F. 3d 1034, 1051 (7th Cir. 2017); *Glenn v. Brumby*,
5 663 F.3d 1312, 1320 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir.
6 2004); *see also F.V. v. Barron*, 286 F. Supp. 3d 1131, 1144 (D. Idaho 2018).

7 Under heightened scrutiny, the government bears the burden of proving it has an
8 “exceedingly persuasive justification” for its discrimination. *Miss. Univ. for Women v.*
9 *Hogan*, 458 U.S. 718, 723–24 (1982) (citation omitted). This requires that “the [challenged]
10 classification serve[] important governmental objectives and that the discriminatory means
11 employed are substantially related to the achievement of those objectives.” *Id.* (citations
12 omitted). The justification must also be “genuine, not hypothesized or invented *post hoc* in
13 response to litigation.” *United States v. Virginia*, 518 U.S. 515, 533 (1996). Requiring a
14 transgender youth to undergo surgery before correcting their birth certificate is arbitrary and
15 fails to serve any rational, much less important, governmental purpose. With limited
16 exceptions, surgery is not an appropriate medical treatment for transgender minors.
17 (Shumer Decl. ¶ 40.) As a result, requiring surgery to obtain a corrected birth certificate
18 operates as a categorical bar, forcing transgender youth to endure irreparable harm as a
19 result of being forced to disclose their transgender status and to use government-issued
20 identification that does not accurately identify their sex. To comply with Arizona law, a
21 transgender young person would be required to undergo a medically unnecessary surgery,
22 which no ethical medical provider would perform. No legitimate state interest is served by
23 such a requirement, much less an important one.

24 Preventing transgender youth from correcting the sex listed on their birth certificate
25 serves no governmental interest. In *F.V.*, the Idaho Department of Health and Welfare—
26 the Idaho equivalent of ADHS—conceded it had no rational basis for prohibiting
27 transgender people from correcting the sex listed on their birth certificate, and the court
28 agreed with the government’s position. 286 F. Supp.3d at 1141–42. Similarly, Arizona’s

1 which does not serve even a legitimate, much less compelling interest, and is certainly not
2 narrowly tailored to advance any compelling interest.

3 A person’s transgender status is “inherently sensitive or intimate information,” and
4 disclosing that information “lead[s] directly to injury, embarrassment or stigma.”
5 *Crawford*, 194 F.3d at 960 (noting that the harm caused by disclosure of a person’s sexual
6 orientation is not speculative); *see also Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999)
7 (“The excruciatingly private and intimate nature of transsexualism, for persons who wish
8 to preserve privacy in the matter, is really beyond debate.”); *Doe v. Pa. Dep’t of Corr.*, No.
9 19-CV-01584, 2019 WL 5683437, at *2 & nn.12–13 (M.D. Pa. Nov. 1, 2019) (granting
10 motion to proceed under pseudonym by transgender litigant and collecting cases granting
11 similar requests); *Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 16-CV-524, 2016
12 WL 4269080, at *5 (S.D. Ohio Aug. 15, 2016) (granting motion to proceed under
13 pseudonym by transgender minor); *Doe v. United States*, No. 16-CV-0640, 2016 WL
14 3476313, at *1 (S.D. Ill. June 27, 2016) (same).

15 By preventing transgender young people from correcting their birth certificates,
16 Arizona forces them to disclose that deeply personal information in a myriad of situations.
17 The harm caused by that disclosure is compounded by the fact that transgender youth must
18 use that document as proof of identity in many contexts, such as enrolling in school and
19 sign-ups for recreational sports. This also denies transgender young people the ability to
20 withhold meaningfully their consent to such disclosures, resulting in subsequent disclosures
21 of their transgender status on attendance sheets and team rosters, among other documents.

22 The disclosure of that information causes a cascade of serious and irreparable harms.
23 Jane has been bullied mercilessly for years; mistreatment that was exacerbated by the sex
24 listed on her school records, which reflected the information on her birth certificate. Those
25 records disclosed to her peers and others in the school community that Jane is transgender.
26 That has taken a significant toll on Jane from her emotional well-being to her ability to
27 develop and maintain friendships and her academic growth. For these reasons, Jane is likely
28 to succeed on her privacy claim.

1 (ii) Denying Jane an accurate birth certificate violates her
2 fundamental right to decisional autonomy.

3 The Due Process Clause “promises liberty to all within its reach, a liberty that
4 includes certain specific rights that allow persons . . . to define and express their identity.”
5 *Obergefell v. Hodges*, 576 U.S. 644, 651–52 (2015). That necessarily includes the right of
6 an individual to make “personal choices central to individual dignity and autonomy,
7 including intimate choices that define personal identity and beliefs.” *Id.* at 663. “[T]here
8 are few areas which more closely intimate facts of a personal nature than one’s transgender
9 status.” *Arroyo Gonzalez*, 305 F. Supp. 3d at 333 (citation omitted).

10 Gender identity is a hard-wired, defining element of human identity. Living
11 consistently with one’s gender identity is essential to each person’s health and well-being.
12 (Hawkins Decl. ¶ 22; Shumer Decl. ¶ 26.) For transgender people, the consequences of
13 doing so—including the risk of rejection, discrimination, or even violence from family and
14 peers—are particularly momentous. (Hawkins Decl. ¶¶ 34–35.) Arizona’s surgical
15 requirement unconstitutionally burdens that deeply personal decision by preventing
16 transgender youth from obtaining birth certificates that match who they are, forcing them
17 to endure the constant risk of exposure, rejection, and discrimination. Imposing that burden
18 on transgender youth serves no legitimate, much less compelling, governmental interest,
19 and Jane is thus likely to succeed on her claim.

20 (iii) Denying Jane an accurate birth certificate violates her
21 fundamental right to bodily integrity.

22 Arizona’s surgical requirement unjustifiably intrudes on Jane’s fundamental right to
23 bodily integrity, including the right to make decisions regarding medical treatment. *See*
24 *Glucksberg*, 521 U.S. at 720 (acknowledging fundamental right to bodily integrity and to
25 receive abortion, use contraception, and refuse unwanted medical treatment); *Washington*
26 *v. Harper*, 494 U.S. 210, 221 (1990) (recognizing “significant liberty interest in avoiding
27 the unwanted administration of antipsychotic drugs”); *Parham v. J.R.*, 442 U.S. 584, 600
28 (1979) (extending the fundamental right to refuse treatment to people under eighteen).

1 Because of the effectiveness of puberty-delaying medication and hormone replacement
2 therapy, those treatments obviate the need for many of the surgical procedures commonly
3 used to treat gender dysphoria. (Shumer Decl. ¶ 37.) Jane thus may never require surgical
4 care to treat her gender dysphoria. (Susan Decl. ¶ 25.) That is a decision she has yet to
5 make and is one that should not be influenced by the state.

6 Requiring surgical treatment to obtain a government benefit—an accurate birth
7 certificate—unduly burdens a transgender young person’s freedom to make treatment
8 decisions based on the advice of medical and mental health professionals, and consistent
9 with the prevailing standards of care. Transgender young people should not be pressured
10 to undergo medically unnecessary surgeries to avoid the risk of discrimination and
11 harassment that is caused by having an inaccurate birth certificate. Without a corrected
12 birth certificate, transgender young people are subjected to a litany of harms, not the least
13 of which is the repeated disclosure of their transgender status and significant anxiety and
14 risk of emotional and physical harm those disclosures cause. Unlike refusing vaccinations
15 contrary to the public good, *see Jacobson v. Massachusetts*, 197 U.S. 11, 25–26 (1905),
16 there is no countervailing interest that justifies Arizona’s surgical requirement for a
17 transgender person seeking to correct their birth certificate. For these reasons, Jane is likely
18 to succeed on the merits of each of her three Due Process claims.

19 **B. Jane will suffer irreparable harm absent a preliminary injunction.**

20 Absent preliminary relief, Jane’s inability to obtain a corrected birth certificate will
21 cause ongoing and irreparable harm. Irreparable harm is “harm for which there is no
22 adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*,
23 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Small v. Avanti Health Sys., LLC*, 661 F.3d
24 1180, 1191 (9th Cir. 2011) (observing that plaintiffs “need not prove that irreparable harm
25 is certain or even near certain,” but must demonstrate only a “likelihood” of irreparable
26 harm). That standard is easily satisfied here.

27 “It is well established that the deprivation of constitutional rights ‘unquestionably
28 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)

1 (citation omitted). There is a presumption of irreparable injury upon a showing of
2 likelihood of success on a constitutional claim, as “constitutional violations cannot be
3 adequately remedied through damages.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*,
4 559 F.3d 1046, 1059 (9th Cir. 2009) (citation omitted); *see also Majors v. Jeanes*, 48 F.
5 Supp.3d 1310, 1316–17 (D. Ariz. 2014). Thus, the continued enforcement of Arizona’s
6 surgical requirement in violation of Jane’s constitutional rights—in and of itself—would be
7 sufficient to presume irreparable harm to justify a preliminary injunction.

8 Even absent that presumption, Arizona’s surgical requirement has and will continue
9 to cause irreparable injury. Psychological harms, such as increased anxiety and fear of
10 rejection, are also irreparable injuries, as are serious negative impacts on a person’s long-
11 term health and well-being. *See Chalk v. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 780
12 (9th Cir. 1988) (citing *Ray v. Sch. Dist. of DeSoto Cnty.*, 666 F. Supp. 1524, 1534 (M.D.
13 Fla. 1987)); *see also Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d
14 1034, 1045 (7th Cir. 2017). Jane experiences significant anxiety regarding the disclosure
15 of her transgender status, including a well-founded fear of continued discrimination and
16 harassment. (Jane Decl. ¶¶ 4–15; Susan Decl. ¶¶ 15–19, 30; Goodman Note at 3.) That
17 forced disclosure has already caused Jane irreparable harm. She has endured such severe
18 bullying and harassment that she struggled to complete schoolwork and avoided classes
19 every day by escaping to the nurse’s office. (Jane Decl. ¶ 9; Susan Decl. ¶ 19; Goodman
20 Note at 3.) If permitted to continue, the psychological distress Jane will experience on a
21 daily basis in school will have long-lasting implications for her health and well-being.
22 (Hawkins Decl. ¶¶ 33–49; Shumer Decl. ¶ 47.)

23 Lost opportunity is also a form of irreparable injury. *Ariz. Dream Act Coal.*, 757
24 F.3d at 1068; *Enyart v. Nat’l Conf. of Bar Examiners, Inc.*, 630 F.3d 1153, 1165–66 (9th
25 Cir. 2011); *see also McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 302 n.25 (2d
26 Cir. 2004) (depriving girls’ soccer team the opportunity to compete for championship
27 competition is irreparable harm). Jane is being denied the opportunity to enroll in a new
28 school and get the fresh start she needs so that she can learn and thrive at school. (Jane

1 Decl. ¶ 12; Susan Decl. ¶¶ 22–23, 26.) Denying her that opportunity denies Jane the chance
2 to form healthy and lasting friendships with her peers, fully engage in her schoolwork, and
3 have the experiences that are critical to the healthy development of all young people. (Jane
4 Decl. ¶¶ 11, 13–14; Susan Decl. ¶ 28; Hawkins Decl. ¶¶ 33–37, 41–43, 48.) No monetary
5 award could fully compensate Jane for the injuries caused by Arizona’s surgical
6 requirement, establishing irreparable harm.

7 **C. The public interest and balance of equities favor injunctive relief.**

8 When an injunction is sought against a governmental entity, the public interest and
9 balance-of-the-hardships factors merge. *Nken v. Holder*, 556 U.S. 418, 435–36 (2009). At
10 the threshold, “it is always in the public interest to prevent the violation of a party’s
11 constitutional rights.” *Melendres*, 695 F.3d at 1002 (citation omitted).

12 Assessing the balance of the equities is nearly as simple. On one hand, a preliminary
13 injunction here will not cause hardship to Defendants because, as government officials, they
14 “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez*
15 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). On the other hand, Jane is exposed to
16 current and ongoing harm, as detailed above in Section III(B) and the accompanying
17 declarations. For these reasons, and because Arizona’s law violates the Constitution, “both
18 the public interest and the balance of the equities favor a preliminary injunction.” *Ariz.*
19 *Dream Act Coal.*, 757 F.3d at 1069.

20 **IV. JANE SHOULD NOT BE REQUIRED TO POST A BOND**

21 The District Court has discretion not to require the moving party to post a bond
22 before granting a preliminary injunction. *Diaz v. Brewer*, 656 F. 3d 1008, 1015 (9th Cir.
23 2011) (citing *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009)). The Court should
24 exercise that discretion here. Waiving this requirement is particularly appropriate where
25 “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”
26 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.2003). Defendants will not be harmed
27 by the requested injunction. Further, imposing a bond would improperly burden Jane’s
28 effort to vindicate her fundamental constitutional rights. *See Complete Angler, LLC v. City*

1 of *Clearwater*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009).

2 **V. CONCLUSION**

3 For the foregoing reasons, Jane Doe respectfully request a preliminary injunction
4 compelling Defendants to issue her a corrected birth certificate.

5 Respectfully submitted this 4th day of November, 2020.

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