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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON AT RICHLAND

10 JOHN DOE 1; JOHN DOE 2; JANE
11 DOE 1; JANE DOE 2; JANE DOE 3;
12 and all persons similarly situated,

11 Plaintiffs,

12 v.

13 WASHINGTON STATE
14 DEPARTMENT OF CORRECTIONS;
15 STEPHEN SINCLAIR, Secretary of the
16 Department of Corrections, in his official
17 capacity,

16 Defendants,

17 and

18 BONNEVILLE INTERNATIONAL,
19 INC., d.b.a KIRO Radio 97.3 FM, a Utah
20 Corporation; THE MCCLATCHY
21 COMPANY, LLC, a California Limited
22 Liability Company, d.b.a. The Tacoma
23 News Tribune; and ANDREA KELLY,
an individual;

Interested Parties.

No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

CLASS ACTION

1 Plaintiffs, by and through their undersigned counsel, on behalf of themselves
2 and all others similarly situated, allege as follows:

3 **I. NATURE OF THE CASE**

4 1.1 Defendant Washington State Department of Corrections (DOC) and its
5 Secretary, Stephen Sinclair, intend to release records to certain “Requestors” that
6 will reveal the identities and highly personal information of transgender, non-binary,
7 and intersex persons currently and formerly in its custody. Such a disclosure will, by
8 purpose and in effect, create a target list of some of the most vulnerable people who
9 are or have been in DOC care. It will deter people from disclosing information that
10 DOC says it needs to keep them safe, it will prevent people from seeking life-saving
11 medical care, and it robs people of their right to fundamental privacy and to live a
12 life consistent with their gender and without the reasonable fear of harassment,
13 discrimination, and assault. The Department’s decision to release these records, in
14 violation of well-settled federal and state law, and despite a number of applicable
15 exemptions to disclosure, will place Plaintiffs and the class they represent at great
16 risk of extreme physical harm and emotional distress, and such harm is irreparable.

17 1.2 The Interested Parties in this case are “Requestors” who have made
18 public records requests under the Public Records Act, RCW 42.56, seeking
19 disclosure of records that would effectively “out” transgender, non-binary, and
20 intersex people.

21 1.3 The named Plaintiffs represent a class of transgender, non-binary, and
22 intersex people who are currently and formerly incarcerated at various facilities by
23 the DOC. Plaintiffs bring this action seeking declaratory and injunctive relief under

1 the Eighth and Fourteenth Amendments to the United States Constitution; Article I,
2 Section 7 of the Washington Constitution; and the injunctive provisions of the Public
3 Records Act, RCW 42.56.540.

4 **II. PARTIES**

5 Defendants

6 2.1 Defendant Washington State Department of Corrections is a
7 department of the State of Washington that manages all state-operated adult prisons
8 and supervises adult inmates who live in the community. The Department is
9 headquartered in Tumwater, Washington, and manages prisons and other detention
10 facilities that house class members throughout the state, including the Coyote Ridge
11 Corrections Center located within the Eastern District of Washington. The
12 Department is responsible for making decisions about where and how to house
13 inmates, including class members, and for responding to requests for records. At
14 least one anonymous employee of the DOC has violated the confidentiality and
15 rights of class members by providing confidential information to members of the
16 public and the media, including KIRO Radio 97.3 FM host Dori Monson, already
17 putting those class members whose names have been leaked, and others, at serious
18 risk of physical harm and emotional distress.

19 2.2 Defendant Stephen Sinclair is the current Secretary of the Department
20 of Corrections and is responsible for the operation of all adult state correctional
21 institutions. See RCW 72.09.050. In that capacity, he is required to exercise all
22 powers and perform all duties prescribed by law with respect to the administration
23 of Washington's prisons, including adopting, implementing, and enforcing policies

1 and procedures that ensure that the rights of individuals who are or have been
2 incarcerated in Washington prisons are not violated. He has the authority to direct
3 activities of subordinate officers and other DOC employees, such as employees who
4 respond to Public Records Act requests. At all times relevant to this action Defendant
5 Sinclair was acting under color of state law and is being sued in his official capacity.

6 Requestors / Interested Parties

7 2.3 Interested Party Bonneville International, Inc., is a Utah Corporation
8 owned by The Church of Jesus Christ of Latter-day Saints (LDS Church) through its
9 for-profit arm, Deseret Management Corporation. Bonneville International does
10 business in the State of Washington as KIRO Radio 97.3 FM. Bonneville
11 International is an “Interested Party” in this matter because one of its agents made a
12 request for records seeking to reveal the identity of transgender, non-binary, and
13 intersex people who are currently and formerly incarcerated at various facilities by
14 the DOC. Bonneville International, through its agents KIRO Radio 97.3 FM and
15 Dori Monson, a radio talk show host, have already “outed” at least two transgender
16 women in public reporting.

17 2.4 Interested Party The McClatchy Corporation is a California corporation
18 doing business in the State of Washington as The Tacoma News Tribune. The
19 McClatchy Corporation is an “Interested Party” in this matter because one of its
20 agents made a request for records seeking to reveal the identity of transgender, non-
21 binary, and intersex people who are currently and formerly incarcerated at various
22 facilities by the DOC.

23 2.5 Interested Party Andrea Kelly is an individual with an email address

1 akelly617@icloud.com. Ms. Kelly is an “Interested Party” in this matter because she
2 made a request for records that would reveal the identity of transgender, non-binary,
3 and intersex people who are currently and formerly incarcerated at various facilities
4 by the DOC.

5 Proposed Class Representatives

6 2.6 Plaintiff “John Doe 1” is an individual housed at Coyote Ridge
7 Corrections Center in Connell, Washington. DOC has private information that
8 identifies this individual as transgender and whether he is vulnerable to sexual
9 assault due to his mental health and medical status. John Doe 1 fears that if DOC
10 were to disclose this information about his gender identity and mental health history
11 and services he has received, he would be embarrassed and it would make him a
12 target for harassment, sexual assault, and other forms of violence in prison and the
13 community upon his release.

14 2.7 Plaintiff “John Doe 2” is a transgender man formerly incarcerated by
15 the DOC beginning in 2004. He was incarcerated in a woman’s prison, and in 2016,
16 he came out and began a long and hard transition to finding social and personal
17 acceptance as a man. While incarcerated, he received years of counseling from
18 mental health workers in the DOC, hormone treatment, and gender-affirming
19 surgery. He was released from prison this year, where he is known as a man in his
20 community. Very few people in the community know that he is transgender.
21 John Doe 2 is worried about DOC disclosing he is transgender because of the impact
22 it could have on his mental health. Based on his personal mental health history, he
23 is concerned he would sink into a deep depression and could harm himself.

1 John Doe 2 is also worried that DOC may disclose information about his history of
2 childhood sexual abuse by a family member and how disclosure of this information
3 would harm him and his relationship with his family.

4 2.8 Plaintiff “Jane Doe 1” is a transgender woman currently housed at
5 Washington Corrections Center for Women (WCCW), who has had gender
6 affirming surgery and who is registered as a female on most of her government
7 documents. When she was arrested, she was housed with other women in a county
8 jail, then transferred to WCCW. Jane Doe 1 fears that that if other people in custody
9 or officers were to know that she is transgender, she would be targeted for assault,
10 harassment, false allegations, and other problems. Jane Doe 1 has been diagnosed
11 with depression and has attempted suicide in the past. Jane Doe 1 is worried that if
12 DOC disclosed private information about her gender identity, she would also be at
13 risk of harming herself again.

14 2.9 Plaintiff “Jane Doe 2” is a transgender woman currently housed at
15 WCCW. She was previously housed in men’s prisons within DOC. Department of
16 Corrections (DOC) staff have interviewed her numerous times in order to determine
17 where DOC thinks she should be housed and what security precautions are necessary
18 to protect her because she is transgender and at risk of being victimized by officers
19 and other incarcerated people. She has provided to DOC information regarding her
20 transgender identity, her gender history, her sexual orientation, and her personal
21 mental health and medical history, including whether she has had gender-affirming
22 surgery and receiving hormones. Jane Doe 2 is concerned that if DOC releases
23 information about her gender identity, sexual orientation, medical and mental health

1 treatment, or history of sexual trauma she would be embarrassed, vulnerable to
2 discrimination, and at serious risk of harm and violent retaliation by incarcerated
3 people and corrections officers.

4 2.10 Plaintiff “Jane Doe 3” is a transgender woman who lives in the Monroe
5 Correctional Complex – a men’s prison. She socially and medically transitioned
6 prior to her incarceration. When she was arrested and prosecuted, the government
7 used her dead name – the male name she was given at birth – instead of her feminine
8 legal name. She made the decision to try to live in the men’s prison as a man for the
9 length of her incarceration in DOC out of fear for her safety. When she entered DOC
10 custody, staff asked her questions to assess her risk of victimization and to be
11 responsive to such in their decision-making about her housing placements. These
12 questions were about her most private personal information, like her gender history,
13 who she is sexually attracted to, and medical information. She fears that if the
14 information she provided in response to these questions is disclosed, her physical
15 safety would be at risk. This information would be released to the Requestors, and
16 eventually the public, if this Court does not prevent it.

17 **III. JURISDICTION AND VENUE**

18 3.1 This Court has original subject matter jurisdiction over Plaintiffs’
19 federal constitutional and statutory claims pursuant to 42 U.S.C. § 1983, as well as
20 28 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction over
21 Plaintiffs’ state law constitutional and statutory claims, which arise out of a common
22 nucleus of operative fact as Plaintiff’s federal claims, pursuant to 28 U.S.C. § 1367.

23 3.2 Venue is appropriate in the Eastern District of Washington pursuant to

1 28 U.S.C. § 1391 because the Defendant operates in this judicial district and because
2 a substantial part of the events or omissions giving rise to the claim alleged here
3 occurred within the Eastern District of Washington.

4 **IV. FACTS**

5 **DOC Collects and Maintains Highly Sensitive and Personal Medical** 6 **Information Regarding Prisoners**

7 4.1 In 2003, the United States Congress passed the “Prison Rape
8 Elimination Act,” (PREA), 34 U.S.C. § 30301 *et seq.*, to “provide for the analysis of
9 the incidence and effects of prison rape in federal, state, and local institutions and to
10 provide information, resources, recommendations and funding to protect individuals
11 from prison rape.” To this end, PREA provides funding to help prevent, detect, and
12 respond to sexual violence in correctional facilities throughout the United States,
13 including assessments to screen and classify inmates at risk of experiencing or
14 committing sexual assault, including those who are at risk because of their
15 transgender, gender non-conforming, and intersex status. The information provided
16 during these assessments is used to make individualized security classification and
17 housing decisions. The records created as part of the PREA risk assessment process
18 and housing protocol for transgender, gender non-conforming, and intersex
19 individuals includes detailed information and analysis regarding an individual’s
20 gender identity, sexual history and orientation, physical anatomy (including genital
21 anatomy and descriptions of genitalia), history of sexual victimization, and other
22 intensely personal information.

23 4.2 In an attempt to comply with PREA, the Washington State DOC
screens inmates and collects personal, private information about a person’s sexual

1 assault history, gender identity, and medical and mental health status. This
2 information is collected in confidence with a reasonable expectation that the
3 information shall be kept confidential. The collected information is maintained in
4 various records, including but not limited to: housing protocol and review forms;
5 forms related to sexual violence risk assessments; “preferences request” forms;
6 email communications among DOC staff; spreadsheets tracking the identities and
7 locations of transgender, non-binary, and intersex individuals; and PREA “holds” in
8 the DOC’s electronic Offender Management Network Information system.

9 4.3 The DOC required the Plaintiffs and all class members to participate in
10 the PREA risk assessment and transgender, gender non-conforming, and intersex
11 housing protocol processes upon arrival in custody and periodically thereafter.
12 Plaintiffs understood, consistent with PREA’s purposes, that it was essential for
13 them to provide candid information in order to ensure their safety while in custody.
14 Plaintiffs reasonably believed that the information would remain confidential and
15 would be used only for the stated purposes of determining appropriate security
16 classification and housing. Indeed, the pertinent DOC policy document, DOC
17 490.820 PREA Risk Assessments and Assignments, expressly states that such
18 information will be kept confidential. Plaintiffs were also required to disclose their
19 gender identity in order to gain access to necessary gender-affirming property and
20 medical treatments, such as gender-affirming clothing, hormone replacement
21 therapy, and gender-affirming surgery.

22 4.4 Although they complied with DOC’s requirement to disclose these
23 types of information, Plaintiffs have attempted to maintain the confidentiality of

1 their gender identities in various ways in order to remain safe. One Plaintiff, Jane
2 Doe 1, has had gender-affirming surgery, a legal name change, and changed her
3 government gender marker before she was incarcerated. She was first incarcerated
4 with other women in a county jail before being transferred to the Washington
5 Corrections Center for Women (WCCW). She has done her best to keep her fellow
6 inmates from knowing that she was assigned the male sex at birth. Jane Doe 3, on
7 the other hand, is a transgender woman who lives in the Monroe Correctional
8 Complex – a men’s prison. Although she lived in the community as a woman and
9 legally changed her name to a feminine name, she was transferred to DOC with her
10 previous male name. She decided to use her old male name and live in DOC with
11 the other men in her prison as a man. Most men think that she is a gay man and do
12 not know that she is a woman. Both plaintiffs are protecting their gender identity in
13 order to keep themselves safe. In addition, John Doe 2 is a formerly incarcerated
14 man who lived in WCCW, a woman’s prison. John Doe 2 has had gender-affirming
15 surgery and legally changed his name and gender marker to correspond to his gender
16 identity. He introduces himself as a man and does what he can to ensure that most
17 people do not know that he is transgender because he fears discrimination and
18 victimization in the community.

19 **Various Requestors Seek Highly Personal Information Regarding**
20 **Transgender, Non-Binary, and Intersex Inmates**

21 4.5 On March 10, 2021, Dori Monson of the “Dori Monson Show” on
22 KIRO 97.3 FM interviewed Pierce County Sheriff Ed Troyer to report on an
23 anonymous email from someone claiming to be a Department of Corrections
employee alleging that men are “claiming to be women” to transfer to women’s

1 prisons. See [https://mynorthwest.com/2666243/doc-washington-correctional-](https://mynorthwest.com/2666243/doc-washington-correctional-center-women-men-transfer/)
2 [center-women-men-transfer/](https://mynorthwest.com/2666243/doc-washington-correctional-center-women-men-transfer/)? (last visited April 3, 2021).

3 4.6 On March 12, 2021, Requestor Stacia Glenn of the Tacoma News
4 Tribune made a public records request to Defendant Washington State Department
5 of Corrections that sought the following records:

- 6 - “The number of transgender or gender non-conformists¹ inmates who have
7 been transferred to the Washington State Corrections Center for Women
8 in Purdy in recent months.”
9 - “The dates the transgender or gender non-conformists inmates were moved
10 to Purdy, and the facilities from which they were moved.”
11 - “The names and ages of the transgender or gender non-conformists
12 inmates moved to Purdy and the convictions they are serving time for.”
13 - “The number of and any records or documents related to complaints or
14 disciplinary action taken against the transgender or gender non-
15 conformists inmates moved to Purdy.”

16 4.7 On March 16, 2021, Requestor “Aaron” of KIRO 97.3 FM made a
17 public records request to Defendant Washington State Department of Corrections
18 that sought the following records:

- 19 - “The number of transgender inmates currently housed in DOC prison
20 facilities.”
21 - “The number of transgender inmates who are currently waiting to be
22 transferred to a prison matching their sexual identity.”
23 - “The number of inmates evaluated and confirmed by DOC to be

¹ The request itself consistently uses the phrase “gender non-conformists” rather
than “gender non-conforming,” which is the description used by DOC.

1 transgendered.²

- 2 - “The number of transfer requests made by transgender individuals that
3 have been approved and denied.”
- 4 - “Records explaining the reasoning for any denial of a transgendered
5 incarcerated request for transfer.”
- 6 - “The number of transgendered incarcerated individuals who have
7 requested gender reassignment surgery.”
- 8 - “The number of transgendered incarcerated individuals who have
9 requested and received gender reassignment surgery.”
- 10 - “The number of transgendered incarcerated individuals who are currently
11 scheduled for gender reassignment surgery.”
- 12 - “The names of all transgendered incarcerated individuals who have
13 requested, received or are scheduled for gender reassignment surgery.”
- 14 - “Any infractions, complaints, reports, concerns submitted by other staff or
15 other incarcerated individuals regarding the following individuals:”

[names and DOC numbers of six inmates omitted]

- 16 - “Have four transgender inmates at the Washington Corrections Center for
17 Women who have male names requested state assistance in obtaining
18 gender re-assignment surgery?”

19 4.8 On March 19, 2021, Requestor Andrea Kelly made a public records
20 request to Defendant Washington State Department of Corrections that sought the
21 following records:

- 22 - “The number of transgender individuals currently incarcerated broken out
23 by facility location.”
- “Number of incarcerated individuals who have been transferred from a
men's facility to a women's facility since January 1, 2021.”

² Here and in some other places the request uses the term “transgendered” rather than the term “transgender,” which is the description used by DOC

- 1 - “The number of male incarcerated individuals who identify as female, non-
2 binary or any other gender identity who are currently housed at a Women's
prison facility.”
- 3 - “The number of incarcerated individuals who have transferred from a
4 Women's facility to a Men's facility since January 1, 2021.”
- 5 - “The number of female incarcerated individuals who identify as male, non-
6 binary or any other gender identity who are currently housed in a Men's
prison facility.”

7 Release of the Information Contained in the Requested Records Will Cause a
8 Substantial Risk of Harassment, Abuse, Violence, and Sexual Assault to Plaintiffs
9 and Other Members of the Class

10 4.9 Social science studies show that one of the collateral consequences of
11 incarceration is an increased risk of sexual victimization by either staff or other
12 inmates. Correctional administrators regularly confront the problem of inmate-on-
13 inmate and staff-on-inmate forced sexual compliance in the institutions they
14 manage. In a carceral environment, victims can neither hide nor escape from their
15 perpetrators and are dependent upon correctional staff to intervene, support and
16 protect them. In correctional settings, the power dynamic is heavily weighted against
17 those imprisoned.

18 4.10 Rape and any form of sexual victimization are particularly damaging to
19 victims held in custodial facilities having organizational cultures and sub-cultures
20 which have long viewed prison rape as an expected, collateral consequence of
21 incarceration. Historically, society-at-large has been willing to ignore or tacitly
22 accept prisoner rape as either the extra punishment anyone sentenced to prison can
23 expect, or because of a sense that nothing can be done to prevent it. Offenders are
often afraid to report abuse out of fear of not being believed and being retaliated
against by staff or other inmates.

1 4.11 Prison sexual abuse has the potential to devastate the lives of all
2 victims, who may struggle with long lasting psychological effects including anxiety,
3 depression, alienation, isolation, hostility, helplessness, and mistrust of others.
4 Studies have shown that these victims may also manifest physical symptoms as a
5 result of this resulting trauma, such as insomnia, chronic pain, and disturbed sleeping
6 and eating patterns.

7 4.12 Well-settled law has acknowledged what the social science teaches us:
8 that prisoners who are known to be transgender, gender non-conforming, or intersex
9 are at particular risk of sexual assault, sexual abuse, and violence at the hands of
10 other inmates and correctional staff. Beyond the mere fact of transgender status, the
11 risk of physical harm from the *disclosure* of that status takes on particular urgency
12 in the prison context.

13 4.13 DOC's disclosure of the records requested here would not only violate
14 but would run entirely contrary to its Eighth Amendment duty to protect Plaintiffs
15 and the Class Members from harm. As inmates who are transgender, gender non-
16 conforming, or intersex, Plaintiffs belong to an identifiable group of prisoners who
17 are frequently singled out for violent attack by other inmates. And the risk of harm
18 stemming from disclosure of that status is both obvious and well established both by
19 legal precedent and social science.

20 4.14 The release of the kind of sensitive and confidential information sought
21 by the requestors and slated for disclosure by the DOC—including an individual's
22 gender identify, risk assessment, allegations and investigations of sexual abuse--are
23 counter-productive to creating an environment where inmates will feel free to file

1 allegations of sexual abuse. The release of this type of information will undermine
2 the intent and effectiveness of the PREA statute and is contrary to basic safety and
3 security principles. Further, the release of any investigations, complaints,
4 grievances, or reports relative to gender identity invades privacy, indirectly discloses
5 a prisoner's confidential medical and mental health status, discourages prisoners
6 from disclosure of their gender identify, and discourages the disclosure of a
7 perpetrators' identities out of fear of retaliation.

8 4.15 The harms described above are irreparable. There is no way to “unring
9 the bell” of disclosure, and there is no remedy at law if the disclosure is later deemed
10 wrongful.

11 Procedural History and Pre-Litigation Discussions

12 4.16 Disability Rights Washington (DRW), which is among Plaintiffs’
13 counsel in this matter, is a private non-profit advocacy organization that is federally
14 mandated to provide protection and advocacy services to individuals with disabilities
15 in the state of Washington pursuant to the Protection and Advocacy for Individuals
16 with Mental Illnesses (“PAIMI”) Act, 42 U.S.C. § 10801, et seq., the Protection and
17 Advocacy for Individual Rights (“PAIR”) Act, 29 U.S.C. § 794e, the Developmental
18 Disabilities Assistance and Bill of Rights (“DD”) Act, 42 U.S.C. § 15041, et seq.,
19 and the regulations promulgated thereto, and RCW 71A.10.080.

20 4.17 DRW’s work includes the AVID Program, which focuses on improving
21 conditions, treatment, services, and reentry for people with disabilities who are
22 incarcerated in Washington State’s jails and prisons. In July 2017, DRW launched
23 an investigation into the treatment of transgender people with disabilities in DOC

1 custody. As part of that investigation, DRW staff have spoken with more than 90
2 transgender individuals across DOC facilities and security levels. DRW has also met
3 with many DOC custodial staff, DOC medical providers, and outside medical
4 experts. The federal laws that establish the protection and advocacy systems,
5 including DRW, also authorize DRW's access to all records of any individual who
6 has authorized the agency to have such access. *See, e.g.*, 42 U.S.C. § 10805(a)(4)(A);
7 42 C.F.R. § 51.41(b)(1). DRW has used this authority numerous times to review
8 individual records and DOC policies. During this time DRW has also advocated
9 directly on behalf of certain individuals when, in its opinion, DOC's failure to
10 provide necessary accommodations, housing, and PREA protections has placed its
11 constituents at serious and immediate risk of harm.

12 4.18 On December 12, 2019, DRW entered into a structured negotiations
13 agreement with DOC as an alternative to litigation about DRW's concerns about
14 access to equal and gender-affirming medical care, housing, property, and
15 programming for transgender, intersex, and non-binary people with disabilities.
16 These negotiations continue to the present time, and DRW remains in close contact
17 with DOC and its counsel at the Corrections Division of the Washington Office of
18 the Attorney General (Attorney General) regarding the treatment and conditions of
19 such people in DOC.

20 4.19 On or around March 15, 2021, the Attorney General communicated by
21 email to DRW that the Tacoma News Tribune had requested information regarding
22 transgender people in custody. The Attorney General notified DRW of additional
23 information requests by KIRO-FM and by Andrea Kelly on or around

1 March 23, 2021. The Department of Corrections has made it abundantly clear that it
2 does not intend to invoke PREA or any exemption under the Public Records Act,
3 RCW 42.56, in order to prevent disclosure of these records and the highly
4 confidential information they contain.

5 4.20 The Attorney General, on behalf of DOC, has indicated in discussions
6 with DRW that DOC does not create records in response to requests for aggregate
7 numerical information. Instead, the Attorney General explained that DOC will
8 identify as responsive and provide records from which requestors may derive
9 answers to their own questions. DOC has not provided DRW a list of what records
10 have been identified by DOC as responsive to the requests. Based on DRW's
11 knowledge of DOC records, such records will likely include highly sensitive
12 information about transgender, non-binary, gender non-conforming, and/or intersex
13 inmates and former inmates.

14 4.21 On or around April 2, 2021, DRW gave notice to the Attorney General
15 that DRW, ACLU of Washington, MacDonald Hoague & Bayless, and Munger,
16 Tolles & Olson LLP would file a complaint on April 7, 2021, seeking preliminary
17 and permanent injunctive relief prohibiting the disclosure of the records at issue.
18 DRW sought the Attorney General's consent to a temporary restraining order to
19 preserve the status quo pending adjudication of Plaintiffs' claims. The Attorney
20 General responded on April 7, 2021, stating that while Counsel for Defendants does
21 not *stipulate* to a temporary restraining order, she has represented that the
22 Defendants *do not oppose* a temporary restraining order preserving the status quo
23 during the briefing and consideration of the motion for preliminary injunction.

1 **V. CLASS ALLEGATIONS**

2 5.1 The named Plaintiffs in this matter represent a class of similarly situated
3 current and former inmates and persons in custody of the Department of Corrections.

4 5.2 Class Definition: The proposed class is defined as follows: All
5 individuals identified as transgender, non-binary, gender non-conforming, and/or
6 intersex in records in the possession of the Washington State Department of
7 Corrections who are currently or were formerly incarcerated by the Washington
8 State Department of Corrections. This can be viewed as two subclasses:

9 5.2.1 Current Inmate Subclass: All individuals identified as
10 transgender, non-binary, gender non-conforming, and/or intersex in records
11 in the possession of the Washington State Department of Corrections who are
12 currently incarcerated in Washington state prisons.

13 5.2.2 Former Inmate Subclass: All individuals identified as
14 transgender, non-binary, gender non-conforming, and/or intersex in records
15 in the possession of the Washington State Department of Corrections who
16 were incarcerated in Washington state prisons at any time.

17 5.3 Numerosity: There are more than 100 individuals who have identified
18 as transgender, non-binary, gender non-conforming, and/or intersex currently
19 incarcerated in Washington state prisons. There are even more such former inmates.

20 5.4 Commonality: There are numerous questions of law and fact common
21 to Plaintiffs and members of the Class. These questions include, but are not limited
22 to, the following:

23 5.4.1 Whether disclosure of the requested records would amount to

1 deliberate indifference and expose detainees to a substantial risk of harm.

2 5.4.2 Whether disclosure of the requested records would constitute an
3 unconstitutional invasion of the right to privacy under the Fourteenth
4 Amendment, including whether it would implicate a fundamental right and
5 whether disclosure is narrowly tailored to serve a compelling state interest.

6 5.4.3 Whether disclosure of the requested records would violate the
7 right to privacy under article 1, section 7 of the Washington Constitution.

8 5.4.4 Whether the requested records that were compiled by DOC for
9 the purpose of PREA compliance are exempt from disclosure under the
10 Washington Public Records Act (PRA) as specific intelligence information
11 and specific investigative records compiled by investigative, law
12 enforcement, and penology agencies, and state agencies vested with the
13 responsibility to discipline members of any profession, the nondisclosure of
14 which is essential to effective law enforcement or for the protection of any
15 person's right to privacy.

16 5.4.5 Whether the requested records contain health care information
17 that is protected from disclosure under the PRA and/or HIPAA.

18 5.5 Typicality: The named Plaintiffs have the same claims and face the
19 same harms as members of the proposed subclasses.

20 5.6 Adequacy: There is no conflict between the named Plaintiffs and the
21 members of the subclasses. As described above, the named Plaintiffs and subclass
22 members have the same injury and seek the same relief. In addition, Plaintiffs'
23 counsel meet Rule 23(g)'s requirements and should therefore be appointed class

1 counsel. Counsel have substantial experience handling class actions and complex
2 litigation, and they have done extensive work investigating and prosecuting this
3 action. Counsel are exceptionally well-versed in disability and constitutional law,
4 and they have more than sufficient resources to vigorously prosecute this case on
5 behalf of the entire class.

6 5.7 Appropriateness of Injunctive and Declaratory Relief: The claims
7 raised and the relief sought by Plaintiffs in this action are the sort that Rule 23(b)(2)
8 was designed to facilitate. Plaintiffs here seek to prevent the disclosure of highly
9 personal and private records request in order to protect their civil rights and safety
10 under the United States and Washington Constitutions as well as under state and
11 federal statutory law. This system-level, process-based relief is exactly the type of
12 single injunction that would benefit all members of the proposed subclasses.

13 VI. CLAIMS

14 6.1 42 U.S.C. § 1983 - Eighth Amendment to the United States Constitution
15 – Against Defendant Sinclair: The facts described above constitute cruel and unusual
16 punishment in violation of the Eighth Amendment. The treatment a prisoner receives
17 in prison and the conditions under which the prisoner is confined are subject to
18 scrutiny under the Eighth Amendment, which prohibits cruel and unusual
19 punishment. A prison official's deliberate indifference to a substantial risk of serious
20 harm to an inmate violates the Eighth Amendment. Prison officials have a duty under
21 the Eighth Amendment to protect prisoners from violence at the hands of other
22 prisoners.

23 6.2 Here, Plaintiffs and the putative class would be incarcerated under

1 conditions posing a substantial risk of serious harm if the records are released, and
2 the prison officials who authorized their release will have acted with deliberate
3 indifference to that risk. Prisoners who are known to be transgender, gender non-
4 conforming, or intersex are at particular risk of sexual assault, sexual abuse, and
5 violence at the hands of other inmates and correctional staff. Beyond the mere fact
6 of transgender status, the risk of physical harm from the *disclosure* of that status
7 takes on particular urgency in the prison context. DOC's disclosure of the records
8 requested here would not only violate but would run entirely contrary to its Eighth
9 Amendment duty to protect Plaintiffs and the Class Members from harm.

10 6.3 42 U.S.C. § 1983 – Fourteenth Amendment to the United States
11 Constitution – Against Defendant Sinclair: The facts described above constitute
12 violations of procedural and substantive Due Process requirements of the Fourteenth
13 Amendment. The Fourteenth Amendment protects the right of transgender, gender
14 non-conforming, and intersex individuals to maintain their transgender status in
15 confidence. The private and intimate nature of this information is beyond debate.
16 Serious harm can result from the disclosure of an individual's transgender status,
17 and where the disclosure of personal information by the government would result in
18 bodily harm, the interest in preventing its disclosure rises to the level of a
19 fundamental right.

20 6.4 Here, Defendants' release of records would infringe upon that
21 fundamental right. As such, Defendants must, but cannot, show that their
22 governmental action furthers a compelling state interest, and is narrowly drawn to
23 further that state interest. In fact, the Secretary has a distinct interest in *maintaining*

1 the confidentiality of that information, since its secrecy furthers the goal of prison
2 safety and carrying out its duty of care to Plaintiffs and the Class Members who are
3 currently incarcerated. Defendants' release of these records will unconstitutionally
4 infringe on Plaintiffs' substantive due process rights.

5 6.5 Article I, Section 7 of the Washington State Constitution – Against
6 Both Defendants: The facts described above constitute violations of Article I,
7 Section 7, which prohibits the government from invading a person's private affairs
8 without authority of law and prohibits disclosure of the requested records here.
9 Disclosure of personal information must be carefully tailored to meet a valid
10 governmental interest and be no greater than is reasonably necessary.

11 6.6 Any disclosure of Plaintiffs' status as transgender, gender non-
12 conforming, and intersex would be highly offensive to a reasonable person. Such
13 information is not only extremely private but is often actively concealed in the
14 interest of personal safety as reflected by the record here. Furthermore, the requested
15 records contain not only Plaintiffs' and the Class Members' status as transgender,
16 gender non-conforming, or intersex individuals, but they are rife with intimate
17 personal details regarding their mental health and sexual history. Defendants'
18 proposed response to the PRA requests at issue here is not carefully tailored or
19 limited to what is reasonably necessary to promote the state's interest in
20 transparency.

21 6.7 RCW 42.56.540 – Public Records Act – Court Protection of Public
22 Records – Against Defendant DOC: The facts described above show that release of
23 the requested records would clearly not be in the public interest and would

1 substantially and irreparably damage Plaintiffs and all members of the class, and
2 therefore release should be prohibited under RCW 42.56.540. More specifically,
3 Plaintiffs have a clear legal or equitable right to the privacy of their information;
4 they have a well-grounded fear of immediate invasion of that right; and the
5 Defendants' proposed actions will result in actual and substantial injury to them.

6 **VII. REQUEST FOR RELIEF**

7 WHEREFORE, Plaintiff requests relief against Defendants as follows:

8 7.1 An order certifying a class of current and former transgender, non-
9 binary, and intersex inmates and community members in the custody of the
10 Department of Corrections;

11 7.2 An order appointing Plaintiffs as representatives of the certified class;

12 7.3 An order appointing the American Civil Liberties Union of Washington
13 Foundation, MacDonald Hoague & Bayless; Disability Rights Washington, and
14 Munger, Tolles & Olson LLP as counsel for the certified class;

15 7.4 A judicial declaration that release of the requested records would
16 constitute cruel and unusual punishment in violation of the Eighth Amendment to
17 the United States Constitution;

18 7.5 A judicial declaration that release of the requested records would
19 violate the procedural and substantive Due Process requirements of the Fourteenth
20 Amendment to the United States Constitution.;

21 7.6 A judicial declaration that release of the requested records would
22 violate Article I, Section 7 of the Washington State Constitution;

23 7.7 A judicial declaration that release of the requested records would

1 clearly not be in the public interest and would substantially and irreparably damage
2 Plaintiffs and all members of the class, and as such should not be released under
3 RCW 42.56.450;


4 7.8 A class-wide preliminary and permanent injunction prohibiting the
5 Defendants and their agents from releasing the requested records under any or all of
6 the above sources of law;

7 7.9 Costs, including reasonable attorneys' fees, to be awarded under
8 42 U.S.C. § 1988 and to the extent otherwise permitted by law;

9 7.10 Leave to amend the pleadings to conform to evidence at trial; and

10 7.11 Such other relief as may be just and equitable.

11 Dated this 7th day of April, 2021.

<p>12</p> <p>13</p> <p>14</p> <p>15 MacDonald Hoague & Bayless</p> <p>16 </p> <p>17 _____</p> <p>18 Joe Shaeffer, WSBA #33273 joe@mhb.com Attorneys for Plaintiffs On behalf of The American Civil Liberties Union of Washington Foundation</p> <p>19</p> <p>20</p> <p>21 705 Second Avenue, Suite 1500 Seattle, WA 98104 Tel: 206.622.1604 Fax: 206.343.3961</p>	<p>15 Munger, Tolles & Olson LLP </p> <p>16</p> <p>17 By: <i>Seeking Pro Hac Vice Admission</i></p> <p>18 _____</p> <p>19 Katherine M. Forster, CA Bar #217609 Katherine.Forster@mto.com Attorneys for Plaintiffs</p> <p>20 350 South Grand Avenue, 50th Floor Los Angeles, CA 90071 Tel: 213.683.9538 Fax: 213.593.2838</p>
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<p>American Civil Liberties Union of Washington Foundation</p> <p>By: <u>s/ Nancy Talner</u> Nancy Talner, WSBA #11196 TALNER@aclu-wa.org</p> <p>By: <u>s/ Lisa Nowlin</u> Lisa Nowlin, WSBA #51512 lnowlin@aclu-wa.org</p> <p>By: <u>s/ Antoinette M. Davis</u> Antoinette M. Davis, WSBA #29821 tdavis@aclu-wa.org</p> <p>Attorneys for Plaintiffs P.O. Box 2728 Seattle, WA 98111 Tel: 206.624.2184</p>	<p>Disability Rights Washington</p> <p>By: <u>s/ David Carlson</u> David Carlson, WSBA #35767 Davidc@dr-wa.org</p> <p>By: <u>s/ Ethan D. Frenchman</u> Ethan D. Frenchman, WSBA #54255 ethanf@dr-wa.org</p> <p>By: <u>s/ Danny Waxwing</u> Danny Waxwing, WSBA #54225 dannyw@dr-wa.org</p> <p>By: <u>s/ Heather McKimmie</u> Heather McKimmie, WSBA #36730 heatherm@dr-wa.org</p> <p>Attorneys for Plaintiffs 315 5th Avenue S, Suite 850 Seattle, WA 98104 Tel: 206.324.1521</p>
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