

not to correct this injustice but to preserve it under the pretext of “harms” that amount to minor inconveniences and hurt feelings. Respondents and Intervenor-Respondents may not like SB 180, but that does not mean they get to ignore it based on fanciful arguments about what the statute says.

Intervenor-Respondents entered the litigation on a theory of constitutional avoidance. This may have made sense if the meaning of SB 180 would have violated some clearly held, undisputed constitutional right. However, that is not what they are asking for here. Instead, they are asking this Court to twist the statute to avoid interfering with alleged constitutional rights that are not plain in the language of either the federal or Kansas constitution and have never been recognized by any Kansas court. Intervention in a mandamus action in order to achieve these ends is improper. These claims (if addressed at all) are better suited for a separate challenge to SB 180 once the court decides the correct interpretation. As such, the Intervenor-Respondents’ “claims” are not ripe for litigation and should be dismissed. But even if the court determines otherwise, the temporary injunction should still be granted.

SUMMARY OF ARGUMENT

SB 180 is a law that has no ambiguity whatsoever. The law says any agency that keeps vital records shall identify individuals within the collective data set as male or female at birth. That command is clear and applies to driver’s licenses. No agency has the authority to ignore it. This command is not based on some Attorney General Opinion or model legislation from an outside group but rather the plain text of the statute. Yet Intervenor-Respondents read into the statute ambiguity that simply does not exist. The court should not accept this.

SB 180 is also presumed to be constitutional and Intervenor-Respondents bear the burden of demonstrating otherwise (a burden they fail to carry). SB 180 is a law that dictates what information a government actor, not any individual, puts on a state-issued license. Therefore, it does not implicate any right to personal autonomy or self-determination. In addition, Intervenor-Respondents have not and cannot demonstrate that Kansas law recognizes a right to informational privacy and present unpersuasive arguments for creating one in relation to transgender status. Finally, SB 180 does not implicate the Equal Protection Clause. As a result, the law is reviewed under rational basis. But even if intermediate scrutiny applies, the law is still constitutional.

The harm to the state of Kansas is vast as the will of Kansas voters would effectively be overruled if a government agency refuses to enforce a valid law that the state legislature passed. In addition, important law enforcement functions would be inappropriately impeded. On the other side, KDOR's own statistics demonstrate that despite having twelve years to do so, only 552 transgender individuals changed their sex marker on a driver's license. In addition, the five named intervenors "harms" resulting from what they deem an incongruent driver's license boil down to minor inconveniences and hurt feelings, which do not rise to the level of a constitutional harm. The balance of harms thus favors Petitioner.

Intervenor-Respondents basically concede that there is no effective remedy such as damages available to Petitioner by not addressing it in their brief. This would be correct since only equitable relief is available to the Petitioner. Finally, the issuing a temporary injunction is not averse to the public interest because the legislature is in the best position to determine the public interest. They heard arguments for and against SB 180 (including ones Intervenor-Respondents raise) and passed it via bipartisan supermajority. Just because

Intervenor-Respondents are unhappy with that result does not mean it is against the public interest, and they should not get a second bite of the apple via the court system for something they were unable to do through the democratic process.

To put it simply, the State is likely to succeed on its mandamus claim. It will suffer irreparable harm if the Court does not issue a temporary injunction. Those harms outweigh any minor inconveniences faced by Respondent-Intervenors and do not go against public interest. The law therefore requires the Court to grant the State's motion for a temporary injunction.

ARGUMENT

As a refresher, the five factors necessary for issuing a temporary injunction are:

“(1) a substantial likelihood of eventually prevailing on the merits; (2) a reasonable probability of suffering irreparable future injury; (3) the lack of obtaining an adequate remedy at law; (4) the threat of suffering injury outweighs whatever damage the proposed injunction may cause the opposing party; (5) and the impact of issuing the injunction will not be adverse to the public interest.”

Downtown Bar and Grill, LLC, v. State, 294 Kan. 188, 191, 273 P.3d 709 (2012).

Petitioner has more than satisfied each factor.

I. Intervenor-Respondent's Constitutional Claims are not ripe

Petitioner sued Respondent because Respondent was not complying with state law by allowing Kansans to change the sex marker on their drivers' licenses to reflect their gender identities rather than their sex as required by SB 180 (The Women's Bill of Rights). Rather than wait until the outcome of this litigation and filing their own complaint, Intervenor-Respondents intervened, raising a theory of constitutional avoidance or constitutional doubt. They argue that the mere specter of a constitutional issue requires the Court to read the plain

text of the Women's Bill of Rights differently. Their approach raises several procedural concerns.

First, ordinarily the party challenging the constitutionality of a statute bears the weighty burden of showing that it is unconstitutional. *Downtown Bar & Grill*, 294 Kan. at 192, 273 P.3d at 714; *Farley v. Engelken*, 241 Kan. 663, 667, 740 P.2d 1058, 1061 (1987). That is no less true here. While at the temporary injunction stage Petitioner has the burden to show a likelihood of success on the merits, it would be Intervenor-Respondents' burden to show the law is unconstitutional at trial. It is not Petitioner's burden to show the law is constitutional.

Second, the court should not decide the constitutional issue first and then use that decision to interpret the plain text of the statute. Constitutional avoidance requires the court to refrain from deciding a constitutional issue when there is another way to resolve case. This is especially true when the constitutional violations asserted are based on rights that have never been recognized by the state, are heavily debated in the federal courts, and are based on speculative, hypothetical harms. The court must first interpret the plain language of the statute and then decide if it is constitutional. If there are two permissible interpretations of the statute, the court may adopt the meaning that is consistent with the constitution. While that is not the case here, as there is clearly only one permissible interpretation, the court must still first interpret the statute.

Finally, the case at hand concerns the Women's Bill of Rights as interpreted by AG Opinion 23-0002. It is about whether Respondents are required put a person's biological sex as recognized at birth on drivers' licenses. As this issue has not yet been resolved,

Intervenor-Respondents have not and cannot claim to have been harmed by SB 180. Any harm they assert is speculative and hypothetical.

II. Petitioner has a Substantial Likelihood of Success on the Merits

If the court decides Intervenor-Respondents “claims” are ripe, the State still prevails. First, most important aspect of a temporary injunction is whether the moving party has a substantial likelihood of success on the merits. Without that, it isn’t even necessary to examine the remaining factors. In this case, it is not a close call that Petitioner would succeed on the merits because: (1) SB 180 unambiguously requires drivers’ licenses to list a person’s sex at birth and (2) despite Intervenor-Respondents’ novel arguments to the contrary, there are no constitutional issues with SB 180.

A. SB180 Unambiguously Requires Driver’s Licenses to List Sex at Birth

Many of Intervenor-Respondents’ arguments regarding the meaning of SB180 overlap with those of Respondents. Petitioner replied to Respondents’ brief in a separate filing. Petitioner will not rehash the same arguments in this reply brief but will incorporate them by reference. Petitioner will focus instead on the specific arguments raised by Intervenor-Respondents’ on statutory interpretation.

Intervenor-Respondents make six basic points in their statutory interpretation arguments: (1) SB 180 does not apply to drivers’ licenses, (2) KDOR policies allowed gender marker changes since 2011 pursuant to statute, (3) the Kansas legislature “uniquely modified the text of the model bill,¹” (4) the Legislature knows how to clearly define “sex” but

¹ This particular point not going to be covered further in the brief as what happened in Tennessee, Montana, or model legislation is irrelevant to this case. Also, as noted in other briefing, KDOR was using the terms sex and gender interchangeably

did not do so in SB180, (5) the legislative history of SB180 negates Petitioner's interpretation, and (6) SB 180 is an implied repeal of SB9. All of these points lack merit.

The first point about SB 180 not applying to drivers' licenses completely ignores Section 1(c) of SB 180, which contains a specific duty directing that state agencies "shall identify each individual who is part of the collected data set as either male or female at birth." Intervenor-Respondents point is based solely on examining Section 1(a) while pretending 1(c) does not exist. However, they cannot read out of a statute the parts that they don't like. The court must examine the entire statute, which in this case shows a clear meaning of what the law requires. The best way to interpret statutory text is by its plain language and ordinary meaning. *See Montgomery v. Saleh*, 311 Kan. 649, 654-55, 466 P.3d 902 (2020). Given the clear command of Section 1(c), SB 180 applies to driver's licenses: KDOR is a "department" that "collects vital statistics" for a variety of purposes and as a result is required to "identify each individual who is part of the collected data set as male or female at birth."

The second point is meritless because KDOR did not allow gender marker changes since 2011 pursuant to statute. It was an internal practice. As noted in depth in a separate brief, the change in the 2007 KDOR statute from "sex" to "gender" was a cosmetic change that relates to uniformity with the federal real ID Act. It was not meant to be a shift to allowing gender identity on a license. Regardless, Section 1(c) overrides whatever KDOR might have been doing prior to the statute since it gives a clear command.

The fourth point is really about how SB 180 compares to SB 228 regarding utilizing the term "sex." This argument is, at best, irrelevant to this inquiry. SB 180 and SB 228

appear to use the same definitions so it is unclear what point Intervenor-Respondents are trying to make. Similarly, the fifth point about legislative history is equally irrelevant. There is no need to look to legislative history when the meaning of a statute can be derived from its plain language. *Id.* The fact that a legislature asked for an AG opinion has no bearing on the issue as there is nothing inappropriate about a state legislator asking for an AG opinion for clarification on something from a statute. There is no support for the contention that seeking an AG opinion on an issue negates the plain meaning of a statute.

Finally, the argument regarding implied repeal of a 2007 law is without merit. As noted in the Reply to Respondents' Brief (*see generally* Pet. Reply to Resp. Br.), the term sex and gender are used interchangeably in K.S.A. 8-243(a), and the reason the term gender was utilized in 2007 was to comply with the Federal REAL ID Act. It was only an internal policy for KDOR to issue licenses with gender in the place of sex markers. Therefore, SB 180 did not repeal any part of K.S.A. 8-243(a). It simply commanded KDOR to stop using an internal practice that is no longer in accordance with the law.

To put it simply, there is no ambiguity in what SB 180 commands KDOR to do: include biological sex, not gender identity, on drivers' licenses. Therefore, there is no need to look to outside factors such as legislative history or other bills to ascertain its meaning. But even if the Court turns to those outside factors, Intervenor-Respondents' arguments are completely unconvincing.

B. SB180 is Constitutional

As noted above, although it is Petitioner's burden to demonstrate substantial likelihood of success on the merits, the constitutional claims that form the merits of Intervenor-Respondents argument place the "weighty" burden on Intervenor-Respondents

to demonstrate that a constitutional violation occurred. *Downtown Bar*, 273 P.3d at 714. This is because a “court presumes statutes are constitutional and resolves all doubts in favor of a statute’s validity.” *Brennan v. Kan. Ins. Guar. Ass’n*, 293 Kan. 446, 450, 264 P.3d 102 (2011) (citation omitted). So although Petitioner bears the burden in a temporary injunction for showing substantial likelihood of success on the merits, the merits in this case involve constitutional arguments made by Intervenor-Respondents. Statutes are presumed constitutional and Intervenor-Respondents bear the burden of demonstrating they are not. *Jurado v. Popejoy Const. Co.*, 253 Kan. 116, 123, 853 P.2d 669, 675 (1993). In this case, they have not come close to meeting that burden.

1. The Interpretation of SB180 at Issue Does Not Interfere with Anyone’s Right to Personal Autonomy or Self Determination

Intervenor-Respondents rely entirely on *Hodes & Nauser, MDs v. Schmidt*, 309 Kan. 610 (2019) for the proposition that they have a right to bodily autonomy and a right to self-determination as it relates to information on a driver’s license, and therefore a right to force the State to make changes to its policies. This is an incorrect reading of *Hodes*. That case provides no support whatsoever for the proposition that personal autonomy includes the right to dictate to a government agency what it should put on its identifying documents issued by that agency.

The basis for the court’s conclusion in *Hodes* was caselaw in our state that recognized the right to personal autonomy in relation to controlling one’s own body for things such as health, family formation, and family life. *Id.* at 614. The court considered the history of this right, to include statements made at the Wyandotte Convention. *Id.* at 625. In this case, Intervenor-Respondents ask this court to arbitrarily expand the right of personal autonomy to include what a government agency puts on a state-issued driver’s license. They do so

while doing an analysis in its brief that is less than two pages and devoid of any history or tradition. That simply doesn't cut it.

Regardless, *Hodes* does not support Intervenor-Respondents' claims. It defined personal autonomy as it relates to controlling one's own body. *Id.* at 614. It did not extend any right to allow individuals to force the government to put the individual's preferred information on government documents created by that government. *Cf. Pleasant Grove City v. Summum*, 555 U.S. 460 (2009) ("A government entity has the right to speak for itself. It is entitled to say what it wishes and to select the views that it wants to express." (internal quotes omitted)); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring) ("It is the very business of government to favor and disfavor points of view."). There is also no logical path to use *Hodes* to overturn SB 180. SB 180 does not prohibit transgender individuals or anyone else from obtaining a driver's license. Transgender individuals have the same ability to get a driver's license as anyone else. Nor does it dictate how transgender individuals must dress, tell them how they must present themselves to the public, control their speech, or do anything else that affects personal autonomy. The only requirement is for KDOR to issue licenses to identify someone's sex as either male or female at birth.

Any idea that the law "forcibly outs" someone as transgender against their will is largely speculative and varies widely based on the individual. First, the choice of whether to tell anyone a person is transgender still rests solely with the individual. SB 180 simply states what the person's sex at birth is. It is the transgender person's decision to tell the person seeing the license that they identify as a gender other than the one identified. Second, Respondent-Intervenor's brief only covers the situation where someone presents as a gender

other than the sex they were born as. There are for example, transgender individuals who choose not to outwardly express as the gender with which they now identify.² For them, listing the gender they identify with on their driver's license could have the effect of “forcibly outing” them as transgender.³ Finally, groups have recognized other gender identities, such as “non-binary,”⁴ for which the sex dichotomy does not apply. If recognized, such identities would require the state to expand current sex markers beyond M or F.

The bottom line is that all of these “harms” are at best second- and third-order effects of choosing to have a driver’s license. They don’t go toward a transgender person’s personal autonomy or self-determination. Such a right places limits on what a government actor can prevent individuals from doing. It does not permit individuals telling the government how to affirmatively act.

Bowen v. Roy, 476 U.S. 693 (1986), is instructive on this point. In that case, plaintiffs who had a religious objection to Social Security numbers brought a free exercise claim.⁵ The U.S. Supreme Court held that while the plaintiffs could believe whatever they wanted, their

² The Human Rights Campaign, *Sexual Orientations and Gender Identity Definitions*, (last accessed Dec. 20, 2023), <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> (Gender expression defined as “External appearance of one's gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.”).

³ Intervenor-Respondents may respond that such persons could simply not change their sex marker. But that would render the sex marker on the license meaningless—sometimes sex, sometimes gender identity, based entirely on the whims of the license holder.

⁴ See E. Coleman *et al.*, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, *International Journal of Transgender Health*, 580–81 (last accessed Dec. 20, 2023), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>.

⁵ Although the Free Exercise Clause is, of course, a different legal provision that what supported the *Hodes* majority’s decision, it is analogous because it likewise protects certain autonomy rights.

right to such beliefs did not entitle them to enlist the government to further those beliefs or make them easier to exercise:

Never to our knowledge has the Court interpreted the [Constitution] to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family. The Free Exercise Clause simply cannot be understood to require the government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens. Just as the Government may not insist that appellees engage in any set form of religious observance, so appellees may not demand that the Government join in their chosen religious practices by refraining from using a number to identify their daughter.

Id. at 699–700.

A similar logic applies here. Intervenor-Respondents right to personal autonomy allows them to believe whatever they wish about sex, gender identity, language, and other topics. And they may act on such beliefs in whatever way they wish, within the bounds of lawful behavior. But what they may not do is force the government to go along with or advance their beliefs. A right to personal autonomy is a right to control *one's own* person, not to control others. Thus, SB 180 does not implicate the right to personal autonomy.

2. There is no Right to Informational Privacy Implicated by SB 180

Intervenor-Respondents admit that there is no right to informational privacy under the Kansas constitution but ask the court to create one for the first time in this litigation—and to do so not even in a straightforward constitutional attack on the statute (which Intervenor-Respondents disclaimed in the hearing on their motion to intervene) but rather by raising the constitutional-doubt canon to twist the interpretation of SB 180 itself. This would be unprecedented. The constitutional-doubt canon only applies when there are “grave and doubtful constitutional questions” based on recognized constitutional rights. *United States ex rel. Att’y Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909). The State is not

aware of any case where it has been used to invent or discover a brand-new, never-before-recognized constitutional right.

At any rate, the only authority Intervenor-Respondents cite for the existence of this supposed right are unpersuasive trial-level opinions from other jurisdictions, which have no binding authority on this court (and are not even particularly persuasive). Intervenor-Respondents exclusively focus on the cases that support their proposition while ignoring the ones that don't, which paints a misleading picture of the law.

As a starting point, the United States Supreme Court has not expressly recognized a constitutional right to informational privacy, *see NASA v. Nelson*, 562 U.S. 134, 161 (2011) (Scalia, J., concurring), and no such right is explicitly mentioned in the Constitution. Because of that, Intervenor-Respondents' must demonstrate informational privacy is implicitly protected by another constitutional provision. Intervenor-Respondents do not really say where in the state or federal constitutions this supposed right is located, but their arguments seem to sound in due process. (*See* Intervenor-Respondents' Resp. 35–39.) But Substantive Due Process rights are now, as they have always been, limited to those that are “‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty.’” *Id.* at 2242 (quoting *Glucksberg*, 521 U.S. at 721).

There have been some circuit courts that have recognized a right to informational privacy in limited contexts or engaged in the practice of assuming without deciding that some right to informational privacy exists, but they too are calling into question that practice. As an example, the Tenth Circuit stated, “[I]t can no longer be said in the context of government disclosure of information that there is no dispute that confidential medical information is entitled to constitutional privacy protection. The Supreme Court has stated

that this is an open question—it has never held that there is a constitutional right to prevent government disclosure of private information.” *Leiser v. Moore*, 903 F.3d 1137, 1144 (10th Cir. 2018) (internal citation, alteration, and quotation marks omitted).

But even if there was a right to informational privacy as a general matter, it would not apply to one’s transgender status. The limited cases where some right to informational privacy was recognized generally involved instances of the government collecting personal information from a specific individual and disseminating that information without a legitimate reason. *See, e.g., Anderson v. Blake*, 469 F.3d 910, 915 (10th Cir. 2006); *Sheets v. Salt Lake Cty.*, 45 F.3d 1383, 1388 (10th Cir. 1995); *Eastwood v. Dep’t of Corrs.*, 846 F.2d 627, 630 (10th Cir. 1988). They certainly do not support any contention that there is a right to privacy that prevents a state from collecting basic information about biological sex and adding that information to a driver’s license. Furthermore, the cases the Intervenor-Respondents cited to support their contention were all decided prior to the recent decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), which overturned one of the key cases on which much of the prior caselaw on which “privacy” rights have been based. Nor do those cases discuss whether the right was deeply rooted in our history and tradition. Therefore, they have no applicability in this case.

If this court were to even entertain the notion that there is a privacy interest in one’s transgender status, there is no argument for a privacy interest in state records such as a driver’s license. As a starting point there is no expectation of privacy in a driver’s license because there is no legitimate expectation that the information contained will remain private or confidential. A driver’s licenses are a document routinely utilized for the purpose of confirming someone’s identity. As an example, a person’s date of birth is also contained in a

driver's license. A person might not want to reveal his age to whoever is viewing the license out of fear of age discrimination, or he might fear identity theft from having a birthdate known to someone. However, that person has no other choice but to reveal that whenever he shows his driver's license. There is nothing legally problematic about that because there is no expectation of privacy on that license. The same applies with biological sex at birth. There is no expectation that such information remains private.

Kansas law does not provide any argument for an informational right to privacy on a driver's license either. Kansas courts rarely become involved in the minutia of state licenses and government records issued by or managed by the Legislative or Executive Branches. In those cases, the court only considers whether the licensure or recordkeeping system is consistent with the requirements set by the legislature, *see, e.g., State ex rel. Stephan v. Harder*, 230 Kan. 573, 579–85, 641 P.2d 366, 372–75 (1982); *Roe v. Phillips Cty. Hosp.*, 317 Kan. 1, 8, 522 P.3d 277, 282 (2023), or whether the requirements set by the legislature violate a recognized constitutional or statutory right or privilege, *see, e.g., Stephan*, 230 Kan. at 585–86, 641 P.2d at 376. Courts will not otherwise interfere in the government's ministerial functions. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 162 (1975) (court cannot require agency to create record). In this case there no recognized constitutional right. Intervenor-Respondents' are asking the court to create new constitutional rights out of thin air, to include a right to informational privacy in a driver's license permitting them to change a state record. Under Kansas state law, that idea has no support.

It also cannot be overstated that SB180 does not require anyone to reveal their transgender status. All SB 180 requires is a statement on a government document that a person was identified as male or female at birth. Sex at birth is simply not highly personal or

intimate information. Rather, it is an observable fact of daily life. *See generally United States v. Alabi*, 943 F. Supp. 2d 1201, 1276 (D.N.M. 2013) (“Society is not prepared to recognize as legitimate an asserted privacy interest in information in plain view that any member of the public may see.”).

Perhaps if there was very real and definitive harm there could be some argument to examine the issue as it pertains to this supposed new right. However, Respondent-Intervenors offer nothing of that sort. Intervenors offer *zero* evidence of experiencing violence, verbal threats, or denial of services. They cite instances of what are mostly minor inconveniences or hurt feelings that supposedly made them feel fearful in some nebulous manner. *See Adefumi v. Lim*, No. CV 15-1101, 2018 WL 3548969, at *3 (E.D. Pa. July 23, 2018) (“Although he may now feel that what she did was wrong, his feelings do not create Constitutional rights. No case has held they do.”)

None of Intervenor-Respondents have been harmed by the Women’s Bill of Rights as applied to drivers’ licenses, and so any harms they may raise are hypothetical and speculative. They argue the Court should look at general experiences they have had related to being transgender as evidence of what *could* happen in the future *if* they had a driver’s license with a sex marker that did not match their gender identities and *if*, as a result, someone found out they are transgender. If anything, the experiences they have highlighted support Petitioner’s position.

Petitioner asked all Intervenor-Respondents to identify “every act of violence [they] have experienced that was caused by or related to a mismatch between [their] gender identit[ies] and [their] sex at birth.” *See, e.g., Redman Resp. to First Set of Discover Requests* at 10–13. Not one of the Intervenor-Respondents came up with an experience that constituted

violence (as either a common person or the law would define it), harassment, or discrimination.

As examples of violence, harassment, and discrimination Intervenor-Respondents included, (1) when people mentioned to other people (in conversations that did not include Intervenor-Respondents) they were transgender, Redman Depo. at 32; Doe 1 Depo. at 22; (2) when an employer briefly questioned whether a driver's license was correct (but the job was offered and accepted anyway), Kellogg Depo. at 22-23; (3) being "misgendered", Doe 2 Depo. at 22-23; Doe 1 Depo. at 33; (4) having to appeal a denial of insurance coverage (which was ultimately approved), Redman Depo. at 35-39; (5) having to update other, unrelated records to match their gender identities, Kellogg Depo. at 34-39; Doe Depo. at 27-29; (6) being patted down by TSA agents after going through security (but being cleared to fly), Gonzales-Wahl Depo. at 38-39; Redman Depo. at 27-29; and (7) having a police officer look at their licenses (without giving them a ticket), Kellogg Depo. at 40-43; Gonzales-Wahl Depo. at 41-44. None of these examples involved physical violence, threats, or verbal harassment. In no case was an Intervenor-Respondent denied services or employment. No case even involved another person commenting to an Intervenor-Respondents about their transgender status. None of these examples includes a legally-cognizable harm. Simply put, these examples do not show Intervenor-Respondents will be harmed in if another person sees their drivers' licenses in the future in a way that is protected by the Constitution.

In short, there is no established right to informational privacy. To the extent the court assumes there is one, it does not apply to sex at birth. And even if it did, it does require the state allow people to alter government documents. Intervenor-Respondents have not shown any compelling harm to warrant changing that analysis.

3. There is no Equal Protection Violation.

SB 180 does not violate Intervenor-Respondents' equal protection rights either. As discussed above, Intervenor-Respondents bear the burden of identifying a "suspect class" of individuals whom SB 180 treats differently than similarly situated individuals, or of showing SB 180 implicates a fundamental right. If they cannot, they then bear the burden of showing there is no conceivable rational basis for the law. They have failed at every step.

The equal-protection rights guaranteed by Section 1 of the Kansas Constitution are coterminous with those guaranteed by the Fourteenth Amendment of the United States Constitution. *Rivera v. Schwab*, 315 Kan. 877, 893, 512 P.3d 168, 180 (2022), *cert. denied sub nom. Alonzo v. Schwab*, 143 S. Ct. 1055, 215 L. Ed. 2d 279 (2023). "The first step in analyzing an equal protection claim is to determine the nature of the legislative classification." *State v. Stallings*, 284 Kan. 741, 751, 163 P.3d 1232, 1239 (2007). An equal-protection right may be implicated if the statute expressly creates classes of people and treats those classes differently. *United States v. Virginia*, 518 U.S. 515, 531–32 (1996). The court will not, however, interpret a law to create different classes when the plain text of the statute does not do so. *See Stallings*, 284 Kan. at 751, 163 P.3d at 1239. Equal protection may also be implicated if the law has a disparate impact on a suspect class. *Washington v. Davis*, 426 U.S. 229, 238 (1976). However, disparate impact alone is not sufficient; the party challenging the statute must show the legislature that passed the law had a discriminatory purpose. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265, 97 S. Ct. 555, 563, 50 L. Ed. 2d 450 (1977); *see also Rivera*, 315 Kan. at 938 (Biles, J. concurring in part).

Intervenor-Respondents state SB 180 is subject to heightened scrutiny because it classifies on the basis of sex and transgender status. The court should reject these arguments

because (1) SB 180 does not create classes of people as it relates to drivers' licenses; (2) if it did, it does not treat these classes differently; and (3) transgender people are not a quasi-suspect class.

Intervenor-Respondents rely on *Bostock v. Clayton County*, 140 S. Ct. 1731, (2020) for their argument that SB 180 classifies men and women on the basis of sex. In *Bostock*, the Supreme Court found that an employer had violated Title VII by firing a biologically male transgender employee for wearing women's clothing. Biologically female employees could wear women's clothing. The Court held that the rule classified male and female employees and was based on an impermissible sex stereotype—that only women wear women's clothing.

Bostock case does not support their argument at all for at least three reasons. First, *Bostock* interpreted only one statute—Title VII—not the Constitution, and it expressly limited its own holding to Title VII. 140 S. Ct. at 1753. It is an error to apply a statutory Title VII standard to a constitutional equal-protection claim. *Washington*, 426 U.S. at 238; *see also Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 308 (2023) (Gorsuch, J., concurring) (noting Equal Protection Clause and Title VI are worded differently and “[t]hat such differently worded provisions should mean the same thing is implausible on its face”); *L. W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 484 (6th Cir. 2023) (holding *Bostock* does not apply to equal-protection challenges); *Naes v. City of St. Louis*, No. 22-2021, 2023 WL 3991638, at *2 (8th Cir. June 14, 2023) (same).

Second, SB 180 does not distinguish between men and women based on an impermissible sex stereotype. All of the cases Intervenor-Respondents cite on this point involve statements or actions based on how men or women should act or dress. (*See*

Intervenors' Resp. 40.) But SB 180 does not say anything about behavior at all. Transgender persons can still act or dress however they wish, independent of their sex. That's the opposite of enforcing a stereotype.

Finally, it is clear that SB 180 does not improperly or invidiously classify men and women, or otherwise separate them for differential treatment. Simply requiring everyone to list biological sex is not the same thing as impermissibly classifying people on the basis of sex. Everyone—women and men both—get the same drivers' licenses with the same privileges and responsibilities attached. Women do not get to drive at a higher speed because their licenses have an "F" marker. Men do not get to ignore yield signs because they have an "M" marker. And no one—neither men nor women—can change their license to reflect something other than their biological sex. There is no group of people who can change the sex marker on their drivers' licenses and a group of those who cannot. Therefore, there is no impermissible classification on the basis of sex in SB 180.

Intervenor-Respondents also argue SB 180 impermissibly discriminates against them because they are transgender. There is an even bigger problem with this argument: the law does not mention transgender people. And because the law is not facially discriminatory, Intervenor-Respondents must show it was passed for a discriminatory purpose. *See Pers. Adm'r v. Feeney*, 442 U.S. 256, 274 (1979); *Adams ex rel. Kasper v. Sch. Bd.*, 57 F.4th 791, 810 (11th Cir. 2022). In order to do so, Intervenor-Respondents must show the legislature as a whole acted with discriminatory animus when passing SB 180. It is not sufficient to point to various advocates for the bill that are not speaking for the legislature itself. *See United States v. Carrillo-Lopez*, 68 F.4th 1133, 1150 (9th Cir. 2023); *United States v. Barcenas-Rumualdo*, 53 F.4th 859, 867 (5th Cir. 2022).

Intervenors' lone argument—a conclusory statement that the breadth of the law implies some form of animus—should be summarily rejected. They set the bar far too low. By comparison, numerous federal courts have rejected arguments that the illegal reentry provision of the United States immigration code was enacted to discriminate against Latinos despite the breadth of the law, blatantly discriminatory statements in the legislative history, and the fact that over ninety-percent of those impacted are Latinos. *See Barcenas-Rumualdo*, 53 F.4th at 867; *Carrillo-Lopez*, 68 F.4th at 1150. If that is not enough, certainly an unsupported claim about the breadth of a law that does not mention gender identity or transgenderism at all is not sufficient.

SB 180 does not target transgenderism by implication either. The court should not read a classification into a statute when the text of the statute is facially neutral. *See Stephenson v. Sugar Creek Packing*, 250 Kan. 768, 775, 830 P.2d 41, 46 (1992).

State v. Limon, 280 Kan. 275 (2005), on which Intervenor-Respondents rely, is a different case altogether. *Limon* involved a statute that placed *criminal penalties* on homosexual activity that were far in excess of those that applied to analogous heterosexual activity. *Id.* at 28, 122 P.3d at 28.⁶ That law obviously created two classifications (men who

⁶ To the extent Intervenor-Respondents' argument is based on the idea that other people (i.e. not the State) will treat them differently because they are transgender, the Court should consider two things. First, while Intervenor-Respondents may say they fear being treated differently in the future these fears are speculative and hypothetical. Not a single one has evidence of actually being treated differently by member of the public because they are transgender, let alone because that member saw a driver's license with a sex marker that matched their biological sex. Second, the Court is not in a position to address every type of differential they could experience for being transgender. The State is not in any position to control whether a stranger looks at an Intervenor-Respondent a little longer or whether an insurance company classifies a treatment as "experimental." Nor could the members of the public be held accountable unless the treatment rises to the level of a constitutional harm. The Court should, therefore, not consider these second-order effects and focus only on whether Intervenor-Respondents have proven the plain text of the statute creates classes who are treated differently.

have sex with women and men who have sex with men) and then enforced those classifications with criminal penalties. It is unclear what that case has to do with a statute like SB 180 that imposes no penalties and makes no distinctions based on transgender status.

Finally, transgender people are not a quasi-suspect class. Once again, Intervenor-Respondents rely primarily on Title VII cases, which, as discussed, are inapplicable here. At least two federal courts have already rejected this argument just within the last couple years. *See Kasper*, 57 F.4th at 810; *Fowler v. Stitt*, No. 22-CV-115-JWB-SH, 2023 WL 4010694, at *21 (N.D. Okla. June 8, 2023) (Broomes, J.). Likewise, “[t]o this date, [the Tenth Circuit] has not held that a transsexual plaintiff is a member of a protected suspect class for purposes of Equal Protection claims.” *Druley v. Patton*, 601 F. App’x 632, 635 (10th Cir. 2015) (citing *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1227–28 (10th Cir. 2007); *Brown v. Zavaras*, 63 F.3d 967, 972 (10th Cir. 1995)). Kansas has likewise never found transgender people are a suspect or quasi-suspect class.

Transgender people are also not politically powerless which cuts against any argument that they belong to a quasi-suspect class. Unlike previously-recognized quasi-suspect classes, transgender people in America today enjoy support from power social justice organizations, big law firms, and many representatives, both on the state and federal level. No average American would have anywhere near that type of support for harms faced with living day to day life. And their alleged interests are being advanced by Respondents, executive officers of a Department of the state’s government. Certainly no one from a historically suspect class would have had that level of support. Simply put, Intervenor-Respondents do not belong to anything that would come close to being considered a suspect class for Equal Protection purposes. Such popular support is antithetical to the very idea of a

suspect class, which hinges on the idea that certain “discrete and insular minorities,” that are powerless to protect themselves through the political process. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938); accord *Lyng v. Castillo*, 477 U.S. 635, 638 (1986).

SB180 Survives Rational Basis Review or Any Level of Review

Should the court find or assume SB 180 does in some way classify people, the court should still uphold the law under rational basis review. “[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others.” *McGowan v. Maryland*, 366 U.S. 420, 425 (1961). While “classification is discrimination,” “discrimination under proper rules is not prohibited.” *Farley v. Engelken*, 241 Kan. 663, 668, 740 P.2d 1058, 1062 (1987). Constitutional protections are only implicated if “the classification rests on grounds wholly irrelevant to the achievement of the State’s objective.” *McGowan*, 366 U.S. at 425. “[U]nequal treatment of persons under proper circumstances is essential to the operation of government.” *Farley*, 241 Kan. at 668, 740 P.2d at 1062. “A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.” *McGowan*, 366 U.S. at 426.

The burden is on Intervenor-Respondents to show there is no rational relationship between SB 180 and the goals of the legislature and no set of conceivable set of facts justifies law. Once again, they have failed to do so.

“Courts typically have applied a rational basis test when parties have asserted equal protection challenges to social and economic legislation.” *Jurado v.*, 253 Kan. at 123, 853 P.2d at 675; see also *Hartin v. Dir. of Bureau of Recs. & Stat., Dep’t of Health of City of New York*, 75 Misc. 2d 229, 230, 347 N.Y.S.2d 515, 517 (Sup. Ct. 1973) (“The essential question is whether the rule adopted by the Department [regarding changing the sex marker on a birth

certificate] has a rational basis . . .”). “The rational basis standard is a ‘very lenient standard.’” *In re Weisgerber*, 285 Kan. 98, 105, 169 P.3d 321, 327 (2007) (quoting *Peden v. Kansas Dept. of Revenue*, 261 Kan. 239, 251, 930 P.2d 1 (1996)). Under this standard, “constitutionality is presumed, and the burden is on the party challenging the statute to prove that no rational basis exists.” *Jurado*, 253 Kan. at 123, 853 P.2d at 675. If any rationale supports the law, the court must uphold it. The court cannot substitute its judgment for that of the state legislature, and it must not strike down a law simply because it, advocacy groups, or members of the public do not like it. *See id.*

Contrary to Intervenor-Respondents’ assertions, there are several reasons for the legislature to pass SB 180 in general and to require sex on driver’s licenses in particular. For example, the State has an interest in keeping consistent records. A law that requires sex, and only biological sex, on every state-issued record or identification document promotes consistency, uniformity, and accuracy across agencies and records. This is especially true in light of the fact that a federal district court recently eliminated a consent decree in Kansas that requires state agencies to issue birth certificates according to biological sex. *See generally Foster v. Stanek*, No. 18-2552-DDC-KGG, 2023 WL 5625433 (D. Kan. Aug. 31, 2023). Allowing one agency to interpret the law differently harms that interest.

As another example, the State has an interest in making it as easy as possible for law enforcement to identify people. If a law enforcement officer runs a warrant check on someone and no warrants appear, the officer, and the State, need to know that that is because the person has no warrants, not because the information on the person’s license was incorrect. Further, the State has a fiscal interest. If the court holds people can change their

records at will, not only will the State incur the administrative costs of making those changes, it will open itself to lawsuits as people pursue other changes.⁷

Finally, Intervenor-Respondents argue intermediate scrutiny applies. To accept this argument, the court must find (a) SB 180 creates classes; (b) those classes are quasi-suspect; *and* (c) the classes are treated differently. Or the court must (a) create a new fundamental right *and* (b) find that is implicated by the law. Doing either requires ignoring the plain text of the statute and reading into it ideas that simply are not there. Intervenor-Respondents have not come close to making the required showings, and therefore intermediate scrutiny does not apply.

That said, Intervenor-Respondents' arguments regarding intermediate scrutiny are unconvincing. SB 180—and any conceivable classifications that may be read into it—are “substantially related to an important governmental objective.” *T.N.Y. ex rel. Z.H. v. E.Y.*, 51 Kan. App. 2d 956, 965, 360 P.3d 433, 440 (2015). Requiring men and women to each list their biological sex, as identified at birth, furthers an important governmental interest. As SB 180 says, the state distinguishes based on sex for sports, jails, locker rooms, domestic violence centers, rape crisis centers, and others. The government also has an interest in collecting accurate, complete, and uniform records of vital statistics for public health, crime, and economic reasons. The government has an interest in detaining biological males with males, in making women's sports fair by keeping them open to only biological women, and

⁷ To put a fine point on it, WPATH, lists a number of gender identities, including bi-gender, agender, and eunuchs, and it claims these genders can change over time. *See E. Coleman et al., Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, *International Journal of Transgender Health*, 580–81 (last accessed Dec. 18, 2023), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>. The Legislature could very well have seen a need to draw a line and limit the sex that can go on a driver's license to male and female based on a person's biological sex as identified at birth.

protecting the privacy of both men and women in any place separate accommodations are called for.⁸ Knowing whether a person is male or female furthers that interest. Including someone's biological sex as identified at birth on an identity document such as a driver's license, allows the government to know this information.

In short, SB180 survives under any level of review.

III. Petitioner Has Demonstrated a Reasonable Probability of Suffering A Future Irreparable Harm

In its motion for TI, Petitioner asserted that, if KDOR refused to comply with SB 180 and continued to issue noncompliant licenses, that would "present a reasonable probability of irreparable harm" because those licenses would be in circulation for six years and could not "be readily corrected until any issued licenses expire and must be renewed." (Motion for Temporary Injunction, 9-10.)

This serious harm is the primary overarching injury the State is concerned with because at its core this harm is a disenfranchisement of the hundreds of thousands of Kansans who voted for this legislature in the 2022 election. It is for this reason the State is pursuing a mandamus action in the first place. See K.S.A. 60-801 ("Mandamus is a proceeding to compel some inferior court, tribunal, board, or some corporation or person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law."); *Manhattan Bldgs., Inc. v. Hurley*, 231 Kan. 20, 26, 643 P.2d 87 (1982) ("Mandamus is also a proper remedy where the essential purpose of the proceeding is to obtain an authoritative interpretation of the law for the guidance of public officials in their administration of public business. . . .").

⁸ Intervenor-Respondents have failed to argue these are not compelling government interests.

Petitioner seeks an authoritative interpretation of SB 180 requiring KDOR to comply with SB 180 and only put a licensee's biological sex on their driver's license. If KDOR were to be allowed to continue changing the sex designations on driver's licenses, Petitioner would suffer an irreparable injury as there would be an unknown number of noncompliant driver's licenses that could not be readily corrected until those licenses come due for renewal. It also gives free reign to state agency's to unilaterally ignore laws passed by the legislature that it disagrees with. This cannot and should not be allowed.

Respondent-Intervenors also heavily criticize Petitioner's asserted injury to law enforcement due in part to the fact that no individual law enforcement officer has encountered a specific instance where an incorrect gender marker affected a law enforcement function such as executing a warrant. This line of argument is ultimately a red herring. As a starting point, there have been a total of 552 gender marker changes approved by KDOR in the 12 years that they have allowed it.⁹ Given that there are millions of residents in the state of Kansas, it is not surprising that an individual officer has not ran into an instance where someone's gender marker was an issue given these numbers.

Regardless, those same officers also testified about their belief that inaccurate driver's licenses would cause public safety issues. Shawnee County Sheriff Brian Hill explained that law enforcement officers regularly use driver's licenses to confirm the identity of suspects and they rely on that information to be correct. See Pet. Resp. to Intervenor-Respondents Motion in Limine at 2-3. In addition, Sargent Erika Jo Simpson also confirmed that law enforcement performs searches on people based on name, sex, and date of birth, so there is a

⁹ See Respondent KDOR Supplemental Responses to Petitioner's First Set of Discovery Requests.

chance that they will not be able to obtain the necessary records on a person if the person's sex has been altered. *Id.*

Law enforcement officers testified at their depositions about the harm they believed inaccurate driver's licenses would cause. Driver's licenses are a common tool of law enforcement officers to identify suspects, victims, wanted persons, mission persons, and others encountered on a daily basis. *See, e.g., Hiibel v. 6th Judicial Dist. Ct.*, 542 U.S. 177, 181, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2004); *State v. Doelz*, 309 Kan. 133, 139, 432 P.3d 669 (2019); *State v. Manwarren*, 56 Kan. App. 2d 939, 947-49, 440 P.3d 606 (2019); *State v. Lees*, 56 Kan. App. 2d 542, 544, 432 P.3d 1020 (2019). As such, permitting inaccurate driver's licenses to continue to be issued would cause harm to the public and irreparable injury to Petitioner.

It's also important to note the standard that applies at the temporary injunction phase. Suffering an irreparable injury does not require Petitioner to show a "virtual certainty" of injury, but a "reasonable probability." *Steffes*, 284 Kan. at 395. The "reasonable probability" standard is a much lower burden than the applicable burden of proof at a trial. *See Idbeis v. Wichita Surgical Specialists, P.A.*, 285 Kan. 485, 492, 173 P.3d 642 (2007). Requiring proof of certainty of an irreparable harm is too high of a standard for parties seeking injunctions. *Bd. Of Cty. Com'rs of Leavenworth County v. Whitson*, 281 Kan. 678, 684, 132 P.3d 920 (2006). Under this standard, it is clear that Petitioner has met its burden.

Petitioner has demonstrated more than a "reasonable probability" of irreparable injury. There is a harm in KDOR not complying with SB 180 that ultimately comes from a state agency unilaterally ignoring a law passed by the legislature that voters put in a position to pass laws. Driver's licenses that do not comply with SB 180's requirements will also be

issued without a realistic opportunity by the State to rescind those inaccurate licenses until they come up for renewal after six years. KDOR's stated policy to continue issuing noncompliant licenses will continue to further this harm suffered by Petitioner. These injuries are more than sufficient to satisfy Petitioner's burden at the temporary injunction stage.

IV. No Adequate Remedy at Law is Available to Petitioner

Although Respondents engaged in this argument that Petitioner had an adequate remedy at law, Respondent-Intervenors did not. This is likely a concession that Petitioner did not in fact have an adequate remedy at law. This makes sense. An adequate remedy at law is "[a] legal remedy (such as an award of damages) that provides sufficient relief to the petitioning party, thus preventing the party from obtaining equitable relief." Black's Law Dictionary ___ (11th ed. 2019).¹⁰ As Petitioner has shown, and Respondent-Intervenors have not denied, monetary damages are not available here as a remedy. In addition, Petitioner cannot sue Respondents for damages in their official capacity. As only equitable relief is available, Petitioner has satisfied this factor of the temporary injunction analysis.

V. The Balance of Harms Favor the Petitioner

In its temporary injunction motion and in this reply, Petitioner has detailed the irreparable injury it will suffer. This vastly will outweigh whatever minor harms Intervenor-Respondents may face. Although estimates vary, approximately 0.43% of Kansas identifies as transgender.¹¹ Extrapolated over the population of the state, it appears there are

¹⁰ An equitable remedy, in contrast, is "[a] remedy, usu[ally] a nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usu[ally] monetary damages, cannot adequately redress the injury." Black's Law Dictionary, (11th ed. 2019).

¹¹ See Andrew R. Flores, et al. How Many Adults Identify as Transgender in the United States, the Williams Institute, (last accessed Dec. 20, 2023)

somewhere in the range of 15,000-20,000 transgender individuals living in Kansas. Despite having 12 years to do so, only 552 individuals have changed their gender marker on a driver's license. That's less than 4% of the transgender population of Kansas. It is reasonable to believe that some number of those individuals no longer live in the state and some of them might not have any objection to SB 180 at all. In fact, only 5 of those individuals have been a part of this lawsuit and the evidence shows that the "harms" they face boil down to minor inconveniences and hurt feelings. Therefore, the harm for Respondent-Intervenors is minimal.

Compare that to the harm of the Petitioner. That harm applies to the voters of Kansas who put in place the legislature that passed SB 180 and would be disenfranchised if the law is not allowed to take effect. In addition, there is harm to law enforcement in their ability to carry out its duty. Those harms greatly outweigh the minimal harms of the Intervenor-Respondents.

It is also important to note that there is currently a temporary restraining order in place. At this point in the proceeding, Petitioner will seek to have the mandamus action decided in short order since there is no further evidence necessary to present to the court to rule on it. Therefore, it will only be a short amount before Respondent-Intervenors get finality on the mandamus. If the court sides with Petitioner on the substantial likelihood of success question but denies the temporary injunction it would create an odd set of circumstances where the window would be open for individuals to get a gender marker change on a driver's license only to have that window shut again a few months later when

the mandamus action is decided. If anything, that would cause more harm to Intervenor-Respondents.

By comparison, Intervenor-Respondents have not shown they will be harmed (in a legally cognizable way) by having to show a driver's license that identifies their biological sex. Based on the facts they have presented, at worst a member of the public will give them a second look or question the validity of the license but then accept the explanation. Even the situations when Intervenor-Respondents allege they were "forcibly outed" by a driver's license as being transgender, there were other indicators, including medical records and specific medications. While perhaps unpleasant or inconvenient, these situations do not show the balance of harms.

In sum, Intervenor-Respondents have demonstrated little harm to result from the granting of a temporary injunction especially since a temporary restraining order has already been in place for months. The Petitioner would suffer great harm if it is denied. Therefore, the balance of harms favors the Petitioner.

VI. The Public Will Benefit from Accurate Information on Driver's Licenses

The public is served by ensuring laws are accurately interpreted. In this case, Petitioner is attempting to ensure SB 180, passed by a supermajority of the public's representatives, is accurately interpreted and applied by Respondents. The public will benefit from SB 180 being accurately interpreted, as well as from the constitutional system being respected. *See City of Wichita v. Wallace*, 246 Kan. 253, 257-58, 788 P.2d 270 (1990); *Le Vier v. State*, 214 Kan. 287, 292, 520 P.2d 1325 (1974).

This is especially true in light of the fact that the legislature is in the best position to determine the public interest subject to constitutional limitations. *See generally Foster v.*

Stanek, No. 18-2552-DDC-KGG, 2023 WL 5625433 (D. Kan. Aug. 31, 2023). It almost goes without saying, but the Legislature listened to the will of the voters rather than letting outside advocacy groups—such as WPATH—dictate what goes on a government record. The state legislature, duly elected by the people of Kansas, passed SB 180 with bipartisan support *after* hearing and considering many of the arguments Intervenor-Respondents are making today.¹² They do not get a second bite at the apple by pursuing in court what they already lost in the Capitol. The court should recognize the public’s heavy interest in legislators responding to its voters and not allowing this interference.

Therefore, it would certainly not be against the public interest to issue to temporary injunction.

CONCLUSION

Petitioner has more than satisfied all the factors required for this court to grant a temporary injunction. Intervenor-Respondents legal arguments are ultimately not serious ones. Furthermore, the legislature already heard their arguments when debating SB 180 and disagreed with them. The solution to that result is to use the democratic process to change the law and not utilize the court system to hijack it. At this stage of the litigation, Petitioner already has a temporary restraining order. There is no valid reason for the court to deny the Petitioner’s next request which is for a temporary injunction in this matter.

¹² *See, e.g.*, Minutes for SB180 - Committee on Health and Human Services, Minutes Content for Mon, Mar 6, 2023, presentation of Aileen Berquist of the ACLU of Kansas (last visited Dec. 18, 2023), https://www.kslegislature.org/li/b2023_24/measures/minutes/agenda_item_202303034825770599
1.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2023, the above document was filed with the Clerk of the Court via fax file, with a copy to all counsel of record via email.

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CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER

1 Q. Okay. And that was an issue when
2 applying for a job at Dairy Queen in Shawnee, Kansas,
3 in 2019.

4 A. Yes.

5 Q. Can you just kind of walk me through,
6 I guess, your experience and what is kind of
7 encompassed in bullet point No. 1? Just kind of tell
8 me in your own words about it.

9 A. About any specific instance?

10 Q. About bullet point No. 1, your
11 experience at [REDACTED]

12 A. Sure. Just this interview piece?

13 Q. Yeah, yeah, that's fine.

14 A. Okay, great. So when I was, like,
15 applying to work at [REDACTED], I had to sit down
16 and have a quick interview. You know how first jobs
17 go, it's like we're having an interview, but not
18 really.

19 But I did have to sit down for it and
20 the interviewer asked to see my identification. So I
21 gave it to him and he looked at it and kind of
22 stopped and did a double-take. I was presenting
23 fairly masculine at the time, and he looked at it and
24 he said is this correct. And I was, like -- again
25 I'm paraphrasing a bit -- and I was, like, yes, it



CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER
1 is, and I didn't remember that I had female marker.

2 And he says, well, this says female, like, is that
3 correct. And I was, like, yes.

4 And he goes I think this isn't real.
5 I think you're, like, making up a document. And I
6 was, like, I'm not, that's -- so then I had to
7 explain that I was transgender and say, like, my
8 driver's license doesn't reflect my identity. And
9 thankfully he got it then, but I was still forced to
10 disclose my identity.

11 Q. Did you end up getting the job?

12 A. I did.

13 Q. How long did you work at [REDACTED]

14 A. A year and some change.

15 Q. Was there any other, other than kind
16 of the initial reaction when you handed the driver's
17 license and they saw what they felt was a
18 discrepancy, was there any other issues that arose
19 from this in your opinion or that you experienced?

20 A. No.

21 Q. Other than their initial reaction,
22 were they rude or harassing or any issues like that?

23 A. No.

24 Q. Okay. Now, in this, this was a
25 question that responded to an act of violence that

CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER 34DER

1 A. I don't know.

2 Q. Okay.

3 A. I'm not there.

4 Q. Okay. Would you please look at the

5 next bullet point you have listed, involves [REDACTED]

6 [REDACTED], and just kind of review

7 that for yourself real quick.

8 A. Okay.

9 Q. And I just want to make sure because

10 it seems odd to me, but it says in 2015 --

11 A. Uh-huh.

12 Q. -- you first enrolled at [REDACTED]

13 [REDACTED] How old were you in 2015?

14 A. Great question. I think I was 11 --

15 Q. Okay.

16 A. -- at the time.

17 Q. That's very young to enroll at [REDACTED]

18 A. Yeah. They have a lot of summer

19 courses that you can enroll in as a little kid.

20 Q. Okay. So what kind of courses were

21 those?

22 A. I took an etiquette class, clearly I

23 didn't learn anything. Joke. I took one on

24 mythology. I took one on music mixing and Adobe. I

25 think that's all I remember.



CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER

1 Q. Okay. About how many classes, so that
2 would be, what, two or three, handful of classes?

3 A. And debate, so four.

4 Q. And you said those were over the
5 summer?

6 A. Yes.

7 Q. And did those count towards college
8 credit or did they give you high school credit?

9 A. No.

10 Q. No, okay.

11 A. My mom thought I should go have fun or
12 something.

13 Q. Give mom some time.

14 Was 2015 was that the only time that
15 you had tried to enroll in [REDACTED]

16 [REDACTED] or summer classes? Or was that each summer
17 up until you graduated high school? Or what was,
18 kind of, the timeline?

19 A. Yeah, it was just once you had to
20 enroll.

21 Q. Okay. So you did take other classes
22 in the future?

23 A. Yes.

24 Q. It was just this one time that you're
25 citing as the issue?

CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE 36DER

1 A. Yes. I didn't have to re-enroll when
2 I took college courses.

3 Q. Okay. Did you attend [REDACTED] before you
4 went to [REDACTED] Did you ever get college courses from
5 there that transferred?

6 A. I did.

7 Q. Did you do that while you were
8 enrolled in [REDACTED]

9 A. Yes.

10 Q. So I guess can you just kind of walk
11 me through what this experience was for you?

12 A. Sure. So when I enrolled in 2015,
13 they had the, like, at the time accurate gender
14 marker of female. When I called to ask if I could
15 change it or, like, see what could be done about it,
16 I had to have, like, this 30-minute conversation with
17 the Juco employee. Juco is short [REDACTED]

18 [REDACTED]
19 And, essentially, they said that they
20 would not update my record. So I then said, like,
21 okay, I identify as transgender, I've changed my
22 gender marker, and they said they still weren't sure
23 if they could update that gender marker.

24 And they had asked me about I believe
25 the employee had asked me about my status as a trans



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CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER 37DER
1 person, which they didn't need to know. But then I

2 have for idea if my gender marker is updated or not.

3 I tried to check but they wouldn't tell me.

4 So you didn't have any problem from
5 '15, it was in '21 when you attempted to update what
6 they previously had on their record is where you
7 encountered the issue?

8 A. * Yeah, in 2017 and in 2021 I had an
9 incorrect marker and any faculty looking at my record
10 could see that.

11 Q. Did you have any written communication
12 regarding this? Did they write you a letter and say,
13 hey, we can't change it because of --

14 A. No.

15 Q. Okay. And I assume -- do you know who
16 you talked with at [REDACTED]

17 A. I don't recall.

18 Q. Was the employee rude to you?

19 A. Yes.

20 Q. How were they rude?

21 A. They were asking a lot of invasive
22 questions and kind of, like, prying me. Again, a
23 30-minute phone conversation was unnecessary for a
24 request for a document change.

25 Q. Did they ask -- I guess when you



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1 attempted to do this, did you initiate this process
2 with a phone call? Do they have a way you can do
3 that online?

4 A. Yes. You can call them.

5 Q. Okay. And so that's how you started
6 the process?

7 A. Yes.

8 Q. Okay. And this 30-minute phone
9 conversation, was that initial phone call to get the
10 process going?

11 A. That is correct.

12 Q. Okay. And I believe you said a few
13 moments ago that you don't know if it's changed.

14 A. Yeah, I have no idea.

15 Q. Okay. And why were you calling them
16 to change it? Were you going to take more classes
17 there? Was there a purpose for deciding to change
18 it?

19 Or did you just want to change it as
20 part of --

21 A. Yeah, part of my general, you know,
22 identity, like, everything getting changed, I wanted
23 to make sure that my records were as accurate as
24 possible.

25 The other thing is when I was



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1 transferring credits over to [REDACTED]
2 wanted to be sure that they didn't conflict and that
3 no issues would arise.

4 Q. When you did transfer the credits to
5 [REDACTED] did any issues arise?

6 A. I was lucky, they did not.

7 Q. Did you report this interaction to
8 anyone at [REDACTED]

9 A. I did not.

10 Q. Why not?

11 A. It seemed something typical at the
12 time.

13 Q. Okay.

14 A. Also something that seemed like way
15 too much effort for a single marker.

16 Q. Would you please -- you know,
17 obviously once again you put this into your responses
18 for violence based upon showing your credential. Did
19 you show them your credential?

20 A. I didn't have to. It's hard to do
21 that over the phone.

22 Q. They didn't request it, though --

23 A. They did not.

24 Q. -- and ask you to send it to them?

25 Okay.



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1 And just describe the violence that
2 you felt you received as part of this interaction.

3 A. Well, I again had to disclose my
4 transgender identity and it was a very difficult
5 conversation to have, kind of going back and forth
6 about my own identity. So that's the psychological
7 harm caused there.

8 Q. Okay. Would you please review the
9 next bullet point?

10 A. Sure. Okay.

11 Q. Would you just kind of walk me through
12 your experience of what's, kind of, encompassed in
13 that next bullet point?

14 A. Sure. So I was headed to a class, I
15 was taking a CPR course as part of I was doing
16 nursing at first. And I was pulled over by an
17 officer. It was raining, it was kind of hard-to-see
18 conditions. And so they pulled me over and they
19 asked to see my driver's license, and when he took
20 it, he kind of stopped for a second but didn't say
21 anything. And I was really, really nerve us he was
22 going to say this is a fake document or, like, are
23 you pretending to be someone else. So, thankfully,
24 that didn't happen.

25 (Phone interruption.)



CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER
1 MR. SKEPNEK: Sorry.

2 THE WITNESS: No, you're famous. It's
3 okay.

4 A. Yeah, so thankfully that didn't
5 happen, but it made me very cautious about working
6 with law enforcement because it definitely could have
7 happened.

8 BY MR. SKEPNEK:

9 Q. What time of day was this?

10 A. It was probably like 4 PM. Again, I
11 don't exactly recall.

12 Q. You said it was raining?

13 A. Yes. Pretty heavy.

14 Q. So, let's see, this was 2019 or '20,
15 so you were still in high school, you probably would
16 have been a junior or so?

17 A. Yeah.

18 Q. And was anyone else in the car with
19 you?

20 A. It was just me.

21 Q. And was it your car?

22 A. Yes. It's under my mom's name, so.
23 It's mine.

24 Q. So the registration would have been
25 under your mom's name?

CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER 42DER

- 1 A. It would have been hers.
- 2 Q. Did he ask to see the registration?
- 3 A. He did.
- 4 Q. And, at that point in time, your
5 driver's license showed female?
- 6 A. Yes.
- 7 Q. And it showed -- what name was on it?
- 8 A. Adam Kellogg.
- 9 Q. Was the officer rude to you?
- 10 A. No.
- 11 Q. Did you get a ticket?
- 12 A. I did not.
- 13 Q. Why did he pull you over? What did he
14 say?
- 15 A. Apparently I ran a stop. I did stop.
16 So I'd like to correct the record -- no, I'm kidding.
- 17 Q. Have you, outside of this experience,
18 have you had poor interactions with law enforcement
19 due to your driver's license?
- 20 A. I have not had any interactions with
21 law enforcement.
- 22 Q. Okay. Now it says you experienced
23 extreme anxiety during the encounter.
- 24 A. Uh-huh.
- 25 Q. It also says that's because of the



CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER
1 inaccurate marker, and was that the only reason you
2 were experiencing extreme anxiety?

3 A. Yeah.

4 Q. Do you think it's normal for most
5 people to experience anxiety when they get pulled
6 over?

7 A. Yeah, at some level.

8 Q. And what would be the violence you
9 experienced in this situation?

10 A. Again, psychological harm. I was
11 afraid of the officer. I wasn't able to respond
12 calmly and I was generally fearful. It was something
13 I hadn't thought of before that an officer might look
14 at my document and accuse me of providing a fake one.
15 I carried that with me after.

16 Q. But did he accuse you of it being a
17 fake document?

18 A. He did not.

19 Q. Just to be clear, he in no way was
20 rude or harassing?

21 A. No.

22 Q. Let's go down to the next bullet
23 point, if you could just take a moment to review that
24 and let me know when you're done.

25 A. Okay.



JULIANA OPHELIA GONZALES-WAHL

1 BY MS. GAIDE:

2 Q. So, were you flying from Kansas City to
3 Chicago?

4 A. Yes, and back.

5 Q. And back. Was that for personal or for
6 work?

7 A. Personal.

8 Q. And can you describe what happened?

9 A. Yeah. I was going through security and
10 had a gender marker marked as M and when I went
11 through security I ended up going through an extra
12 set of pat downs, screening things that were
13 really uncomfortable and a lot of questions of,
14 like, oh, who do you want to do this and just
15 very loudly asking, asking those questions
16 followed by a pat down of my genitals, which is a
17 thing that feels like you just have to accept as a
18 trans person traveling through airports in
19 general, but yeah.

20 Q. So, you -- did you hand the TSA agent
21 your ticket and your license at the same time?

22 A. Umm. I think so. That's how that
23 usually works.

24 Q. And then went through an x-ray?

25 A. Yes, yeah.

JULIANA OPHELIA GONZALES-WAHL

1 Q. And then you were selected for the pat
2 down?

3 A. Yes.

4 Q. Okay. Did the agent ask you -- I believe
5 you said the agent asked you whether you wanted a
6 male or a female TSA agent to pat you down?

7 A. Yes. Very, very loudly.

8 Q. Did they make any harassing comments
9 other than very loudly asking you?

10 A. I mean, I don't recall if they did. I
11 think that it's hard to downplay the experience of
12 having your gender talked about very loudly when
13 you're in a cam position. It's just kind of
14 embarrassing, humiliating and unnecessary in
15 general. So, yes, other than that I can't recall
16 any other harassing comments.

17 Q. Did they ask you any questions about your
18 license?

19 A. I can't recall. This was in 2019.

20 Q. Have you flown since?

21 MR. HECHT: Excuse me?

22 BY MS. GAIDE:

23 Q. Have you flown since?

24 A. No.

25 Q. Do you travel at all?

JULIANA OPHELIA GONZALES-WAHL

1 A. Not, not much, no. I mostly stay to
2 Lawrence. Been through all of Kansas before I
3 transitioned, though, every corner. Beautiful
4 state.

5 Q. Mostly for the geological survey?

6 A. Uh-huh. The geology in southern Kansas
7 is gorgeous.

8 Q. But earthquake prone?

9 A. Yeah.

10 MS. BRETT: Can we take a five minute
11 break 'cause I have to leave to get to the court
12 hearing.

13 (THEREUPON, a recess was taken, upon
14 which Pedro Irigonegaray and Sharon Brett left the
15 deposition room.)

16 BY MS. GAIDE:

17 Q. Let's look at bullet point number 4,
18 which is in response to interrogatory number 1,
19 and just let me know when you've reviewed that.

20 A. Okay.

21 Q. Okay, can you tell me a little bit about
22 what happened here?

23 A. Yeah. I was driving back from a friend's
24 bar that my partner and I visited. It was --
25 yeah, we'd been there to play board games and meet

JULIANA OPHELIA GONZALES-WAHL

1 up with some friends and were driving back from
2 Kansas City to Lawrence. I was sober, obviously,
3 and was driving my partner's car for the first
4 time and we were coming back pretty late and I had
5 gotten pulled over by an officer. I was super
6 anxious and nervous. It was one of the first
7 times I was presenting a little bit more, just
8 presenting a little bit more fem and it is a scary
9 thing when you're very early in transition,
10 especially when you're coming from like a
11 conservative background. The -- it's scary. So,
12 getting pulled over was a little terrifying and I
13 had to show my license to the officer and
14 everything and there was that knowledge that the
15 photo on the license, name on the license, and the
16 gender marker on the license all conflicted with
17 the way that I was looking at the time and that
18 put me on edge a lot and I ended up getting asked
19 to do a field sobriety test in the middle of the
20 night and felt so cold out, too, and passed it and
21 -- yeah. It was -- sorry, I'm like covering my
22 mouth. It was just something that was really kind
23 of scary to go through as somebody who was newly
24 out and especially with the, like, background that
25 I had I felt very scared going through that and I

JULIANA OPHELIA GONZALES-WAHL

1 felt like some of the demeanor of the officer
2 changed a little bit when they got my license and
3 when I was like standing outside and it all --
4 while it all went well in the end, it left me
5 super uncomfortable wanting to drive because it
6 really kind of cemented in my head the way that
7 that could have gone bad and just how exposed and
8 vulnerable I am as a trans person, especially as a
9 trans Latina when I'm interacting with law
10 enforcement. The power dynamics there are very
11 skewed and leave you very vulnerable. Yeah.

12 Q. Was this on I-70?

13 A. It was -- we were -- was it I-70? We
14 were near an on-ramp to one of the highways. It
15 was -- I'm not sure if it was on I-70, but it's
16 one of them that connects to I-70. It was a Taco
17 Bell near an Ikea -- it was near a Taco Bell near
18 an Ikea. God, I sound like my mom.

19 Q. And you said it was a sobriety
20 checkpoint. Were other cars being pulled over and
21 stopped?

22 A. Umm. I say sobriety checkpoint because
23 it was obvious that they were, like, looking for
24 people to pull over to check 'cause it was, it was
25 a weekend night, but it was that one officer --

11/6/2023

JULIANA OPHELIA GONZALES-WAHL

1 pair of officers were stationed there and were
2 watching people as they were trying to get on, so,
3 I think that is a sobriety checkpoint.

4 Q. Okay. You didn't see any other cars
5 getting pulled over there?

6 A. Yeah. It was just the cops looking for
7 people and they were obviously on duty to look for
8 potential, yeah.

9 Q. Okay.

10 A. So...

11 Q. Did the officer explain why he or she
12 pulled you over?

13 A. Yes. It was -- the justification that
14 they gave was I hadn't turned on my headlights
15 quickly enough when I was pulling out, so, I was
16 used to a car that had automatic headlights.

17 Q. But this wasn't your car?

18 A. No. It was my partner's.

19 Q. You said it was cold. Do you remember
20 month roughly?

21 A. It was pretty close to when I started
22 HRT, so, it was probably -- it was cold 'cause it
23 was late at night, but it was like late spring-
24 early summer. It was also I feel like abnormally
25 cold that year, so.

JULIANA OPHELIA GONZALES-WAHL

1 Q. Did they ask for your partner's license,
2 too?

3 A. My partner was not driving, so.

4 Q. But was he or she in the car?

5 A. Yes.

6 Q. Did they ask for the registration?

7 A. Yes.

8 Q. And how long roughly would you say this
9 encounter took?

10 A. A while. I didn't really have a clock at
11 the time. It felt like longer than it probably
12 was, but I'm not sure the exact time. Probably a
13 little bit longer than whatever the average time
14 is for getting through a field sobriety test.

15 Q. But you passed?

16 A. Yes.

17 Q. And were you allowed to leave right
18 after?

19 A. Yes.

20 Q. Were you given a ticket?

21 A. Nope.

22 Q. Did the officer -- you said the officer
23 looked at your license longer?

24 A. Uh-huh.

25 Q. I don't want to put words in your mouth.

[REDACTED]

1 A. Yes.

2 Q. Can you walk us through what happened?

3 A. He was being treated at the Topeka ER and
4 they, they would not -- at that time we had not
5 changed his legal name but we still referred to
6 him as he and they wouldn't do that. They called
7 him -- we were calling him [REDACTED] because
8 he didn't want to go by his birth name and the,
9 the ER and the nurses would not agree to do that.
10 They called him she and used his birth name. He
11 was already going through a very painful and
12 pretty major situation and that just added to the
13 situation and how he felt, so.

14 Q. And what were you at the ER for?

15 A. [REDACTED]

16 Q. And did you have to provide any medical
17 documentation to the ER when you went?

18 A. I don't think so. I mean, I think we --
19 no. If he had to show his driver's license I
20 don't remember that. I don't know.

21 Q. Okay. Did you have to show yours?

22 A. I don't remember.

23 Q. Okay. You said they would not agree to
24 call your child by --

25 A. Correct.



1 Q. Who do you mean by they?

2 A. The staff at the ER. The nurses and the
3 doctor.

4 Q. Staff and -- or nurse and doctor?

5 A. Yes.

6 Q. Did they tell you that they weren't going
7 to call --

8 A. They just didn't.

9 Q. They just didn't?

10 A. Yeah. We asked them to and they kind

11 Q. Yeah.

12 A. Of ignored our request, so.

13 Q. How long were you in the ER for?

14 A. I think he spent the night, so, at least
15 12 to 15 hours. I'm not sure exactly, but...

16 Q. Okay. Did you file any kind of
17 complaint?

18 A. No.

19 Q. Have you been back to that ER since?

20 A. No.

21 Q. Hopefully --

22 A. We have not.

23 Q. Okay. Other than that, were the people
24 harassing, rude?

25 A. No.

CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER 27DER

- 1 Q. Body scanner, metal detector, yeah.
- 2 A. Yeah, whatever those machines are.
- 3 Q. You were, as part of these
- 4 supplemental security screenings, you mentioned that
- 5 you were given pat downs.
- 6 A. Yes.
- 7 Q. Were you given -- was it a male
- 8 officer who patted you down? A female officer? Did
- 9 it vary?
- 10 A. It varied.
- 11 Q. Okay. Would you have preferred a pat
- 12 down from one sex or the other?
- 13 A. I would have preferred a female.
- 14 Q. Okay. Did you ask?
- 15 A. Sometimes.
- 16 Q. And would they allow the change?
- 17 A. Yes.
- 18 Q. Or would they tell you no?
- 19 A. No. They would allow the change.
- 20 Q. You also stated you were asked
- 21 invasive questions. Can you provide me with those
- 22 invasive questions if you recall them?
- 23 A. Again, it's the best way I can
- 24 describe it is that there was a question as to
- 25 whether that was truly my driver's license.

CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER 28DER

1 Q. And whenever that was an issue, they
2 may go through -- they went ahead and went through
3 with the supplemental security screening and that
4 process?

5 A. Yes.

6 Q. Were you ever denied the ability to
7 fly?

8 A. No, I was not.

9 Q. Okay. On each of these instances
10 where you had an issue with the security screenings,
11 did the name on your ticket or flight pass, did it
12 match the security or matched your driver's license?

13 A. It matched my ID. The name matched my
14 ID.

15 Q. Did you ever make any complaints to
16 the TSA folks or anyone who was running security at
17 the airports feeling --

18 A. I had made, you know, they've got the
19 comment card and whatnot and you can file a comment
20 after the fact.

21 I will tell you at the time I was
22 going somewhere, I wanted on that plane, I wasn't
23 going to rock any more boats than I had to.

24 Now, after the fact, yeah, I made a
25 couple complaints.



CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER

1 Q. You mentioned on the last line of that
2 section of the first bullet point that some of the
3 pat downs were conducted by men which felt like
4 sexual assault.

5 A. Yeah, I call it a legal sexual
6 assault.

7 Q. And did you feel like, because it was
8 a man that was patting you down, it was
9 inappropriate? Or did you feel like the manner in
10 which anyone would have done it was inappropriate?

11 A. I felt that the manner that anyone did
12 it was inappropriate.

13 Q. Okay.

14 A. I will concede to TSA that they would
15 use the back of their hand, but they were still
16 touching my genitals.

17 Q. Okay.

18 A. And that made me very angry. Please
19 leave my genitals alone.

20 Q. Outside of being selected and the pat
21 downs, were the interactions with the security folks,
22 were they harassing? Threatening? Rude? Anything
23 that you can add to that?

24 A. Every now and then you would get a
25 comment or you would get a strange look or something

1 CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER
like that. You know, they have a job to do, they're
2 trying to be professional. In most cases, no, I
3 would not call it harassing.

4 Q. Okay.

5 A. You know, I recognize they're trying
6 to do a job.

7 Q. And I think you might have answered
8 this a little bit along the way, but I just want to
9 make sure for the record it's clear.

10 Obviously this is a response to an act
11 of violence that you feel you received.

12 A. I feel it was an act of violence, yes.

13 Q. Can you just explain why you feel it
14 was or what about it or how it's an act of violence?

15 A. It's an act of violence because I feel
16 it's demeaning to me. It's an act of violence
17 because I don't believe anybody other than my wife
18 has any right to touch my genitals. I believe it is
19 an act of violence because it is embarrassing,
20 because there's other people around when it occurred.
21 So that's...

22 Q. Okay, thank you.

23 All right, let's go to the next bullet
24 point there. If you just take a moment just to
25 review that and let me know once you've had a chance



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CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER
1 to and we can talk about it.

2 A. So have we moved down to talking about
3 insurance coverage?

4 Q. It would be the local golf club in
5 [REDACTED] the very bottom of Page 9.

6 A. Okay. There has been -- okay A
7 little context here.

8 When I joined the golf club when we
9 moved back here to [REDACTED] my legal transition
10 was not yet complete, so I joined the golf club in my
11 legal name at the time.

12 After I got Judge Vano's order, that
13 was one of the places that I corrected my
14 identification. I will sit here and say the golf
15 club has not given me any problem at all. But,
16 unfortunately, it did get out that I once was
17 identified as a male and I'm now identified as a
18 female, and I have overheard some of the other
19 members talking about me.

20 Personally, I just want to be left
21 alone to live what's left of my life in peace with
22 myself, and it bothers me that they're talking about
23 me.

24 Q. You said a moment ago that the golf
25 club has been fine itself, so I assume you meant the

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1 staff, employees?

2 A. The club itself is fine. The staff,
3 they have said nothing, you know. They have treated
4 me with equal respect as they did before.

5 Q. So how do you -- do you feel like
6 someone in the golf club told the other members and
7 that's --

8 A. I don't know how that got out. I
9 can't say.

10 Q. Okay.

11 A. I just know the most recent incident
12 happened about last August, and just to give you a
13 little background.

14 Q. August, like, 3 or 4 months ago?

15 A. This year. Yeah, this year.

16 Q. Okay.

17 A. We had a tee time and the person
18 behind us, their tee time, we've talked before, we've
19 played a round together, so we switched tee times so
20 they can go first because they play their rounds
21 faster than Patty and I play our round.

22 And after that was done, he told his
23 partners about the time change, and then he proceeded
24 to tell his partners about my history.

25 Q. And I know you said when you moved --



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1 I believe you said when you moved back to Kansas City

2 is when you joined the club?

3 A. Yes.

4 Q. When was that again?

5 A. That would have been April of 2021. I

6 think officially it was, like, May 3rd --

7 Q. Okay.

8 A. -- when I joined the club.

9 Q. And then after you got the order from
10 Judge Vano, you went in to change your information
11 with the club; is that accurate?

12 A. That is correct. That is accurate.

13 That is correct.

14 Q. What's your handicap?

15 A. About an 80 -- well, I usually will
16 shoot about an 85.

17 Q. Okay. Good for you.

18 MR. DALGLEISH: You know you're under
19 oath, right?

20 THE WITNESS: Yes. But I also had
21 knee surgery this year, so I have not kept score this
22 year.

23 MR. SKEPNEK: Good for you.

24 THE WITNESS: Because I'm having to
25 learn how to re-swing a club.

CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE 34DER
MR. DALGLEISH: That's called

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sandbagging.

BY MR. SKEPNEK:

Q. Let's go down to the
final -- actually, I'm sorry. I apologize.

To wrap up there, this was one of the
instances that you listed as violence that you had
experienced.

Could you kind of explain in your own
words why you believe that you experienced violence
in this situation?

A. Which situation are we talking about?

Q. The one described in bullet point No.
2 regarding the golf course or the golf club.

A. Again, all I'm trying to do is live my
life at peace with myself. I don't think it should
matter to anybody what my past was. I don't
appreciate people talking about my past.

Q. Do you feel that this situation had
anything to do with your driver's license?

A. I honestly don't know.

I do know that the club, when I became
a member, took a copy of my driver's license and they
took a copy of the new driver's license when I
changed my name.

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1 Q. Let's go down to the final bullet
2 point that's on Page 10.

3 A. Okay.

4 Q. And I'll just give you a moment to
5 read that just to kind of --

6 A. And this is we're talking about
7 insurance?

8 Q. Yes.

9 A. And the mammograms?

10 Q. Yes.

11 A. Okay.

12 Q. Can you kind of walk me through your
13 experience here and recount it for me?

14 A. It was a standing joke because Aetna
15 identified me as male and one of the things that

16 [REDACTED]

17 [REDACTED]. I am of the age where, as a
18 woman, I undergo annual mammograms.

19 Because the mismatch between a
20 procedure that is typically associated with female
21 and my identification, my legal identification to
22 Aetna is male, they would deny the claim as
23 experimental.

24 I had got down to where I had a form
25 letter where I reminded them that I carry [REDACTED]

1 CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE 36DER
ICD code. Don't ask me to define that, it's a
2 medical classification.

3 Q. Well, now I'm curious because I have
4 no idea what it is.

5 A. International classification diagnoses
6 I believe.

7 Q. [REDACTED]

8 A. [REDACTED]

9 Q. Okay.

10 A. [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Q. [REDACTED]

14 A. Yes.

15 Q. -- also through Aetna?

16 A. Yes.

17 Q. Okay. Was that an issue?

18 A. It was initially, you know, the first
19 month or so there were questions. But once we got it
20 resolved, [REDACTED]

21 Q. Now I see on here 2019, 2020, 2021. I
22 guess my first question is how long have you been or
23 were you with Aetna as your insurance carrier?

24 A. Aetna is provided to me through IBM,
25 so it's, where are we at now, 14 years.



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1 Q. Okay. And still presently?

2 A. Yeah, I still get my insurance through

3 [REDACTED] Again, I mentioned I was on the
4 bridge-to-retirement program and part of that allows
5 me to stay on my [REDACTED]

6 Q. [REDACTED]

7 [REDACTED]
8 A. I started in December of 2018.

9 Q. Okay. And the mammograms that you
10 were trying to get Aetna to cover, were those
11 prescribed by your physician?

12 A. They were prescribed [REDACTED]

13 [REDACTED]
14 Q. And when Aetna denied your coverage, I
15 assume they sent you a denial letter?

16 A. They sent me a denial letter calling
17 the procedure experimental.

18 Q. Did they have a reason for stating
19 that it was experimental?

20 A. Not in the letters that I remember.
21 They just said this is how we see it.

22 Q. You state in here that because of your
23 license and patient information, it was listed
24 inaccurate M gender marker, that's why you were
25 denied.

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A. Uh-huh.

Q. Was it both your license and patient information? Was it just your patient information? Do you know?

A. At that point, it was just the patient information they had on file.

Q. And I assume you were able to get that patient information updated?

A. When I got Judge Vano's order, I did submit that information to Aetna and Aetna corrected it.

Q. And did you attempt to correct it with Aetna prior to getting Judge Vano's order?

A. No.

Q. Has Aetna ever asked you to provide them with your Kansas driver's license?

A. I provided my Kansas driver's license at the time that I provided Judge Vano's order when we -- because that's when we did the name change and did the legal gender marker change.

Q. And is that something you just provided? Or did they request that as well?

A. That was part of what they requested to make the change.

Q. Okay. At any other time did they

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1 request your driver's license?

2 A. There was ID information that was
3 requested when I first hired on with [REDACTED] Now you're
4 going back, like, 14, 15 years. I do not
5 specifically remember what all they required other
6 than information about my family, because IBM covers
7 domestic partnerships, so that's a little bit unusual
8 I guess.

9 Q. For the 3 years listed here, 2019,
10 2020 and 2021, where you had denials for your
11 mammogram screening, were you eventually approved?

12 A. Yes. They eventually paid.

13 Q. Other than the issue with getting
14 coverage initially when dealing with Aetna, were
15 there problems that you encountered based upon to
16 your status as a transgender person?

17 A. I would say not really. You know
18 there would be some questions, again, we would -- I'd
19 have to remind them of [REDACTED], and
20 that was definitely in the records. I would also
21 remind them that they were paying for my therapy, so
22 there was another record in their system.

23 Q. [REDACTED]
24 [REDACTED]

25 A. Actually, as I understand it, it reads



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1 words just, kind of, walk me through what happened

2 there, what your memory of that situation was?

3 A. Yeah. So I was filling my [REDACTED]
4 prescription at a local pharmacy that was the closest
5 to me, the easiest to get to. And, while filling
6 that prescription, the person who was helping me, as
7 well as another woman in the back, were looking for
8 my prescription trying to find it and kept referring
9 to me as "she" and "her" and "ma'am" and all of these
10 things.

11 And I would -- there were other people
12 in the pharmacy and there wasn't really much that I
13 could do about that. Their system still said female,
14 so.

15 And it seems like the person who was
16 helping me just didn't really know any better. The
17 other person I think realized that I was picking up
18 [REDACTED] realized that I was transgender
19 and was acting very disgusted and like she was maybe
20 doing this on purpose.

21 Q. And was this in [REDACTED]

22 A. This was in [REDACTED]

23 Q. [REDACTED] How far away from [REDACTED]

24 [REDACTED]

25 A. [REDACTED]

CONFIDENTIAL TRANSCRIPT - PURSUANT TO PROTECTIVE ORDER

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A. A different day care.

Q. You state in here that they repeatedly referred to you as a woman. Was that during an interaction? Or during the time that you interacted with them while your child was in day care?

A. The second. After he was enrolled, yeah.

Q. Did you ask them to change the way they referred to you?

A. Yes.

Q. And they wouldn't do it?

A. It was kind of random or sporadic. They would do okay for a little while and then kind of revert back.

Q. Was it person to person? Or were there some people who would have different -- I guess, some people might have done it and some people didn't, was that it? Or some people just weren't consistent with it?

A. People weren't consistent.

Q. Outside of referring to you as a woman, were you threatened?

A. No.

Q. Did they harass you in any way?

A. No.



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