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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2023-CV-000422
PII COMPLIANT

IN THE THIRD JUDICIAL DISTRICT
SHAWNEE COUNTY DISTRICT COURT
CIVIL DEPARTMENT

STATE OF KANSAS, *ex rel.* KRIS KOBACH, Attorney General,

Petitioner,

v.

DAVID HARPER, Director of Vehicles, Department of Revenue, in his official capacity, and
MARK BURGHART, Secretary of Revenue, in his official capacity,

Respondents,

and

ADAM KELLOGG, KATHRYN REDMAN, JULIANA OPHELIA GONZALES-WAHL, and DOE INTERVENOR 2, on behalf of her minor child,

Intervenor-Respondents.

Case No. 23-CV-000422
Div. No. 3

INTERVENORS' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR KDOR RESPONDENTS TO MAINTAIN A RECORD OF CHANGES TO DRIVER'S LICENSES

COMES NOW Intervenors Adam Kellogg, Kathryn Redman, Juliana Ophelia Gonzales-Wahl, and Doe No. 2 (collectively "Intervenors"), and hereby submit their response in opposition to the Petitioner's Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses. For the reasons explained more fully below, Intervenors respectfully request that the motion be denied.

INTRODUCTION

This case returns to the district court following the Kansas Court of Appeals' clear and controlling decision in *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 571 P.3d 6 (2025), which "reverse[d] the district court's order and lift[ed] the temporary injunction." *Id.* at 684. The Kansas Supreme Court subsequently denied the Attorney General's petition for review, rendering the appellate decision final and the mandate binding under Kansas Supreme Court rule 8.03(h).

Despite this final appellate resolution, the Attorney General now asks this Court to "temporarily delay" compliance with the appellate court's order. That request misstates the procedural posture of this case and seeks relief this Court has no power to grant. There is no injunction left to "lift." The Kansas Court of Appeals already did so, and the Supreme Court's denial of review cemented that result. Any further order purporting to delay compliance would contravene the binding mandate, exceed this Court's jurisdiction, and improperly interfere with KDOR's ongoing lawful operations

The Kansas Court of Appeals unambiguously held that the State failed to satisfy the prerequisites for injunctive relief and that the injunction was improvidently granted. The Court further determined that "the State would suffer no harm" from the absence of an injunction, while Kansans, including the Intervenors, have endured two years of prejudice from its enforcement.

Under Kansas law, the mandate rule leaves no room for delay or modification. This Court cannot "temporarily suspend" a directive of a higher court, even for administrative convenience or perceived equity. To grant the Attorney General's request would effectively reinstate the very injunction that the Court of Appeals vacated and would exceed this Court's jurisdiction.

Intervenors therefore respectfully urge this Court to deny the Attorney General's motion and not to issue any new order that would impede KDOR's resumed processing of gender-marker

reclassifications in accordance with long-standing administrative practice and the binding mandate of the Kansas Court of Appeals.

ARGUMENTS

I. The Kansas Court of Appeals Already Lifted the Injunction, and the Mandate is Final.

The controlling appellate decision left no ambiguity: the Court of Appeals "reverse[d] the district court's order and lift[ed] the temporary injunction." *Id.* at 726. Once the Kansas Supreme Court denied the Attorney General's petition for review, "[t]he Court of Appeals decision is final as of the date of the decision denying review" and the appellate mandate issued pursuant to Kansas Supreme Court Rule 8.03(h) and Kansas statutes K.S.A. 60-2106(c) and K.S.A. 20-108.

Those authorities make the mandate self-executing and controlling. It required no additional order from the district court to "lift" an injunction that no longer exists. K.S.A. 60-2106(c) provides, in relevant part, that the mandate of the Kansas Supreme Court "shall be controlling in the conduct of any further proceedings necessary in the district court." Likewise, K.S.A. 20-108 requires that a district court execute any further proceedings "according to the command of the appellate court made therein."

The Attorney General's request to "temporarily delay" the lifting of the injunction contravenes the mandate rule, a foundational principle of Kansas appellate procedure that strictly limits the authority of a district court after an appellate decision. Once the appellate court's judgment became final, the temporary injunction dissolved as a matter of law.

Accordingly, this Court has no authority to delay or modify what the appellate court has already done. The Kansas Supreme Court has repeatedly held that "[u]nder the plain language of these statutes, a district court is required to apply the mandate *without exception*." *Bldg. Erection Servs. Co. v. Walton Constr. Co.*, 312 Kan. 432, 432, 475 P.3d 1231, 1232 (2020) (quoting *State*

v. Kleypas, 305 Kan. 224, 296–97, 382 P.3d 373 (2016)) (emphasis added). "It is axiomatic that on remand for further proceedings after a decision by an appellate court, the trial court must proceed in accordance with the mandate and the law of the case as established on appeal." *Id.* (quoting *State v. Collier*, 263 Kan. 629, 637, 952 P.2d 1326 (1997)).

Kansas law recognizes no exception that would allow a district court to alter, delay, or "temporarily suspend" enforcement of an appellate mandate, even in the face of ongoing litigation or changed circumstances. The Kansas Supreme Court in *Kleypas* and *Building Erection Services* was explicit:

> "While this court has recognized its power to recall, correct, amplify, or modify its own mandate, Kansas cases have not recognized the power of a district court to unilaterally depart from the mandate, even when a change in the law has occurred. And neither K.S.A. 60-2106(c) nor K.S.A. 20-108 contemplate such an exception."

Building Erection Servs., 312 Kan. at 432 (quoting *Kleypas*, 305 Kan. at 296–97).

The hierarchical nature of the court system demands obedience to the mandate: "[U]nder Kansas law, no exceptional circumstances permit a lower court to circumvent the mandate of a higher court, a result that logically follows from the hierarchical court system." *Id.* at 441, 475 P.3d at 1237 (quoting 18B Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* § 4478 (2d ed. 2002)). In short, the district court "cannot do as it wishes once the case returns. It must follow the ruling of the higher court." *Fawcett Tr. v. Oil Producers, Inc.*, 58 Kan. App. 2d 855, 856–57, 475 P.3d 1268, 1272 (2020).

The Attorney General's attempt to halt or "pause" that compliance seeks to restore a judicial restraint that no longer exists. Granting such relief would have the effect of reinstating a void injunction and disrupting KDOR's lawful operations. Under the separation of powers doctrine, this Court cannot revive an order that an appellate court has vacated.

II. The Attorney General's Requested "Delay" Would Contradict the Letter and Spirit of the Mandate

Even if the Attorney General's request were characterized as a mere "temporary delay," such relief would still violate the spirit of the appellate mandate. In *Gannon v. State*, 303 Kan. 682, Syl. ¶ 2, 368 P.3d 1024 (2016), the Kansas Supreme Court held:

> "It is axiomatic that on remand for further proceedings after a decision by an appellate court, the district court must proceed in accordance with the appellate court mandate. The district court must implement both the letter and spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces, and it has no authority to consider matters outside the mandate."

See also Building Erection Servs., 312 Kan. at 441–42, 475 P.3d at 1237–38.

The Court of Appeals not only lifted the injunction but explained that the State failed to satisfy the prerequisites for injunctive relief. *Harper*, 65 Kan. App. 2d at 725–26. The spirit of the Court of Appeals' mandate is unmistakable: the injunction was improperly issued, and "[b]ecause of the district court's abuse of discretion, the KDOR has been unable to issue reclassifications of gender designations on Kansas driver's licenses for two years while this litigation languished." *Id.*

As the appellate court recognized, the injunction was improvidently granted and has remained in effect for nearly two years, during which time Kansans, including the Intervenors, have been unjustly prejudiced by their inability to obtain accurate driver's licenses consistent with their gender identity. The Attorney General identifies no corresponding prejudice to the State. Indeed, the Court of Appeals expressly determined that "the State would suffer no harm" from the absence of the injunction. *Id.*

The appellate court made it clear that "KDOR is free to proceed as it has since at least 2007 until a determination is made on the merits of the AG's claim either in this litigation or subsequent litigation that may follow." *Id*. at 726. Any further "temporary delay" would subvert both the letter

and purpose of that mandate, effectively reimposing the very injunction the appellate court struck down.

III. The Attorney General's Requested Relief Would Harm Intervenors and Serves No Legitimate State Interest

The Attorney General's requests to reinstate the improvidently granted temporary injunction or to compel KDOR to specially track or segregate information regarding updates to gender markers lack any legal or factual basis and would cause direct harm to Intervenors.

First, Intervenors' inability to obtain driver's licenses accurately reflecting their gender identity imposes significant harm and exposes them (and similarly situated transgender Kansans) to safety risks in their daily lives. *See, e.g.*, Intervenors-Respondents' Motion for Summary Judgment at ¶¶ 19-26, 47-77. For two years, transgender Kansans were unable to obtain corrected licenses while this litigation languished under an improvidently granted injunction. The Court of Appeals recognized the prejudice caused by that restraint and expressly rejected the State's position that any continued prohibition was warranted. Intervenors and other transgender Kansans should not be made to endure those same harms again under a new guise.

Second, there is no factual or legal justification for the Attorney General's requests that KDOR maintain special records of updates to gender markers on driver's licenses. KDOR already keeps records of such changes in the ordinary course of its administrative functions. *See, e.g.*, Response by Respondents Harper and Burghart to Petitioner's Motion for Summary Judgment and Memorandum in Support Thereof at ¶ 9; Intervenors-Respondents' Motion for Summary Judgment at ¶ 38. The Attorney General's request for separate data collection serves no purpose other than to terrorize transgender Kansans.

Moreover, the rationale the Attorney General now invokes to support this "record-keeping" request is the same argument he advanced before the Kansas Court of Appeals—that continued

issuance of corrected licenses would make them "difficult to rescind or remove from circulation" if he ultimately prevailed. *See* Brief of Petitioner-Appellee at 22. The appellate court necessarily rejected that argument when it vacated the injunction and authorized KDOR to resume issuing gender-appropriate licenses. *Harper*, 65 Kan. App. 2d at 725. Having fully argued and lost that issue, the Attorney General cannot now repackage the same concern as a new administrative demand.

Finally, even if the Attorney General were to prevail on the merits at some later stage, there would be no basis for any "remedial" action with respect to duly issued, unexpired driver's licenses containing updated gender markers. During the pendency of the improvidently granted temporary injunction, there was no impediment to Intervenors or other Kansans continuing to use their existing driver's licenses with updated gender markers until they expired, even if KDOR could not issue new or renew such licenses. The Attorney General's suggestion that such valid, unexpired licenses could be revoked raises profound issues of fairness, administrative consistency, and the reliance interests of those who acted in good faith under established KDOR procedures

CONCLUSION

The Kansas Court of Appeals has spoken plainly: the temporary injunction was improvidently granted, the State suffers no harm from its absence, and KDOR is free to resume its long-standing administrative practice pending a final decision on the merits. The Kansas Supreme Court declined to disturb that judgment, and the appellate mandate now controls these proceedings.

The Attorney General's request to "temporarily delay" compliance with that mandate is contrary to law, equity, and the express command of the appellate court Kansas statutes, binding precedent, and the hierarchical structure of the judiciary all require this Court to recognize that the

injunction has already been lifted and to refrain from taking any action inconsistent with the mandate.

For these reasons, Intervenors respectfully request that the Court deny the Attorney General's motion in its entirety and decline to issue any order that would interfere with KDOR's processing of gender-marker reclassifications on Kansas driver's licenses in accordance with the Court of Appeals' decision and the governing Kansas statutes.

Date: October 20, 2025

By: /s/ *Monica Bennet*

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2025, the above document was filed with the Clerk of the Court via the e-filing system, with a copy to all counsel of record via email:

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