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CASE NUMBER: SN-2023-CV-000422
PII COMPLIANT

IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT, SHAWNEE COUNTY, KANSAS
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**

Response in Opposition to Motion for Sanctions

KDOR Respondents David Harper and Mark Burghart's motion for sanctions against the Attorney General and Solicitor General is politically motivated and filed in bad faith. The State strongly opposes it and moves the Court to dismiss it expeditiously. The State's Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses was brought in good faith and is supported in the law.

In contrast, Respondents' sanctions motion is a naked attempt to harass the State's attorneys and use this Court for political purposes.

Background

This case involves the State's effort to require KDOR to follow the plain language of SB 180, which defines a man and woman in terms of their biological sex at birth. The State asserts that the issuance of driver's licenses which do not list the licensee's biological sex at birth contravenes SB 180. After an evidentiary hearing, Judge Watson agreed with the State and issued a temporary injunction against Respondents, forbidding them to issue any driver's license that did not contain the licensee's biological sex at birth. Both Respondents and Intervenors appealed the temporary injunction to the Court of Appeals.

On June 13, 2025, the Court of Appeals reversed, finding that the State had not presented sufficient evidence of irreparable harm to support the temporary injunction. It also ordered the case be reassigned to a different judge. On July 14, 2025, the State petitioned the Supreme Court for review, and that petition was denied on September 29, 2025.

Prior to the issuance of the mandate, the ACLU (counsel for Intervenors) stated on social media that KDOR would once again begin issuing driver's licenses to individuals with a sex marker other than the licensee's biological sex at birth. KDOR's own website appeared to confirm this fact. Concerned that KDOR would be issuing such driver's licenses immediately, on October 6, 2025, the State, seeking the Court's help in preserving the record while the case was still being litigated,

filed its Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses. Because of the procedural uncertainty created by the removal of the initial judge, it was the hope that a hearing on the State's motion could be set immediately on or about the day the mandate issued. However, Chief Judge Ebberts' chambers subsequently indicated that the case would not be reassigned until the mandate issued. The next day, KDOR's general counsel, Ted Smith, informed the undersigned that KDOR would not process driver's license changes until after the mandate had been issued.

The Clerk of the Appellate Courts issued the mandate on October 8, 2025, and based upon information and belief, KDOR resumed processing requests for driver's licenses that did not reflect the licensee's biological sex at birth. However, the mandate was not received by the Shawnee County District Court Clerk until October 14, 2025. After receiving the mandate, Chief Judge Ebberts assigned the case to this Court. Only then could the State obtain a hearing date on its motion, which was set for November 12, 2025.

Argument

Respondents have a high burden to establish sanctionable conduct. According to K.S.A. 60-211(b)(1), they must show that the pleading was presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Moreover, sanctions cannot be imposed if "the claims, defenses and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing

law or the establishment of new law." K.S.A. 60-211(b)(2). The purpose of imposing sanctions is to penalize only willful misuses of judicial process. *Southgate Bank v. Fidelity & Deposit Co. of Md.,* 14 Kan. App. 2d 454, 460, 794 P.2d 310 (1990).

The local court rules for the Shawnee County District Court also speak to the issue of sanctions. Local Rule DCR 3.113.4 states that "[a] lawyer shall avoid making ill-considered accusations of unethical conduct toward an opponent." DCR 3.113.7 states that "[a] lawyer shall not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining a tactical advantage."

1. <u>The State's request that KDOR keep a detailed and individualized record of certain driver's license changes during the continued litigation of the case is not sanctionable.</u>

Respondents claim that the State's request for KDOR to keep a detailed and individualized record of driver's licenses that do not contain the licensee's biological sex at birth is improper because, they assert, the Attorney General already knows, through discovery and at the hearing, that KDOR already maintains individualized records of all driver's licenses. Thus, they argue, even a request for such a judicial order requiring KDOR to maintain such a list is sanctionable. Their assertions are unsupported in the record.

As explained in the State's reply to Respondent's opposition brief, while KDOR represents that it maintains records of driver's license changes, it is not clear that those records distinguish between sex changes on driver's licenses made due to

the licensee's transgender views and those made to accurately reflect the licensee's biological sex, such as correcting a clerical error. If the State prevails on the merits, a specific record of driver's license changes that inaccurately reflect biological sex—not undifferentiated records of all sex marker changes—will be needed to remedy KDOR's failure to comply with SB 180.

Moreover, such a record will be required to also take account of those newly issued driver's licenses that do not reflect the licensee's biological sex. While KDOR keeps records of changes to driver's licenses, there is nothing in the record to show whether newly issued driver's licenses contain the correct sex designation nor is the State aware that this is currently being done.

Finally, even if such a record has been kept by KDOR, there would be no harm in an order from this Court requiring KDOR to maintain these records as it would preserve an orderly record. It should be understood that KDOR's record-keeping policy is an administrative one. At a minimum, such a court order would prevent KDOR from administratively changing its record-keeping practices during this litigation, which is a valid concern given KDOR's refusal to comply with SB 180.

2. The State's request to temporarily delay lifting of the temporary injunction is not sanctionable.

Respondents devote the bulk of their argument to asserting that the State's request to "temporarily delay" the lifting of the temporary injunction is sanctionable because the State should be aware such an order would be contrary to the mandate.

For sanctions, they ask for a sanction of $1, that the Attorney General and Solicitor General be required to attend "remedial training for civil procedure," and that they be admonished for the State's alleged improper request. It is clear there is a nefarious political underpinning to the request. Neither the Attorney General nor the Solicitor General deserve to be sanctioned, admonished, or sent to a reeducation camp for asking this Court to consider an order preserving evidence while this case continues to be litigated.

The State agrees with Respondents' statement that under the mandate rule, "the trial court must proceed in accordance with the mandate and the law of the case as established on appeal." *State v. Soto,* 310 Kan. 242, 253, 445 P.3d 1161 (2019). However, "[t]he language of neither K.S.A. 60-2106(c) nor K.S.A. 20-108 explicitly or even implicitly deprives a district court of its jurisdiction to address an entirely new issue that surfaces in a case as a result of events that occur after a mandate issues." *Id.* at 252. Moreover, the mandate rule does not prevent the district court from "doing whatever is necessary to dispose of a case." *Id.* at 256. In fact, as the Kansas Appellate Practice Handbook explains, it is the district court's duty to enforce and execute the appellate court mandate. The appellate mandate in this instance is not necessarily self-executing because only after the mandate was received by the Shawnee County District Court Clerk did the Chief Judge act to reassign the case. Thus, it is the State's view that the district court had a ministerial duty to lift the temporary injunction at the appropriate time.

Here, the State's principal request in its motion was to ask for KDOR to keep a detailed and individualized record of driver's licenses issued without the licensee's biological sex at birth. Such a request is appropriate to preserve the ability of the State to enforce this Court's final order and obtain an adequate remedy should this Court agree that SB 180 compels driver's licenses to be issued with the licensee's biological sex at birth. The request for a temporary delay in the lifting of the temporary injunction was merely to assure that the record of the entire number of driver's license changes would be captured. Thus, the State's request is not inappropriate. Moreover, given the good faith disagreement as to what the law requires, sanctions are not appropriate under well-established case law.

The State also points out that its request for a delay in the lifting of the temporary injunction is now moot because KDOR resumed issuing driver's licenses with sex markers other than the licensee's biological sex at birth prior to the mandate being received by the district court and prior to the ability of the State to even obtain a hearing on its motion. To sanction a party for a request that is now moot is extreme, to say the least.

Finally, the Court should be aware that the day the State filed its motion, Mr. Irigonegaray contacted the undersigned and demanded a withdrawal of the motion. Counsel attempted to extort the State with a threat - if the State did not withdraw its motion, a motion for sanctions would be forthcoming. The undersigned offered to withdraw the State's motion if Respondents would agree to keep a detailed and individualized record of driver's licenses issued that fail to reflect the

licensee's biological sex at birth. Mr. Irigonegaray flatly refused. That refusal cannot be reconciled with Respondents' claims in their motion for sanctions. If they already keep the requested records, formally agreeing to continue to do so would not have harmed them, and such agreement would have made any further time and expense litigating that request completely unnecessary. In any case, the Attorney General and Solicitor General should not be sanctioned for a good faith request they were willing to withdraw as part of a settlement of the dispute. Their willingness to withdraw the request is further evidence of their good faith intent.

Respondents have failed to show their request for sanctions is justified by the circumstances and necessary for their protection, so their request for sanctions should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 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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