

IN THE SUPREME COURT OF KANSAS

STATE OF KANSAS, ex rel. KRIS KOBACH, Attorney General, <i>Petitioner-Appellant</i>	Appellate Case No. 24-127390-S
v.	Petition for Review of the Court of Appeals of the State of Kansas Memorandum Opinion No. 127,390; 127,522
DAVID HARPER, Director of Vehicles, Department of Revenue, in his official capacity, and MARK BURGART, Secretary of Revenue, in his official capacity, <i>Respondents-Appellees</i>	Appeal from the District Court of Shawnee County, Kansas Honorable Theresa L. Watson, Judge District Court Case No. 2023-CV-422
and	
ADAM KELLOGG, et. al, <i>Intervenor Respondents-Appellees</i>	

**INTERVENOR RESPONDENTS-APPELLEES' MOTION TO  
EXPEDITE PETITION FOR REVIEW**

Intervenor Respondents-Appellees are transgender Kansans who are currently suffering harm from a temporary injunction at issue in the petition for review of the above-captioned case and a parallel proceeding 24-127522-S. Although the Court of Appeals held that the district court plainly erred in awarding the injunction, that injunction remains in place because the petitions for review have stayed the Court of Appeals' mandate, pursuant to Kansas Rule of Appellate Practice 8.03(k). To mitigate this harm, and to further the interest of justice, Intervenor ask this Court to expedite its consideration of whether to grant the AG's pending petitions for review and, should it grant such review, order expedited briefing and argument. Kan. R. App. Pro. 8.03(b)(4) (the Kansas Supreme Court may expedite a petition for review "on motion by a party").

## BACKGROUND

For sixteen years, from 2007 until 2023, the Kansas Department of Revenue (“KDOR”) has issued driver’s licenses to all Kansans in accordance with their “gender,” consistent with the statutes governing licenses. *See* K.S.A. 8-240(c), 8-243(a). That practice allowed transgender Kansans—whose sex assigned at birth does not match the gender they live as—to obtain licenses consistent with their gender identity. As the Court of Appeals in this case concluded, there is no evidence that KDOR’s practice, consistent with Kansas law, has resulted in any harm to the State of Kansas.

After the passage of K.S.A. 77-207, which defines the term “sex” for some portions of the Kansas code to mean “biological sex, either male or female, at birth,” the Attorney General (“AG”) brought this mandamus action against KDOR to compel KDOR to include on all new and renewed licenses a person’s sex assigned at birth. Although the plain text of K.S.A. 77-207 forecloses its application to licenses, and although the AG failed to present any evidence to support the threat of an irreparable injury, the district court erroneously entered an injunction in early 2024 requiring KDOR to only issue licenses with an individual’s sex-assigned-at-birth.<sup>1</sup> This ruling changed the status quo by disrupting KDOR’s longstanding practice—since 2007—of providing correct gender markers in accordance with Kansas law.

For more than a year and a half now, that injunction has forced transgender Kansans, including some Intervenor Respondents-Appellants (“Intervenors”), to display a driver’s

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<sup>1</sup> Intervenor Respondent-Appellants’ separately filed response to the petition for review discusses the dispute at greater length.

license with a gender marker that does not match the gender they live as, revealing their transgender status to government officials, businesses, and other private parties in countless interactions. In June 2025, the Kansas Court of Appeals correctly reversed that injunction after finding that the Attorney General (“AG”), the moving party, had failed to demonstrate at least two of the required showings for an injunction: likelihood of success on the merits and irreparable harm. Despite this ruling, the district court’s flawed injunction remains in place during the pendency of this Court’s proceedings because the AG’s petition for review in this Court has stayed the entry of the Court of Appeals’ mandate. *See* Kan. R. App. Pro. 8.03(k).

### **ARGUMENT**

Intervenors, who are transgender Kansans experiencing harm under the district court’s injunction which changed the status quo, now ask this Court to expedite consideration and resolution of the AG’s petition for review under Kansas Rule of Appellate Procedure 8.03(b)(4). As explained more fully in Intervenors’ papers below, the forced outing of transgender status results in a range of harms, including by increasing the risk of harassment, embarrassment, and even physical harm. Br. of Intervenor-Appellants 24–25, 39–40; *see, e.g.*, R. II, 312–14, 343, 351–67; R.VIII 62–71. Moreover, the district court’s injunction burdens transgender Kansans’ constitutional rights to personal autonomy, informational privacy, and equal treatment, all of which are protected by the Kansas Bill of Rights. Kan. Const. Bill of Rights §§ 1, 2. *See* COA Br. of Intervenor-Appellants 24–32. For these reasons, Intervenor Respondents-Appellants respectfully ask this Court to expedite review of the AG’s petition for review. For reasons

explained in a separately filed response to the petition, this Court should deny review so that the district court may proceed to adjudicate the merits of this action. Expeditious action in this respect would at least mitigate the ongoing harm to transgender Kansans by limiting the period in which the Court of Appeals' mandate remains in limbo.

Moreover, if this Court were to accept review, it could be many more months—or even longer—before this matter returns to the district court for adjudication on the merits. Granting Intervenor's motion to expedite would help to ensure that the proceedings in this Court move as quickly as possible to minimize harm to those Kansans deprived of accurate identity documents. Intervenor therefore request that, if this Court grants review, it issue an expedited briefing schedule, set this matter for argument, and endeavor to reach a decision as soon as reasonably possible.<sup>2</sup>

Intervenor reached out to counsel for KDOR and the AG and sought their position on this motion. KDOR consented to the motion, and the AG “takes no position” on the motion. *But see* Kansas AG's Office (@KSAGOffice), X (Jun. 13, 2025, 3:39 PM), <https://x.com/ksagoffice/status/1933610315502993866> [<https://perma.cc/DK4S-R2RS>] (“We will be asking the Kansas Supreme Court to review this case in an expedited manner and overturn the Court of Appeals decision.”).

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<sup>2</sup> Should this Court decide to accept review, Intervenor intend to seek a stay of the injunction from this Court pending review under K.S.A. 60-262. Should the Court grant that motion, a highly expedited schedule for review would become less critical.

## CONCLUSION

Intervenors respectfully request that this Court expedite consideration and resolution of the petition for review in the above captioned case and in the parallel proceeding, 24-127522-S.

Respectfully submitted,

By: /s/ D.C. Hiebert

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Dated August 12, 2025

## CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2025, I filed this document via this Court's e-flex filing system, and courtesy copies were sent via email to:

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