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CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: DG-2026-CV-000112
PII COMPLIANT

IN THE SEVENTH JUDICIAL DISTRICT
DOUGLAS COUNTY DISTRICT COURT
CIVIL DEPARTMENT

DANIEL DOE and MATTHEW MOE,

Plaintiffs,

v.

STATE OF KANSAS, *ex rel* KRIS KOBACH, Attorney General; KANSAS DEPARTMENT OF REVENUE, KANSAS DIVISION OF VEHICLES; DEANN WILLIAMS, Director of Vehicles, Department of Revenue, in her official capacity; MARK BURGHART, Secretary of Kansas Department of Revenue, in his official capacity; KANSAS DEPARTMENT OF ADMINISTRATION; and ADAM PROFFIT, Secretary of Department of Administration, in his official capacity,

Defendants.

Case No. _____
Div. No. 7

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER / TEMPORARY INJUNCTION

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INTRODUCTION

Once again, the Kansas Legislature leverages the State's power to attack transgender Kansans. The Legislature has already erased transgender people from Kansas law, excluded transgender students from full participation in school, deprived transgender adolescents of healthcare, and targeted transgender individuals in jails, among other indignities.[1] The Attorney General has joined out-of-state litigation to oppose the so-called "radical trans agenda" and "woke gender ideology," opposed non-discrimination protections for gender identity in government contracts, and sued to prevent transgender people from obtaining accurate identity documents.[2] Now, over the Governor's veto, the Legislature has passed Senate Bill 244[3] (SB 244 or the "Act"), yet another law that singles out transgender people for discriminatory and dehumanizing treatment. This latest attack on transgender people's right to exist in civil society poses an imminent threat of irreparable harm to Plaintiffs and must be enjoined.

SB 244 harms transgender people in at least two distinct ways. First, it changes the rules that apply to government-issued identification documents by invalidating driver's licenses that reflect a gender identity distinct from a person's sex assigned at birth. That portion of SB 244 went

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[1] K.S.A. 77-207; K.S.A. 60-5601, *et seq*. K.S.A. 65-28,137 *et seq*.; K.S.A. 19-1903; K.S.A. 38-2293.

[2] Kris W. Kobach, "Socially Transitioning" Minors Without Parental Consent, State of Kansas Office of the Attorney General, Dec. 7, 2023, (available at https://www.ag.ks.gov/Home /Components/News/News/225/); Kris W. Kobach, Federal Judge sides with Kobach, coalition of AGs striking down Biden trans healthcare rule, Attorney General of Kansas, Oct. 28, 2025 (available at https://www.ag.ks.gov/home/showpublisheddocument /10474/638460589512800000); Tim Carpenter, Kansas attorney general seeks removal of anti-discrimination text from school district contracts, KANSAS REFLECTOR, July 10, 2025 (available at https://kansasreflector.com/2025/07/10/kansas-attorney-general-seeks-removal-of-anti-discrimination-text-from-school-district-contracts/); *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 696, 571 P.3d 6, 18 (2025).

[3] https://kslegislature.gov/li/b2025_26/measures/documents/sb244_enrolled.pdf

into effect with no grace period to allow transgender people to comply. The Act also prospectively prohibits the State from issuing driver's licenses that accord with a transgender person's gender identity. Second, SB 244 makes it a crime for transgender people to use restrooms that correspond to their gender identity in a sweeping range of government buildings, including schools, offices, hospitals, libraries, courthouses, state parks, and interstate rest stops.

Plaintiffs are transgender Kansans who, no different from anyone else, seek to live their lives in safety and with dignity. They hold Kansas driver's licenses that reflect their gender identity, not the sex they were assigned at birth. They use those licenses not only to drive, but also to demonstrate their identity for all manner of daily activities, including employment, volunteering, air travel, and banking. In addition, like all other Kansans, Plaintiffs spend time in government buildings and need to use restrooms while there. They attend and work at public universities, spend time in public libraries, and engage in countless professional and personal activities that bring them into government spaces.

By invalidating Plaintiffs' licenses and barring them from restrooms that align with their gender identity, SB 244 demeans their personhood, obstructs their ability to participate equally in public life, and exposes them to heightened risks of harassment and violence by forcibly outing them as transgender.

The Kansas Constitution does not countenance this discrimination, and a temporary restraining order, followed by a temporary injunction, is necessary to prevent it. The Act violates Plaintiffs' fundamental rights to personal autonomy, privacy, equality under the law, due process, and freedom of expression. And it transparently violates the Kansas Constitution's requirement that statutes have only one subject, not—as SB 244 does—at least two. Plaintiffs meet all the other requirements for obtaining preliminary relief: They will be irreparably harmed by the Act, the

balance of equities weighs heavily in their favor, and an injunction would further the public interest. This Court should therefore grant Plaintiffs' motion for a temporary restraining order, followed by a temporary injunction.

STATEMENT OF FACTS

I. Transgender people socially transition to live as their authentic selves and to address gender dysphoria.

The term "gender identity" refers to "a person's deeply felt, inherent sense of their gender." Declaration of Angela Turpin ("Turpin Decl.") ¶ 26. In contrast, a person's sex assigned at birth is almost always based solely on observation of an infant's external genitalia. *Id.* ¶ 27. For cisgender people, their sex assigned at birth matches their gender identity. *Id.* ¶ 28. For transgender people, their sex assigned at birth is different from their gender identity. *Id.* ¶ 29.

Major medical groups recognize that the marked incongruence between a person's gender identity and sex assigned at birth—when accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning—constitutes a medical condition called gender dysphoria. *Id.* ¶ 32–33. If not treated, gender dysphoria can lead to significant anxiety, depression, and suicidality. *Id.* ¶ 34.

As a result, major medical and mental health organizations support access to age-appropriate, individualized care for transgender people. *Id.* ¶ 35. The standard of care for gender dysphoria involves treatment designed to bring people's bodies and expressions of gender in line with their gender identities, depending on the particular needs of each transgender person. *Id.* ¶ 36-37; *see also Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 522–23 (3d Cir. 2018). Such treatment may involve social transition, mental health support, and medical treatments. Turpin Decl. ¶ 36–38.

"Social transition" is the process by which transgender people live and become socially recognized in accordance with their gender identity. *Id.* ¶ 36. Social transition includes allowing transgender people to dress, amend legal documents, and use names, pronouns, restrooms, and other sex-separated facilities consistent with their gender identity. *Id.* ¶ 36, 43, 52.

II. Transgender people experience high levels of discrimination, especially when they cannot access restrooms and identity documents consistent with their gender identity.

Transgender people experience incredibly high levels of discrimination and violence. Declaration of Ayden Scheim ("Scheim Decl.") ¶ 22. But being able to live in society in accordance with their gender identity is a critical determinant of health and well-being for transgender people. *Id.* ¶ 15. Policies that require transgender people to use restrooms and hold identity documents consistent with their sex assigned at birth contribute to worsened mental health, in part because of harassment or ridicule, denial of service or access to facilities, or violence. *Id.* ¶ 16, 23, 35–39.

Transgender people experience lower rates of harassment, discrimination, and violence when they are able to use identity documents reflecting their gender. *Id.* ¶ 40–42. Having a driver's license with the correct gender marker is associated with fewer negative mental health outcomes. *Id.* ¶ 52. BUT policies that prevent transgender people from updating the gender marker on their driver's licenses curtail access to services, employment, education, and social participation, while also increasing scrutiny of transgender people. *Id.* ¶ 20-21, 25-29. Transgender people without gender-congruent identity documents are more likely to experience problems when interacting with security personnel. *Id.* ¶ 38. They also experience discrimination and poor treatment specifically due to being forced to present identity documents that do not accurately reflect their gender identity. *Id.* ¶ 36. When transgender Kansans have legal identification that accurately reflects their gender identity, that opens up opportunities for employment and education, improves

mental health, and reduces incidents of misgendering or being singled out based on a perceived mismatch between gender presentation and identity documents. Turpin Decl. ¶ 59.

Restrictions on transgender people's restroom access negatively affect their mental and physical health. Scheim Decl. ¶ 25, 27-28. Transgender people who cannot use gender-concordant restrooms suffer in employment, education, and healthcare. *Id.* ¶ 29. There is no scientific evidence that restricting transgender people's restroom use promotes public safety, but multiple studies have shown that permitting transgender people to use restrooms consistent with their gender identity are not associated with increases in criminal incidents in restrooms. *Id.* ¶ 19, 30-33. When transgender Kansans are unable to access restrooms in accordance with their gender identity, they are at risk of stigma and mistreatment, as well as significant negative medical consequences from avoiding the restroom or reducing food and water intake. Turpin Decl. ¶ 48-50.

III. SB 244

The Kansas Legislature overrode Governor Kelly's veto of SB 244 on February 18, 2026. The Act took effect on Thursday, February 26, upon publication in the Kansas Register. SB 244, 2026 Leg. Reg. Sess. (Kan. 2026).[4]

A. The Act threatens transgender Kansans with crimes, fines, and lawsuits for using multiple-occupancy private spaces consistent with their gender identity.

The Act imposes draconian restrictions on transgender Kansans, threatening them with fines and criminal penalties for using many restrooms in accordance with their gender identity. This "Restroom Ban" applies to "multiple-occupancy" restrooms and other "private space[s]" in nearly all buildings owned or leased by a government entity. SB 244, § 1(a)(4), (a)(5). It provides that such spaces—even if they contain "curtains or partial walls" to separate occupants—must be designated "for use only by individuals of one sex," *id.* § 1(a)(4), (b)(1). And the Act in turn defines

[4] https://sos.ks.gov/publications/Register/Volume-45/Issues/Issue-09/02-26-26-53915.html.

"sex" to mean only "biological sex, either male or female, *at birth*." *Id.* § 1(a)(6) (cross-referencing K.S.A. 77-207 as amended) (emphasis added); *see also id.* § 5(b)(8) (defining "sex" as "the biological indication of male and female in the context of reproductive potential or capacity"); *id.* § 6(a)(2) (defining "male" and "female" with reference to whether one's "biological reproductive system" has developed to "produce" or "fertilize" ova).

The Restroom Ban's enforcement mechanisms apply not only to regulated government buildings, but also to transgender people themselves: "It shall be a violation of this section for an individual to enter a multiple-occupancy private space designated for use only by individuals of the opposite sex." *Id.* § 1(g)(1). There are two enforcement mechanisms applicable to individuals.

First, the Act provides for escalating penalties through public enforcement of the Restroom Ban. Individuals found to have violated the Act more than once "shall" be liable for a civil penalty of $1,000 for their second violation and—for any subsequent violations—guilty of a class B misdemeanor, which carries up to six months of jail time. *Id.* § 1(g)(2)-(3); *see* K.S.A. 21-6602. Moreover, nothing in the Act forbids government entities responsible for maintaining multiple-occupancy private spaces from taking steps to punish individuals who violate the Restroom Ban even a single time, therefore creating a risk that such entities will attempt to rely on other, ill-defined authority to do so.[5]

Second, the Act provides that anyone claiming to be "aggrieved" by even a single violation of the Restroom Ban can bring a civil suit against the person who committed the violation, seeking

[5] *See, e.g.*, K.S.A. § 75-2949f (listing "personal conduct detrimental to state service which could cause undue disruption of work . . . , as may be determined by the appointing authority," as a basis for adverse employment action); Student Code of Conduct, Kansas State Univ., https://www.k-state.edu/sga/judicial/student-code-of-conduct.html;https://www.k-state.edu/sga/judicial/student-code-of-conduct.html (allowing disciplinary sanctions for "[u]nauthorized presence" in university facilities, violations of university policies, and violations of state law that cause substantial disruptions).

"actual damages" or "liquidated damages in the amount of $1,000," along with declaratory and injunctive relief, and attorney's fees and costs. SB 244, § 1(h)(1), (3). The Act does not limit the number of people who could sue over a single violation, or the total amount of liquidated damages that could ultimately be imposed on a transgender person in the event of multiple claimants. In large public buildings like government-owned sports arenas and concert halls, the number of complaints could quickly balloon. For example, the new $3 billion, 65,000-seat domed stadium to be built for the Kansas City Chiefs in Wyandotte County will be owned by the state,[6] exposing transgender sports fans to the risk of ruinous financial penalties under the Act if they use stadium restrooms that correspond to their gender identity.

B. The Act requires that Kansas driver's licenses display a person's sex assigned at birth, invalidating hundreds of transgender Kansans' licenses.

Stitched together with the Restroom Ban, a separate portion of the Act restricts a completely different aspect of transgender people's lives: the issuance and validity of certain government identification documents. As relevant here, the "License Restriction" requires that driver's licenses issued in Kansas must reflect the State's narrow definition of "sex" and "gender," rather than a person's gender identity. *Id.* § 4(g)(2); *see also* K.S.A. §§ 8-240(c), 8-243(a) (providing that all Kansas driver's licenses "shall bear" the "full legal name, date of birth, gender and address of [the licensee's] principal residence," among other information).[7]

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[6] Zak Gilbert, *Chiefs New Stadium Facts We Know So Far*, Sports Illustrated (Dec. 25, 2025), https://www.si.com/nfl/chiefs/onsi/kansas-city-new-stadium-facts-we-know-so-far (cost and capacity); Matthew Kelly, Sofi Zeman & Kacen Bayless, *New Chiefs Stadium to be built in WyCo, with practice facility in Olathe*, Kan. City Star (Jan. 8, 2026), https://www.kansascity.com /news/local/article313904698.html (attaching agreement reflecting government ownership).

[7] A separate portion of the Act requires the State to include an individual's sex assigned at birth rather than their gender identity on birth certificates. *See* SB 244, § 2(b). Although Plaintiffs were not born in Kansas and do not have Kansas birth certificates, those provisions are not severable from others that Plaintiffs do challenge as unconstitutional in this case. *Gannon v. State*, 304 Kan.

The Act also requires that the Kansas Department of Revenue ("KDOR") "correct" any existing driver's license records that "identify the gender" of an individual "in a manner that is contrary" to the Act's definition of "gender." SB 244, § 4(g)(2). These non-compliant licenses are expressly deemed "invalid," *id.* § 4(g)(1), and KDOR is charged with notifying affected Kansans of the invalidity and an obligation to surrender their licenses for replacement. *Id.* § 4(g)(2). KDOR has already started notifying affected individuals. Jason Alatidd, *Kansas invalidates IDs and birth certificates of transgender people*, Topeka Capital-Journal, Feb. 26, 2026 (quoting KDOR spokesperson Zach Denney as stating "Letters are being sent to those impacted, and they should begin receiving them soon."). Without a valid license, "[n]o person," unless expressly exempted, "shall drive any motor vehicle upon a highway" in Kansas, K.S.A. § 8-235, on pain of potential criminal penalties and fines, *id.* § 8-262.

The License Restriction affects Plaintiffs and hundreds of other individuals with existing licenses. KDOR estimates that approximately 1,700 people will be required to get new licenses under SB 244.[8] As the Kansas Court of Appeals recognized last year, KDOR has maintained a policy since at least 2007 of issuing licenses that reflect an individual's gender identity, rather than sex assigned at birth. *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 696 (2025). And more than 300 people relied on this policy to change their gender markers in Kansas between 2007, when KDOR adopted the policy, and 2022, when—at the Attorney General's request—a Shawnee County District Court wrongly enjoined KDOR's practice. *See id.* at 696, 726 (reversing the

490, 520 (2016) (collecting cases declaring "an entire act void" "despite the presence of a severability clause"); *Boyer v. Ferguson*, 192 Kan. 607, 615–16 (1964) (explaining that provisions integral to a statute's "purpose" are not severable).

[8]https://www.kslegislature.gov/li/b2025_26/measures/documents/supp_note_sb244_02_0000.pdf

injunction and finding that "the evidence was overwhelming that there was no harm" to the State from KDOR's policy and "[n]o one was able to bring forward *any* instance of the feared harm of misidentification of criminals in the last 16 years or even the potential [of] a problem.").

IV. The Plaintiffs

A. Daniel Doe

Daniel Doe is a transgender man who lives in Lawrence, Kansas. Declaration of Daniel Doe ("Doe Decl.") ¶¶ 1, 11. Daniel has lived in Kansas for more than a decade. *Id*. ¶ 6. He moved to Kansas in 2014 to attend college, drawn in part by his family's multigenerational ties to the state. *Id*. He now works as an administrative associate at the University of Kansas. *Id*. ¶ 12. Although he was assigned female at birth, Daniel has known from a very young age that he is male. *Id*. ¶ 5. He was diagnosed with gender dysphoria in 2018 and has since received gender-affirming medical care, including hormone replacement therapy and gender-affirming surgery. *Id*. ¶ 8. Since 2018, Daniel has lived as a man in all aspects of his life. *Id*. ¶ 16. With limited exceptions for close family and friends, Daniel has kept his transgender status private and has taken deliberate steps to avoid involuntary disclosure. *Id*. ¶¶ 10, 15-16.

In August 2020, Daniel legally changed his name and updated both the name and gender marker on his Kansas driver's license and California birth certificate. *Id*. ¶ 10. All of his identity documents now accurately reflect his name and male gender marker. *Id*. The accuracy of these documents is critical to Daniel's safety, privacy, and livelihood. *Id*. ¶ 17. Daniel's job requires him to drive university vehicles twice daily, Monday through Friday. *Id*. ¶ 23. A valid driver's license is an essential qualification for his position. *Id*. Without one, Daniel would lose his job. *Id*.

Daniel periodically travels for work, including by air. *Id*. ¶ 25. Presenting identification that does not align with his gender identity would subject him to heightened scrutiny, potential harassment, and invasive questioning during security screenings. *Id*. Such encounters would be

humiliating and degrading and would forcibly disclose his transgender status without his consent. *Id*. Prior to updating his license, Daniel experienced precisely this type of mistreatment when a bartender questioned the authenticity of his identification and subjected him to prolonged interrogation. *Id*. ¶ 27. Since his driver's license has reflected his male gender marker, he has not experienced similar incidents. *Id*. ¶ 28.

If Daniel is required to carry identification bearing a gender marker inconsistent with his gender identity, he will be compelled to disclose his transgender status each time he presents identification. *Id*. ¶ 21. This forced disclosure would strip Daniel of his hard-won privacy and expose him to stigma, discrimination, and potential hostility. *Id*. ¶ 27.

Since 2018, Daniel has used men's restrooms exclusively. *Id*. ¶¶ 30-31. He works in a government-owned building and uses the men's restrooms closest to his office, as he has done consistently throughout his employment. *Id*. ¶ 33. Although gender-neutral restrooms exist in other areas of the building, requiring him to use those facilities would necessitate traveling farther from his workspace and would conspicuously single him out, effectively disclosing his transgender status to colleagues. *Id*. Daniel's work requires him to travel among multiple government-owned or leased buildings on campus, some of which do not have gender-neutral restrooms. *Id*. ¶ 34. He also frequents other public facilities in Lawrence, including the public library, where he uses the men's restrooms without incident. *Id*. ¶ 36.

SB 244 places Daniel in an untenable and dangerous position. *Id*. ¶ 35. If he continues to use the men's restrooms—as he has safely and without issue for years—he risks fines or misdemeanor charges. *Id*. If he instead uses the women's restrooms, he will be involuntarily outed as transgender and may face confrontation, complaints, or litigation from individuals who perceive him as a man in the women's facility. *Id*. Daniel is further concerned that his employer could face

penalties if an individual claims to be "aggrieved," potentially jeopardizing his professional standing and workplace relationships. *Id*.

Daniel's fears are neither speculative nor abstract. Before he began hormone therapy, he was frequently confronted and yelled at when using women's restrooms because others perceived him as male. *Id*. ¶ 37. He has observed public statements and social media posts threatening violence against transgender men who use women's facilities. *Id*. ¶ 29.

Compelling Daniel to use facilities inconsistent with his gender identity would expose him to harassment, potential violence, and severe emotional distress, while forcing him to disclose deeply private medical information. *Id*. ¶ 41.

B. Matthew Moe

Matthew Moe is a transgender man who resides in Lawrence, Kansas. Declaration of Matthew Moe ("Moe Decl.") ¶¶ 1, 5, 9. He is a Ph.D. student, active in his community, volunteers with science enrichment programs for children, and participates in local arts and theater. *Id*. ¶ 6–7. Matthew has known he is male since he was a preteen. *Id*. ¶ 10. He was diagnosed with gender dysphoria in 2019 and has received gender-affirming medical care. *Id*. ¶ 11. Since that time, he has lived as a man in all aspects of his life. *Id*. ¶¶ 12-14.

In 2020, Matthew legally changed his name and updated his South Carolina birth certificate and driver's license to reflect a male gender marker. *Id*. ¶ 12. In 2023, he received a Kansas driver's license with a male gender marker. *Id*. ¶ 13. All of his identity documents consistently reflect his name and male gender. *Id*. ¶ 12. Matthew uses his driver's license routinely: to drive, enter government buildings, complete employment paperwork, check into hotels, board flights, vote, register for conferences, pick up prescriptions, and verify his identity at bars and restaurants. *Id*. ¶ 18. He works at a local bar and frequently ends his shift at approximately 3:00 a.m. *Id*. at ¶ 20. A

valid driver's license is necessary for him to drive safely to and from work. *Id*. Without one, he would be forced to bicycle at unsafe hours, jeopardizing his physical safety. *Id*.

Since obtaining identification that reflects his gender identity, Matthew has not experienced misgendering or questioning when presenting his license. *Id*. ¶ 14. Others cannot discern from his appearance or identification that he is transgender. *Id*. ¶ 16. If required to carry identification that discloses his sex assigned at birth, Matthew would be forced to reveal his transgender status every time he presents identification. *Id*. ¶ 18. Such involuntary disclosure would subject him to humiliation, degradation, and fear of potential violence. *Id*. ¶ 21.

Since 2019, Matthew has used men's restrooms exclusively. *Id*. ¶ 23. Prior to that time, using women's restrooms exacerbated his gender dysphoria and caused profound distress. *Id*. Access to restrooms consistent with his gender identity is essential to his mental health, well-being, and ability to function in academic and professional environments. *Id*. ¶¶ 23-26.

Matthew spends more than 60 hours per week at his university and the public library for study and research. *Id*. ¶¶ 25–26. Many of the buildings he frequents lack single-occupancy restrooms. *Id*. ¶ 25. SB 244 places him in an impossible position: using the men's restroom risks fines or misdemeanor charges and lawsuits from private individuals; using the women's restroom risks confrontation, lawsuits from private individuals, and involuntary disclosure of his transgender status. *Id*. ¶ 28. Being observed entering or exiting a women's restroom would immediately out him to classmates, colleagues, and the public. *Id*. ¶ 25.

Matthew has previously been harassed in a restroom and fears that SB 244 will embolden further harassment and possible violence. *Id*. ¶ 30. He is also concerned that his employer or university could face litigation if he uses men's restrooms, placing additional pressure on his educational and employment opportunities. *Id*. ¶ 29.

ARGUMENT

A temporary injunction is warranted where the plaintiff shows (1) "a substantial likelihood" of "prevailing on the merits"; (2) "a reasonable probability" of "irreparable injury" absent an injunction; (3) the absence of an adequate alternative remedy to address the harm; (4) the threat of injury to the movant outweighs any harm to the opposing party; and (5) "the injunction will not be against the public interest." *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 619 (2019) (*Hodes I*) (citing *Downtown Bar and Grill v. State*, 294 Kan. 188, 191 (2012)).

I. Plaintiffs are likely to succeed on the merits of their claims.

Plaintiffs move for a temporary injunction based on six constitutional claims challenging SB 244, any one of which would be sufficient to justify the requested relief. Accordingly, to obtain an injunction, Plaintiffs need only establish that they are reasonably likely to prevail on one of their claims after final judgment. This "reasonable probability" standard is a much lower hurdle than meeting the applicable burden of proof at trial. *Idbeis v. Wichita Surgical Specialists, P.A.*, 285 Kan. 485, 492 (2007). Plaintiffs have undoubtedly met that standard here.

A. SB 244 infringes on Plaintiffs' individual rights under the Kansas Constitution and cannot survive any standard of constitutional scrutiny that might apply.

i. SB 244 infringes on Plaintiffs' constitutional right to procedural due process by subjecting them to license revocation and Restroom Ban penalties without sufficient notice and a realistic opportunity to comply.

Under Section 18 of the Kansas Constitution, "[a]ll persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay." Kan. Const. Bill of Rights, § 18. This provision, which is reinforced by Section 1's guarantee of "life, liberty, and the pursuit of happiness," has long been interpreted to afford Kansans a procedural due process right that is independent of a corresponding right conferred by

the U.S. Constitution. *See, e.g.*, *State v. Wilkinson*, 269 Kan. 603, 608–09, (2000); *Murphy v. Nelson*, 260 Kan. 589, 597, (1996).

Here, SB 244 violates the Kansas Constitution's due process guarantee by invalidating transgender people's driver's licenses and barring them from restrooms that align with their gender identity without providing the guarantee's most "basic elements": "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Wilkinson*, 269 Kan. at 608.

Liberty and property interests at stake. As an initial matter, Plaintiffs' liberty and property interests are at stake here for at least three reasons. *See Wilkinson*, 269 Kan. 608–09 (describing first step of procedural due process analysis as considering "whether a protected liberty or property interest is involved"). **First**, although "a person is not entitled to a driver's license, . . . once a person has a license," that person "is entitled to due process before it is taken away...." *Creecy v. Kan. Dep't of Revenue*, 310 Kan. 454, 463, (2019) (state due process claim); *see also Kempke v. Kan. Dep't of Revenue*, 281 Kan. 770, 776, (2006), as corrected (May 18, 2006) (court addressing federal due process claim and the "well-settled" principle that due process is required in "drivers' license suspension cases"); *Bell v. Burson*, 402 U.S. 535, 539 (1971) ("Once [driver's] licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood."). Similarly, Plaintiffs have an established due process interest in accessing government spaces, whether as part of their government employment, education, or otherwise. *See*, *e.g.*, *McMillen v. U.S.D. No. 380*, *Marshall Cnty., Kan.*, 253 Kan. 259, 263–64 (1993) (Kansas due process protects government employment).

Second, Plaintiffs have cognizable liberty interests in accessing driver's licenses and government spaces on terms that do not infringe on their fundamental constitutional rights to personal autonomy, privacy, and free speech. *See*, *e.g.*, *Chelf v. State*, 46 Kan. App. 2d 522, 538,

(2011) (holding that statute interfering with "the right to pursue a remedy for injuries sustained by the tortious act of another" implicated a due process interest because that right had been held to be "a fundamental constitutional right").

Third, Plaintiffs have a liberty and property interest in avoiding civil and criminal penalties. *See*, *e.g.*, *In re J.D.C.*, 284 Kan. 155, 166, (2007) (established liberty interest in civil proceeding in "a parent's right to make decisions regarding the care, custody, and control" of their child); *Reed v. McKune*, 77 P.3d 1289, 2003 WL 22387838, at *1 (Kan. Ct. App. 2003) ("A fine of any amount is sufficient to implicate due process concerns."); *Matter of Marriage of Clark & Daniels*, 393 P.3d 1062, 2017 WL 1426454, at *4-*5 (Kan. Ct. App. 2017) (due process interest in contempt proceedings involving jail time).

The absence of notice and a reasonable opportunity to comply. As for the process due before infringing on these liberty and property interests, the State must at least provide "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Wilkinson*, 269 Kan. at 608-09 (describing federal balancing test that Kansas courts have borrowed to date in assessing what process is due). To evaluate the administrative procedural protections that apply in a given situation, Kansas courts borrow a federal balancing test to guide their analysis, considering "(1) the individual interest at stake; (2) the risk of erroneous deprivation of the interest; and (3) the State's interest in the procedures used." *Creecy*, 310 Kan. at 463 (citing *Matthews v. Eldridge*, 424 U.S. 319, 334-35 (1976)).

For at least two reasons, the individual interests at stake here are substantial and the risk of erroneous deprivation high.

***First*, as to driver's licenses,** the Act invalidates licenses without giving affected individuals any time and the necessary procedures to secure replacement credentials, all while threatening them with substantial sanctions for their involuntary non-compliance.

Specifically, to the extent individuals have received notice of SB 244's impact, it came in the past 48 hours, when KDOR advised at least some drivers that, upon publication of this law in the Kansas Register, "your current Kansas credential will no longer be valid," and "the Legislature did not include a grace period for updating credentials." Matthew Kelly, *Kansas informs trans residents their driver's licenses become invalid on Thursday,* The Kansas City Star, Feb. 26, 2026[9] ; *see also*, Erin Reed*, Kansas Sends Letters To Trans People Demanding The Immediate Surrender Of Drivers Licenses,* Erin In The Morning, Feb. 25, 2026[10] (stating that filing of a notice of appeal does not forestall invalidation). Moreover, even this recent State correspondence lacks information about the "procedures for obtaining a legally compliant credential," instead referring individuals to their local licensing office or the Kansas Division of Vehicles for guidance. *Id.*

In addition, even assuming individuals have opened and digested correspondence from KDOR, they are saddled with an impossible choice: On one hand, Plaintiffs and other affected individuals may immediately "be subject to additional penalties if [they] are operating a vehicle," because they do not have "a valid credential." *Id.* On the other hand, Plaintiffs—like all other Kansans—depend on their ability to drive for work, school, family obligations, and a range of other demands. Doe Decl. ¶¶ 22-23, 25, 27, 34; Moe Decl. ¶¶ 16-20. Indeed, it is unclear how Plaintiffs are supposed to "visit [their] local driver licensing office," *see supra,* Erin Reed, without driving themselves there in the first place.

[9] https://www.kansascity.com/news/politics-government/article314844596.html

[10] https://www.erininthemorning.com/p/kansas-sends-letters-to-trans-people

Kansas courts have repeatedly held that due process requires giving individuals a realistic opportunity to comply with the law. *See*, *e.g.*, *In re De Lano's Est.*, 181 Kan. 729, 746-47 (1957) (holding that court order violated federal due process guarantee where it required a litigant to present property that was "not within her possession or control"); *Sw. Bell Tel. Co. v. State Corp. Comm'n*, 169 Kan. 457, 480-81 (1950) (holding that interpretation of statute would render it void under federal due process principles based on "the impossibility of compliance"); *In re Davison*, 125 Kan. 807 (1928) (holding that imprisonment of party until she complied with contempt order was void under the Fourteenth Amendment because compliance was impossible).

Courts in other states faced with laws that have required compliance with terms that are impossible to satisfy have likewise held that such requirements violate due process. As one court explained, "any law that requires you to do something by a certain date must give you adequate time to do it; otherwise, the law would be irrational and arbitrary for compliance with it would be impossible." *Campbell v. Bennett*, 212 F. Supp. 2d 1339, 1343 (M.D. Ala. 2002) (finding due process violation where defendants changed deadline for independent candidate registration without providing plaintiff sufficient time to meet the deadline); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) ("Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted."); *Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 738 F.3d 786, 789 (7th Cir. 2013) (holding that the "impossibility of compliance with [a] statute" offers "a compelling reason for [a] preliminary injunction").

The same is true here: The law applies immediately and offers no clear procedure for compliance, warranting temporary injunctive relief.

***Second*, as to the Restroom Ban**, the Act violates Plaintiffs' procedural due process rights by subjecting them to findings that they have violated the Ban—a predicate offense for later civil and criminal penalties—without establishing even the most rudimentary safeguards to govern the investigations used to reach those findings, and without an established appeal process to contest the findings.

Specifically, SB 244 provides that whenever there is a complaint that an individual entered a restroom or other covered private space in violation of the Act, "the governing body, or chief administrative officer if no governing body exists, shall investigate and, upon a finding that such individual violated this section, shall provide written notice of such violation to such individual." SB 244, § 1(g)(1). On the face of the statute, an entity investigating a complaint may find a violation without providing prior notice to the individual who is the subject of the complaint, and without offering that individual an opportunity to defend themselves. *See id.* The absence of a pre-deprivation hearing in this respect violates due process. *See*, *e.g.*, *Bell v. Burson*, 402 U.S. 535, 542 (1971) (holding under the federal due process clause that "before the State may deprive petitioner of his driver's license . . . it must provide a forum for" determining "whether there is a reasonable possibility of a judgment being rendered against" the driver based on a prior accident).

Moreover, individuals under investigation for violating the Restroom Ban are not entitled to the substance of the complaint against them or the identity of the complainant, and therefore have no way—either before a finding of a violation or after—to test the complaint's allegations. SB 244, § 1(g)(1)(A) (noting that notice of a violation need only disclose to an individual the "date and location" where the violation occurred). This nebulous scheme stands in stark contrast to the process whereby government entities may be held liable under the Act for violations on their property. In those circumstances, government entities subject to a complaint are entitled to notice

from the complainant "describing the violation," are given an opportunity to cure it before the Attorney General can investigate, and may provide a statement to the Attorney General regarding their attempts to comply with the Act. *Id.* § 1(e)(1)(A), (f)(2). *Compare, e.g.*, *Powerback Rehab., LLC v. Kan. Dep't of Lab.*, 321 Kan. 236, 250 (2025) (upholding as consistent with due process a detailed statutory scheme applicable to resolving employee complaints regarding COVID-19 vaccine mandates and religious exemptions).

In addition, although SB 244 states that a person found to have violated the Act's Restroom Ban should be told of "the procedure to administratively appeal th[at] finding," SB 244, § 1(g)(1)(C), it sets out no process whatsoever for those administrative appeals to follow. It is unclear how one files an administrative appeal, whether an impartial decisionmaker will preside over that appeal, and whether there is a corresponding right to seek judicial review. It is also unclear whether the pendency of an appeal will forestall imposition of civil and criminal penalties for second or subsequent violations, since those penalties can be imposed whenever a person has been "found to have violated" the Restroom Ban before. SB 244, § 1(g)(2).

The Kansas Department of Administration's implementing regulation for SB 244 also does not erect procedural safeguards. Instead, that policy largely repeats the statutory language and states that "[g]uidance on how to submit a complaint and the investigation process will be forthcoming."[11]

For all of these reasons, the Restroom Ban is devoid of the most basic elements necessary to satisfy procedural due process.

[11]Kansas Department of Administration, Policy on Designation of "Multiple-Occupancy Private Spaces," (Feb. 19, 2026), available at https://admin.ks.gov/media/cms/DOA_Policy_for_State_Agencies_on_Implementation_of_SB244_scan_17aa6dcc710c8.pdf.

ii. SB 244 infringes on Plaintiffs' state constitutional right to personal autonomy.

Section 1 of the Kansas Bill of Rights provides that "[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." Kan. Const. Bill of Rights, § 1. As the Kansas Supreme Court has recognized, "[a]t the core of the natural rights of liberty and the pursuit of happiness" embodied in Section 1 "is the right of personal autonomy, which includes the ability to control one's own body, to assert bodily integrity, and to exercise self-determination." *Hodes I*, 309 Kan. at 646. "This ability enables decision-making about issues that affect one's physical health." *Id.* Moreover, the right to personal autonomy encompasses "the right to shape, for oneself, without unwarranted governmental intrusion, one's own identity, destiny, and place in the world." *Id.* at 649 (quoting *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206, 237 (Iowa 2018), *abrogated on other grounds by, Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710, 746 (Iowa 2022).).

In *Hodes I*, for example, the Kansas Supreme Court affirmed an injunction barring a law that restricted the most common method of second-trimester abortion. In doing so, it recognized that "one's control over one's own person" has long been understood to "stand[] at the heart of the concept of liberty," *id.* at 640, and that the abortion restriction would have "severely limit[ed]" a pregnant woman's autonomy by forcing her to "carry out a long-term course of conduct that will impact her health and alter her life," *id.* at 646.

SB 244 infringes on the "fundamental," inalienable rights protected by Section 1. *Id.* at 614; Kan. Const. Bill of Rights, § 1. It is not possible to tell whether someone is transgender by looking at them. Turpin Decl. ¶ 39; Scheim Decl. ¶ 30; Doe Decl. ¶ 32; Moe Decl. ¶ 16. Yet, by forcing a person to carry a license with a marker inconsistent with their gender identity, or forcing a person to use a single-sex restroom that does not match one's physical appearance, SB 244

dictates how transgender people present themselves to the world. Far from enjoying the "right to shape . . . [their] own identity, destiny, and place in the world," *Hodes I*, 309 Kan. at 649, transgender Kansans living under SB 244 will be forced to present the identity imposed on them by the State, on documents that "are not trivial pieces of paper, but instruments of liberty and personhood . . . central to modern life." *Rigoberto S.J. v. Bondi*, No. 26-cv-957, 2026 WL 490104, at *4 (D. Minn. Feb. 20, 2026).

And instead of leaving to transgender Kansans the right to make their own decisions about their physical security and health, SB 244 forces them to present themselves to the world in a way that makes them simultaneously less safe and less free. The forcible outing of transgender people causes serious psychological harm and puts them at further risk of harassment, discrimination, and even violence from others. Requiring transgender people to show a license or use a restroom that reveals their transgender status puts them at increased risk of experiencing precisely this kind of mistreatment.

B. SB 244 infringes on Plaintiffs' constitutional right to informational privacy.

SB 244's challenged provisions violate the Kansas Constitution by forcing transgender Kansans to routinely disclose their transgender status and by inviting public entities and courts to interrogate transgender Kansans about their genitalia at birth and reproductive capacity.

Consistent with many federal courts,[12] the Kansas Supreme Court has long recognized a federal right of informational privacy. *See Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 919–22 (2006); *Tiller v. Corrigan*, 286 Kan. 30, 47–48, (2008). And the state's constitutional provisions,

[12] *See, e.g.*, *Moore v. Kobach*, 359 F. Supp. 3d 1029, 1049–51 (D. Kan. 2019); *Stewart v. City of Okla. City*, 47 F.4th 1125, 1137 (10th Cir. 2022); *Lee v. City of Columbus*, 636 F.3d 245, 259-61 (6th Cir. 2011); *A.C. v. Cortez*, 34 F.4th 783, 787 (9th Cir. 2022); *Chasensky v. Walker*, 740 F.3d 1088, 1095–96 (7th Cir. 2014).

at minimum, "echo federal standards." *Alpha Med. Clinic*, 280 Kan. at 920; *see Hodes I*, 309 Kan. at 621–22 (recognizing the Kansas Constitution may sweep more broadly than federal law).

This right to informational privacy is one of the most basic reserved to the people in their constitutions. *See, e.g.*, *Jegley v. Picado*, 80 S.W.3d 332, 347–50 (Ark. 2002) (holding that "a fundamental right to privacy is implicit in the Arkansas Constitution," flowing from the state's inalienable rights of "life and liberty" and "pursuing . . . happiness"); *Powell v. State*, 510 S.E.2d 18, 21 (Ga. 1998) (holding Georgia has an implied right to privacy stemming from the state constitution's provision declaring "no person shall be deprived of liberty except by due process of law"); *Commonwealth v. Wasson*, 842 S.W.2d 487, 494–95 (Ky. 1992) (confirming prior interpretation of "the Kentucky Bill of Rights as defining a right of privacy, even though the constitution did not say so in that terminology"). The constitutional right to informational privacy is likewise reinforced by tort law that has long imposed liability for the unlawful "disclosure of private information." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). At common law, and in Kansas for over a century, the tort of invasion of privacy has protected Kansans from intrusion upon their "private affairs or concerns" and from publicity of "matters concerning [their] private" lives. *Dotson v. McLaughlin*, 216 Kan. 201, 206–08 (1975).

This right to informational privacy applies in particular to information that is sexual, medical, or about mental health. *See, e.g.*, *United States v. Kravetz*, 706 F.3d 47, 63 (1st Cir. 2013); *United States v. Brice*, 649 F.3d 793, 796 (D.C. Cir. 2011); *Livsey v. Salt Lake Cnty.*, 275 F.3d 952, 956 (10th Cir. 2001). And "much like matters relating to marriage, procreation, contraception, family relationships, and child rearing, there are few areas which more closely intimate facts of a personal nature than one's transgender status." *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018) (citation omitted).

Consistent with this right to informational privacy, SB 244's challenged provisions violate the Kansas Constitution for at least two reasons.

First, the statute forces transgender Kansans to routinely disclose this "private, sensitive personal information" about their transgender status whenever they present a license for identification or need to use a restroom or other covered space in public buildings. *K.L. v. State, Dep't of Admin., Div. of Motor Vehicles*, No. 3AN–11–05431 CI, 2012 WL 2685183, at *6 (Alaska Super. Ct. Mar. 12, 2012). It would require them to do so in a broad range of circumstances involving not just government entities, like schools and law enforcement, but also private parties, such as employers and businesses who request their licenses or identification, or colleagues and neighbors who are present when they seek to use restrooms in government buildings.

This forced disclosure of sensitive, personal information is, by itself, a constitutionally cognizable harm. *See Alpha Med. Clinic*, 280 Kan. at 918–23. And it can have devastating consequences for transgender people: where disclosure of this highly intimate information falls "into the hands of persons harboring . . . negative feelings" toward transgender people, denial of a license with an accurate gender marker "[c]reates a very real threat" to transgender individuals' "personal security and bodily integrity," *Love v. Johnson*, 146 F. Supp. 3d 848, 856 (E.D. Mich. 2015) (internal quotation omitted), exposing them "to a substantial risk of stigma, discrimination, intimidation, violence, and danger," *Arroyo Gonzalez*, 305 F. Supp. at 333.

The record in this case is replete with examples of such harm to Plaintiffs and transgender Kansans more generally. *See supra* 3–12.

Second, forced disclosure of transgender status imposes an additional, unjustified burden on the right to informational privacy by inviting public entities and courts to ask invasive and deeply personal questions about genitalia at birth and reproductive capacity. *Cf. Thorne v. City of*

El Segundo, 726 F.2d 459, 468–69 (9th Cir. 1983) (questioning job applicants on their sexual activities violated constitutional right to privacy).

For example, KDOR policy permits out-of-state licenses, out-of-state birth certificates, and other documentation as evidence of identity and gender for a license application. *See Harper*, 65 Kan. App. 2d at 725, (noting that "at least 45 other states allow gender reclassification on their driver's licenses."). Many transgender people, including Plaintiffs, have updated those documents to reflect the gender they live as. Doe Decl. ¶ 10; Moe Decl. ¶ 12–13. Where those documents do not show that someone is transgender, SB 244 would invite government employees to ask questions about genitalia at birth and reproductive capacity to applicants. *Cf. Harper*, 65 Kan. App. 2d at 725 ("The AG indicated . . . he had no idea how the KDOR would handle people seeking a Kansas license who had a valid out-of-state license from one of those states.").

Similarly, SB 244 provides that government officials "shall investigate" alleged violations of the Restroom Ban and issue "finding[s]" as to whether those violations occurred. SB 244, § 1(g)(1); *see also id*. § 1(f)(2) (stating that government entities subject to complaints "shall provide to the attorney general any information" requested, presumably to include information held by the entity regarding an individual alleged to violate the statute). Criminal prosecutions and citizen suits will likewise turn on whether the elements of a Restroom Ban violation are met. And because the Restroom Ban's application hinges on a person's reproductive capacity, it is not just likely but entirely foreseeable that the Ban will result in the invasive interrogation of transgender people (and many others, for that matter). The Act's promise of liquidated damages for individuals who claim harm from a violation only compounds the Ban's predictable effect. *See id*. § 1(h)(1).

C. SB 244 infringes on Plaintiffs' state constitutional right to equality by targeting them for disfavored treatment based on their transgender status and sex.

Individual rights claims based on a denial of equality are grounded in Section 2 of the

Kansas Bill of Rights, which guarantees equal protection to at least the same degree as the Fourteenth Amendment of the U.S. Constitution. *Rivera v. Schwab*, 315 Kan. 877, 894 (2022). Section 1 also protects equality. *Id.* at 893 (citing *Hodes I*, 309 Kan. at 624); *State v. Limon*, 280 Kan. 275, 283 (2005) (finding Section 1 applicable "when an equal protection challenge involves individual rights"). These provisions provide that government is "instituted for [the people's] equal protection and benefit," Kan. Const. Bill of Rights, § 2, that "[n]o special privileges or immunities shall ever be granted," *id.*, and that "[a]ll men are possessed of equal and inalienable natural rights," *id.* § 1. Together, Sections 1 and 2 guarantee robust equality rights. *Cf.* Robert F. Williams, *Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 Wis. L. Rev. 1001 (2021) (describing how joint interpretation of state constitutional provisions can give rise to stronger protection).

When resolving equality claims under the Kansas Bill of Rights, Kansas courts look to the nature of a challenged law's classification. As the Kansas Supreme Court explained in *State v. Limon*, although some classifications are apparent from the face of a law, classifications may also exist by virtue of a law's operation. 280 Kan. at 284–86 (holding that a law lacking a "per se classification of homosexuals, bisexuals, or heterosexuals" nevertheless imposed a "discriminatory classification" where it placed greater burdens on conduct engaged in by people who were gay or bisexual).

In this case, SB 244 imposes a facial sex-based classification: it relies on reproductive organs to classify people under state laws "with respect to the application of an individual's biological sex." SB 244, § 6(a) (providing that an "individual's 'sex' . . . means such individual's biological sex, either male or female, at birth" and defining male and female by reference to ova and fertilization of ova). If the Legislature cannot "writ[e] out instructions" for determining when

a law applies "without using the word[] . . . sex (or some synonym)," then the law classifies based on sex. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 668–69 (2020).

In addition, through its operation, SB 244 imposes a classification that targets transgender people. For example, a woman who was assigned female at birth could receive a license or use a restroom that reflects her female gender identity, while a transgender woman who was assigned male at birth could not. Just like in *Limon*, where the challenged law treated "the same conduct" differently depending on whether it occurred between same-sex or different-sex partners, SB 244 treats an individual's eligibility for a license and their ability to use public spaces differently depending on whether the person's gender identity is consistent with or different from their sex assigned at birth. *Limon*, 280 Kan. at 276.

D. SB 244's License Restriction infringes on Plaintiffs' constitutional free speech right by forcing them to declare their sex assigned at birth and transgender status.

Section 11 of the Kansas Bill of Rights provides that "all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights." Kan. Const. Bill of Rights, § 11. The License Restriction violates this guarantee by forcing transgender Kansans to convey the ideological message that their sex and gender are the biological sex they were assigned at birth, and by forcing them to disclose information that—juxtaposed with the gender they present to the world and know themselves to be—will out them as transgender.

As an initial matter, Kansas's speech protections under Section 11 "are, at a minimum, coextensive with the First Amendment." *League of Women Voters of Kan. v. Schwab*, 318 Kan. 777, 787 (2024). They extend, like the First Amendment, to "the decision of both what to say and what *not* to say." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 797 (1988) (emphasis in original). And they ensure that a person need not communicate, or even disseminate, a message with which they disagree. *See Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766

(2018); *see also Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 9–12 (1986) (reviewing cases invalidating requirements to carry another's message). This rule helps secure "individual freedom of mind" against "officially disciplined uniformity" on questions of political, ideological, or moral significance. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943); *see Vlaming v. W. Point Sch. Bd.*, 895 S.E.2d 705, 739 (Va. 2023).

Section 11's text buttresses these principles and, in fact, shows that Section 11 sweeps more broadly than the First Amendment. Unlike the First Amendment, which is framed solely as a restraint on government, Section 11 guarantees Kansans an affirmative right to "freely speak, write, or publish their sentiments." Kan. Const. Bill of Rights, § 11. Here, the word "freely" reflects the principle of "autonomy to control one's own speech." *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp. of Bos*., 515 U.S. 557, 574 (1995). And the language "their sentiments" makes clear that Section 11 protects a person's ability to speak *their own mind*, rather than express the beliefs of the state. In addition, Section 11's reference to "being responsible" for abusing one's speech rights reflects the broader principle that "[t]here is always a responsibility for whatever one may choose to communicate." *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 234 (1984). Crucially, a person is only responsible for what they *choose* to say; "being responsible" for one's speech has little meaning if the state can force people to speak against their will. This right to expressive autonomy is further bolstered by Section 1, whose "natural rights" guarantee has been interpreted to encompass the right to "personal autonomy." *See* Kan. Const. Bill of Rights, § 1; *Hodes I*, 309 Kan. at 646.

Unsurprisingly, many other states with speech guarantees that resemble Kansas's Section 11 have held that they offer more protection than the federal First Amendment. *See* Cal. Const. art. I, § 2; *Gerawan Farming, Inc. v. Lyons*, 12 P.3d 720, 751–52 (Cal. 2000) (addressing compelled

speech specifically); *see also* N.J. Const. art. I, ¶ 6; *State v. Schmid*, 423 A.2d 615, 626–28 (N.J. 1980); Or. Const. art. I, § 8; *State v. Henry*, 732 P.2d 9, 11 (Or. 1987); Conn. Const. art. 1, § 4; *Trusz v. UBS Realty Invs., LLC*, 123 A.3d 1212, 1228 (Conn. 2015); Tex. Const. art. I, § 8; *Ex parte Tucci*, 859 S.W.2d 1, 5 (Tex. 1993).

SB 244 infringes on Kansans' state constitutional speech rights in at least two key ways. **First**, it forces transgender Kansans to convey on their driver's licenses their biological sex assigned at birth, and to present it as their "gender." SB 244, § 4(g); *see also* K.S.A. §§ 8-240(c), 8-243(a) (requiring driver's licenses to state the licensee's "gender"). This message perpetuates an ideological view embedded in SB 244 with which Plaintiffs fundamentally disagree. Doe Decl. ¶ 13–16; Moe Decl. ¶ 8–9. **Second**, SB 244 violates Kansans' speech rights by forcing them to disclose on their licenses information that—when combined with the gender they present as to the outside world—will disclose that they are transgender, including to people who may be hostile to them or in circumstances that are unsafe.

In both respects, SB 244 is notably at odds with other parts of the Kansas Code recognizing that individuals effectively "speak" through their licenses and have an interest in controlling the information communicated there. For example, state law permits—but does not require—residents to carry driver's licenses disclosing certain disabilities, K.S.A. 2025 Supp. 8-243(c), (f), or that they are veterans, *id.* 8-243(e). Even a person's status as a registered sex offender is marked by a number recognizable only to law enforcement. *Id.* 8-243(d); *cf. State v. Hill*, 341 So.3d 539, 542, 555 (La. 2020), *cert. denied*, 142 S. Ct. 311 (2021) (invalidating, on compelled speech grounds, state law requiring persons convicted of sex offenses to carry identification cards branded with "SEX OFFENDER"); *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1321, 1324–27 (M.D. Ala. 2019) (same as to Alabama rule requiring "CRIMINAL SEX OFFENDER" to be written in bold, red

letters on IDs). Especially in light of these policies, it is clear that the sex designation on a Kansas license is the license holder's own speech, and that the Kansas Legislature has singled out transgender people for compelled speech that is invasive and morally repugnant to them.

E. SB 244 cannot survive any level of scrutiny that applies to Plaintiffs' individual rights claims because it evinces animus and advances no legitimate, much less compelling, state interest.

Although the Kansas Supreme Court has adopted somewhat differing standards for testing the constitutionality of laws burdening individual rights, in each case it requires more rigorous review than applied, for example, to economic legislation. *See, e.g.*, *Limon*, 280 Kan. at 284.

First, "expressly enumerated" state constitutional rights "provide[] the strongest possible constitutional protections." *League of Women Voters*, 318 Kan. at 800. In Kansas, if a law violates such a right, "it is unconstitutional, full stop." *Id.* at 802 (on the article 5 right to suffrage, but speaking broadly about the "mode of review for an enumerated right"). The state should not have the "opportunity to satisfy a balancing test, even such a stringent one as strict scrutiny." *Id.*

Moreover, even where the Kansas Supreme Court has not yet adopted *League of Women Voters'* most stringent standard, it has still made clear that heightened review applies to a law that burdens a fundamental right or a protected class of Kansans. *See Hodes I*, 309 Kan. at 663 (applying strict scrutiny to law burdening right to personal autonomy); *Stephenson v. Sugar Creek Packing*, 250 Kan. 768, 776–77 (1992) (recognizing that sex-based classifications are subject to intermediate scrutiny); *Alpha Med. Clinic*, 280 Kan. at 921–22 (balancing compelling state interest against patient privacy rights, and suggesting disclosure "must advance compelling state interest in least intrusive manner" (quoting *Sheets v. Salt Lake Cnty.*, 45 F.3d 1383, 1387 (10th Cir. 1995))).

Heightened review requires, among other things, that the government identify a justification that is compelling, *Hodes I*, 309 Kan. at 663, or at least important, *Stephenson*, 250 Kan. at 775. The government must demonstrate that the harms it recites are real, and it cannot rest

on post hoc justifications. *See Hodes I*, 309 Kan. at 662–63 (strict scrutiny standard); *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1196-97 (10th Cir. 2003) (intermediate scrutiny standard); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) ("[W]here the State's interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual's [speech] right to avoid becoming the courier for such message."). Under heightened review, the government must also show that "its action is narrowly tailored to serve" its interest. *Hodes I*, 309 Kan. at 670.

It is apparent that the government could not meet any form of heightened scrutiny here. There is no evidence in the legislative record that SB 244 addressed an existing problem with the driver's license regime or restroom access in public buildings. SB 244 contains no legislative findings, and as discussed below in Part F, legislators used a "gut-and-go" approach to expedite passage of its contents, bypassing legislative hearings at which legislators could have attempted to justify the bill.

Moreover, the Attorney General already attempted to block driver's licenses for transgender Kansans in litigation that predates SB 244, and despite a full-blown evidentiary hearing in that case, the Kansas Court of Appeals held that "the evidence was overwhelming that there was no harm" to the State from KDOR's prior policy of allowing individuals to change the gender markers on their licenses to align with their gender identity. *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 696, 726 (2025). It observed, for example, that "[n]o one was able to bring forward *any* instance of the feared harm of misidentification of criminals in the last 16 years or even the potential [of] a problem" caused by transgender individuals with licenses that reflect their gender identity rather than sex assigned at birth. *Id.* at 696.

For similar reasons, SB 244 could not satisfy the balancing test that Kansas courts have

applied to procedural due process claims, *see supra* Part A(i), or even the less rigorous form of constitutional scrutiny known as rational basis review. No matter the standard, a "[d]esire to harm a politically unpopular group cannot constitute a legitimate governmental interest" justifying a law that infringes on individual rights. *Limon*, 280 Kan. at 291 (citation omitted); *see also Romer v. Evans*, 517 U.S. 620, 633 (1996). And in all circumstances, Kansas courts still "insist on knowing the relation between the classification adopted and the object obtained." *Limon*, 280 Kan. at 288 (citation and internal quotations omitted). This requirement helps "ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law. . . . If the adverse impact on the disfavored class is an apparent aim of the legislature, its impartiality would be suspect." *Id.* (citations omitted).

There is no rational relationship between any relevant government interest and requiring transgender people to carry a license that reveals their sex assigned at birth (while immediately invalidating licenses that reflect their gender identity). The same is true for SB 244's requirement that transgender people use restrooms associated with their birth-assigned sex, regardless of how they present themselves in their daily lives, and its imposition of an amorphous enforcement scheme that lacks notice and an opportunity to defend oneself. Instead, SB 244 aims to bar transgender people from participating in civic life by restricting their freedom and personal autonomy across multiple domains, and "[t]hat sort of blanket burdening of a group and its rights . . . [is] inherently suspicious." *Bishop v. Smith*, 760 F.3d 1070, 1102 (10th Cir. 2014) (Holmes, J., concurring). SB 244 "would very publicly brand all transgender [people] with a scarlet 'T,' and they should not have to endure that as the price of" living in Kansas. *Doe by and through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 530 (3d Cir. 2018).

F. SB 244 violates the Kansas Constitution's single-subject and clear-title requirements.

SB 244 is unconstitutional for the additional reason that it violates Article II, Section 16 of the Kansas Constitution, which provides that "[n]o bill shall contain more than one subject," and "[t]he subject of each bill shall be expressed in its title." Kan. Const. art. II, § 16. Because the statute "contains more than one subject," it is "invalid in its entirety." *State ex rel. Stephan v. Thiessen*, 228 Kan. 136, 144 (1980).

Section 16 was designed to prevent "logrolling," which is the practice of combining "unrelated proposals and present[ing] them as separate provisions of one bill." *Kansas One-Call Sys., Inc. v. State*, 294 Kan. 220, 226 (2012) (citing *Garten Enters., Inc. v. City of Kan. City*, 219 Kan. 620, 622 (1976)). It helps ensure that the "legislature and the public may be fairly informed as to what [a bill] embraces." *State v. Roseberry*, 222 Kan. 715, 716 (1977).

In analyzing whether a bill violates Section 16, the Kansas Supreme Court considers whether a statute's provisions are sufficiently related to one another and to the bill's "umbrella" category, as articulated in the title's "concerning" clause. *See, e.g.*, *Kansas One-Call Sys., Inc.*, 294 Kan. at 228. To be sure, Section 16 is to be liberally construed so as to uphold legislation where possible, Kan. Const. art. II, § 16, and the legislature may pass a comprehensive bill as long as its provisions are all "germane to the single subject expressed in the title." *Thiessen*, 228 Kan. at 143 (citing *State v. Barrett*, 27 Kan. 213 (1882)). But "[w]here an act contains two separate and independent subjects, having no connection with each other, and the title to the act is broad enough to cover both," the act is generally "unconstitutional and void." *Id.* (quoting *Barrett*, 27 Kan. 213, 218–20). Otherwise, "the constitutional requirement that a bill shall contain only one subject" would be "utterly without force." *State v. Sholl*, 49 P. 668, 668 (Kan. 1897).

For example, the legislature can, by a single act, create a complete code of criminal procedure, but it cannot "lawfully . . . unite[]" provisions on criminal procedure with provisions

on a law enforcement training center "under the broad title 'crimes.'" *Thiessen*, 228 Kan. at 143. Neither can it pass a law regulating "the licensing of operators and chauffeurs of motor vehicles," on the one hand, and "defining the liability of certain persons for negligence" in the operation of motor vehicles, on the other. *Cashin v. State Highway Comm'n*, 22 P.2d 939, 938–40 (Kan. 1933). The gap between those subjects is simply too wide to be bridged by a title, even one as broad as "[a]n act relating to motor vehicles." *Id.*[13]

Consistent with Section 16's anti-logrolling purpose, legislative history is also relevant. *See Sholl*, 49 P. at 668-69; *Cashin*, 22 P.2d at 940–41. In holding that the "crimes" bill described above violated Section 16, the Kansas Supreme Court considered the bill's history. *Thiessen*, 228 Kan. at 140–42. The Court explained that the two areas covered by the bill—criminal procedure and a law enforcement training center—were initially "the subjects of separate bills." *Id.* at 140. After one bill was voted down in the state senate, provisions from both bills were merged and given a new title. *Id.*

In this case, SB 244 violates Section 16 because it encompasses at least two separate subjects: (1) the identification of a person's "biological sex" at birth on government identification documents, and (2) the designation of private spaces in public buildings for use by a single sex.

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[13] *See also Burns v. Cline*, 387 P.3d 348, 355 (Okla. 2016) (holding that all four provisions of a bill, despite being related "in some way to abortion," were unrelated for single-subject purposes); *Hunsucker v. Fallin*, 408 P.3d 599, 610, *as modified* (Okla. 2017) (holding that "license seizure and destruction upon arrest" and "criminal liability for a breath test refusal" were separate subjects from "administrative monitoring" of "impaired driving"); *Leach v. Commonwealth*, 141 A.3d 426, 434 (Pa. 2016) (invalidating law that create "a civil cause of action for persons affected by local gun regulations" and defined new criminal "offenses relating to the theft of secondary metal"); *Fent v. State ex rel. Okla. Capitol Improvement Auth.*, 214 P.3d 799, 807 (Okla. 2009) (invalidating law with bond issuance measures that financed three separate projects); *Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 103 (Mo. 1994) (en banc) (holding that "amendment authorizing a county to adopt a county constitution does not fairly relate to elections, nor does it have a natural connection to that subject"); *Tenn. v. Hailey*, 505 S.W.2d 712, 715 (Tenn. 1974) (invalidating a law providing for more severe punishments for different crimes).

That conclusion follows for at least two reasons.

First, the multiplicity of SB 244's subjects is apparent on the bill's face: Identification documents and sex-separated spaces in public buildings do not both relate to "one subject" clearly expressed in the title. Kan. Const. art. II, § 16. SB 244's provisions regulating public buildings fall outside the scope of the bill's "concerning" clause, which describes SB 244 as an act "concerning identification of biological sex." One would have to twist the meaning of "identification" to read the building provisions—including the associated enforcement mechanisms and penalties—as falling into that category. SB 244's two subjects are also conceptually and practically unrelated to each other. To state the obvious, designating a *person* as a particular sex on an identification document is different from restricting *restrooms or private spaces* to one sex.

Nor can SB 244 be justified on the ground that its multifarious provisions target and disproportionately harm transgender people. Just as bare legislative animus toward a disfavored group cannot qualify as a legitimate state interest for equal protection analysis, *see United States Dep't. of Agric. v. Moreno*, 413 U.S. 528, 534 (1973), it cannot serve as a unifying "subject" that connects otherwise disparate parts of a bill.

Second, SB 244's legislative history likewise bears the hallmarks of logrolling. The content of SB 244 was first presented at hearings of the House Judiciary Committee on HB 2426 with little or no notice.[14] HB 2426 originally contained only the provisions concerning identification documents and definitions; its title began, "AN ACT amending the women's bill of rights," and enumerated various other subjects related to the definition of gender, driver's licenses,

[14] Morgan Chilson, *'This bill spits on basic human decency': Kansas Legislature passes Restroom Ban without hearing*, KANSAS REFLECTOR (Jan. 28, 2026), https://kansasreflector.com/2026/01/28/this-bill-spits-on-basic-human-decency-kansas-legislature-passes-bathroom-ban-without-hearing.

and birth certificates.[15] Only later did the Committee tack on the Restroom Ban, its criminal penalties and civil penalties, and the creation of a private enforcement scheme.[16] Then, in a maneuver known as "gut and go," the Committee circumvented a Senate hearing by dumping the contents of HB 2426 into SB 244, a bill that originally addressed regulating bail bond companies; this allowed the Senate to simply concur with the overwritten bill.[17]

Like traditional logrolling, these tactics—combining unrelated provisions, introducing them with little notice, and using an unrelated, stripped-down Senate bill as a vehicle—distort the legislative process to expedite a bill's passage and minimize opposition. If anything, SB 244's procedural defects are more egregious than most logrolled legislation. One legislator said of SB 244: "Procedurally, it is the absolute worst bill I have ever heard in the Kansas Legislature."[18] While SB 244's text alone dooms the bill under Section 16, its history confirms its fate.

II. Plaintiffs are already suffering irreparable harm for which no other adequate remedy is available.

Plaintiffs seeking a temporary injunction need only demonstrate a "'reasonable probability of irreparable future injury' or harm." *Bd. of Cnty. Comm'rs of Leavenworth Cnty. v. Whitson*, 281 Kan. 678, 684 (2006); *see also Steffes v. City of Lawrence*, 284 Kan. 380, 395 (2007). In this case, the Plaintiffs are already suffering harm for which they cannot be made whole after final judgment, and that harm will continue every day that SB 244 remains in effect without an injunction from

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[15] HOUSE BILL No. 2426, Kan. Leg., https://www.kslegislature.gov/li/b2025_26/measures/documents/hb2426_00_0000.pdf.

[16] Morgan Chilson, *Kansas local government leaders question 'millions' in costs, lack of detail in bathroom bill*, KANSAS REFLECTOR (Feb. 12, 2026), https://kansasreflector.com/2026/02/12/kansas-local-government-leaders-question-millions-in-costs-lack-of-detail-in-bathroom-bill.

[17] *See id.*; Chilson, *supra* n.14; SENATE BILL No. 244, Kan. Leg., https://www.kslegislature.gov/li/b2025_26/measures/documents/sb244_01_0000.pdf (bail bond version).

[18] Chilson, *supra* note 12.

this Court.

First, it is well-established that the deprivation of a constitutional right, even for a short period of time, constitutes irreparable harm. *See, e.g.*, *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019); *Karem v. Trump*, 960 F.3d 656, 667–68 (D.C. Cir. 2020); *Trust Women Found. Inc. v. Bennett*, No. 121,693, 2022 WL 1597011, at *7 (Kan. Ct. App. 2022). Accordingly, because Plaintiffs have demonstrated a substantial likelihood of success on their constitutional claims, they have likewise demonstrated a reasonable probability of irreparable future harm.

Second, Plaintiffs are suffering material, irreparable harm every day SB 244 is in effect. Plaintiffs drive to work and for work. Doing so without a valid license exposes them to legal penalties. Even driving to the DMV to try to comply with SB 244 would expose them to those harms. Plaintiffs, like everyone else, use the restroom multiple times a day. They work in government buildings and are now faced with the impossible choice, every time they need to relieve themselves, about whether to risk civil or criminal penalties and lawsuits in the men's restroom, harassment and violence and lawsuits in the women's restroom, or prying questions about why they are waiting for a single-user restroom, if one is even available. Forgoing eating or drinking to avoid needing the restroom exposes them to medical risks. These harms, as well as the stigma of being deemed unfit by the Kansas Legislature to exist in society alongside everyone else, are irreparable.

III. The balance of equities and the public interest sharply favor a temporary injunction.

Absent a temporary injunction, Plaintiffs will be exiled from civil society unless they are willing to publicly reveal their transgender status. Meanwhile, Defendants "face little, if any, injury from issuance of an injunction, which will impose no affirmative obligations and will preserve the *status quo*." *Hodes Temp. Inj.*, No. 2015CV000490, 2015 WL 13065200, at *5 (Kan

Dist. Ct. June 30, 2015). SB 244 has already gone into effect, but for purposes of a temporary injunction, the status quo is "the last actual, peaceable, noncontested position of the parties which preceded the pending controversy." *State v. Alston*, 256 Kan. 571, 579 (1994) (citing *McKinney*, 236 Kan. at 227). That relative position was that transgender people could use driver's licenses reflecting their gender identity and could use restrooms corresponding with their gender identity without fear of civil or criminal penalties.

A temporary injunction is in the public interest because the "public's interest in not suffering a potential constitutional limitation is served more by maintaining the status quo than by permitting a law which may be unconstitutional to go into effect." *Hodes Temp. Inj.*, 2015 WL 13065200, at *5.

CONCLUSION

Plaintiffs respectfully request that this Court grant their motion for a temporary restraining order, followed by a temporary injunction. Plaintiffs request that this Court waive the requirement for any bond.

Respectfully submitted, this 26 day of February, 2026.

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