

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

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

Petitioner,

vs.

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,
DOE INTERVENOR-RESPONDENT 1,
and DOE INTERVENOR-RESPONDENT
2, on behalf of her minor child,

Intervenor-Respondents.

Case No. 23 CV 422
Division No. 3

Pursuant to K.S.A. Chapter 60

**RESPONSE TO TEMPORARY INJUNCTION
AND MEMORANDUM IN SUPPORT THEREOF**

Senate Bill 180 is discriminatory, targeting transgender individuals for different treatment in the provision of Government services. It was not born of thoughtful deliberation, but rather adopted nearly wholesale as model legislation from three

Washington, D.C. organizations: the Independent Women’s Voice, the Independent Women’s Law Center, and the Women’s Liberation Front (WOLF). *Women’s Bill of Rights Model Legislation*, Model Legislation, <https://womensbillofrights.com/wp-content/uploads/2022/04/womens-bill-of-rights.pdf> (last visited November 16, 2023).

As reported in the Kansas Reflector:

“The model legislation for SB 180 comes from Independent Women’s Voices, a far-right group that has a long history of opposing women’s rights, including the Equal Rights Amendment and equal pay.

“The group introduced the “women’s bill of rights” in 2022 as a way to counteract the spread of “transgender ideology,” a phrase used by hate groups in an attempt to promote fear of transgender people. The model legislation was part of the group’s multifaceted campaign against the transgender community.

“Kansas legislators initially debated a nearly identical version of the IWF bill at the beginning of the 2023 legislative session, including a section that stated men are “on average, bigger, stronger and faster than females.”

Rachel Mipro, *‘What is a woman?’ Here’s how a new Kansas anti-trans law skews the meaning of gender and sex*, Kansas Reflector (July 5, 2023, 2:17 PM),

<https://kansasreflector.com/2023/07/05/what-is-a-woman-heres-how-a-new-kansas-anti-trans-law-skews-the-meaning-of-gender-and-sex/>.

This Court should deny Petitioner’s request for a temporary injunction. A temporary injunction is an extraordinary remedy, and the burden is on the movant to demonstrate all of the factors required in order to obtain it. *Schuck v. Rural Tel. Serv. Co., Inc.*, 286 Kan. 19, 24, 180 P.3d 571 (2008).

“[I]n order to obtain such an injunction, a plaintiff must show the court: (1) The plaintiff has a substantial likelihood of eventually prevailing on the merits; (2) a reasonable probability exists that the plaintiff will suffer irreparable injury without an injunction; (3) the plaintiff lacks an adequate legal remedy, such as damages; (4) the threat of injury to the plaintiff outweighs whatever harm the injunction may cause 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, 440 P.3d 461 (2019).

Petitioner cannot show the court he has a substantial likelihood of prevailing on the merits. For this reason alone, the Court should deny Petitioner's motion for temporary injunction. Furthermore, Petitioner also cannot show that a reasonable probability of irreparable harm exists without an injunction. As such, the Court should deny Petitioner's motion for temporary injunction.

I. PETITIONER DOES NOT HAVE A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS.

For a temporary injunction to be granted, the first element the Petitioner must show is that he has a substantial likelihood of prevailing on the merits. Petitioner cannot meet this burden for four reasons. First, SB 180 unambiguously applies to "sex" not gender. Second, "gender" and "sex" are distinct and are not used interchangeably in modern usage. Third, specific laws control over more general laws. Finally, the Petitioner's interpretation of subsection (c) is far broader than its plain language.

A. *SB 180 unambiguously defines "sex," not gender.*

"The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained." *Northern Natural Gas Co. v. ONEOK Field Servs. Co., L.L.C.*, 296 Kan. 906, Syl. ¶ 3, 296 P.3d 1106 (2013). Courts "attempt to ascertain legislative intent by reading the plain language of the statutes and giving common words their ordinary meaning." *Id.* "When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read

into the statute something not readily found in it.” *Id* at Syl. ¶14. Courts must “presume that the Legislature ‘expressed its intent through the language of the statutory scheme.’” *Schneider v. City of Lawrence*, 56 Kan. App. 2d 757, 762 (2019).

As enacted, SB 180, Section 1 subsection (a)(1) states: “An individual’s ‘sex’ means such individual’s biological sex, either male or female, at birth.” Not only is “gender” not defined by the bill, SB 180 does not mention the word “gender.” The plain language of the statute clearly refers to “sex.” The Petitioner reads the words “or gender” into the language of SB 180 defining “sex,” and asks this Court to do the same. This Court cannot.

The plain language of the statute controls. SB 180 defines “sex.” It does not define “gender.” “It is presumed the legislature understood the meaning of the words it used and intended to use them.” *State ex rel. Stephan v. Bd. of Cnty. Comm'rs of Seward Cnty.*, 254 Kan. 446, 448, 866 P.2d 1024 (1994). As such, SB 180 does not apply to statutes using “gender” instead of “sex.”

The plain language of the statute must control. It defines “sex” as it is used in Kansas’s statutes. But it does not define “gender” and certainly does not define “gender” as “biological sex at birth.” Based on the plain language of the statute, Petitioner has not shown a substantial likelihood of success on the merits.

B. Gender and sex are not the same and are not used interchangeably in modern usage.

As courts across the country are recognizing, although “gender” and “sex” have been used interchangeably, they are distinct terms. In *D.H. v. Williamson Cnty. Bd. Of Educ.*, 638 F. Supp. 3d 821, 826 (W.D. Tenn. 2022), the court explained:

“The American Psychiatric Association explains that ‘sex’ and ‘gender’ are often used interchangeably, but they are distinct terms. ‘Sex’ ordinarily refers to biological sex as determined based on anatomy and other biological factors. ‘Gender’ is more accurately stated as ‘gender identity’ or ‘gender expression.’ As relevant here, ‘gender identity’ is a person’s inner sense of being a particular gender. ‘In a human context, the distinction between gender and sex reflects the usage of these terms: Sex usually refers to the biological aspects of maleness or femaleness, whereas gender implies the psychological, behavioral, social, and cultural aspects of being male or female (i.e. masculinity or femininity).”
(Citations omitted.)

The National Institute of Health’s Office of Research on Women’s Health uses similar definitions. It defines “sex” as “a multidimensional biological construct based on anatomy, physiology, genetics, and hormones.” Office of Research on Women’s Health, National Institutes of Health, *Sex & Gender*, <https://orwh.od.nih.gov/sex-gender> (last accessed November 17, 2023). In contrast, “gender” is “broadly defined as a multidimensional construct that encompasses gender identity and expression, as well as social and cultural expectations about status, characteristics, and behavior as they are associated with certain sex traits.” *Id.*

Further, even the drafters of the model legislation SB 180 was adopted nearly wholesale from acknowledge “gender” is not a synonym for “sex”. Jennifer C. Braceras, *Legal Policy Focus: Sex is Better than Gender*, Sept. 7, 2022, Independent Women’s Forum, <https://www.iwf.org/2022/09/07/legal-policy-focus-sex-is-better-than-gender/> (last visited November 16, 2023).

The current trend is to treat “sex” and “gender” as distinct concepts because, scientifically, they are. Even the drafters of the model legislation SB 180 is based on agree.

The Petitioner cites four statutes to argue the Legislature uses sex and gender interchangeably in Kansas law. However, a closer look at these statutes reveals this argument is unpersuasive.

First, the Petitioner cites K.S.A. 77-201, which states, in relevant part: “Words importing the masculine gender only may be extended to females.” However, this language has existed in the statute since at least 1949. *See Shuffleberger v. Hopkins*, 177 Kan. 513, 519 (1955). It hardly supports the argument that, in 2023, the Legislature uses the terms “sex” and “gender” interchangeably.

Second, the Petitioner cites K.S.A. 48-292, which was enacted in 2005, and states, in relevant part, “Such resident will have the right to reinstatement . . . subject to payment of the current premium charged to other persons of the same age and gender.” Petitioner then asserts, without citation, that insurance premiums vary according to biological sex, rather than gender. Petitioner cites neither factual nor legal authority to support this contention. He has abandoned this argument. Nothing in the language of K.S.A. 48-292 suggests the Legislature intended to use sex and gender interchangeably in SB 180; K.S.A. 48-292 only mentions the word “gender,” once and never mentions the word “sex.” There can be no inference of interchangeable use of words when one of them does not even appear in the statute.

The Petitioner also cites to two statutes regulating abortion: K.S.A. 65-6710(a)(3) and K.S.A. 65-6726. Petitioner quotes K.S.A. 65-6710(a)(3) for the proposition that the Legislature has unequivocally stated “[g]ender, eye color and other traits are determined

at fertilization.” Again, the statute never mentions the word “sex.” As with K.S.A. 48-292, there can be no inference of interchangeable use of words when one does not appear in the statute. Further, nothing in the statute actually indicates the Legislature intended to use sex rather than gender; it is just as likely the Legislature intended the use of the word “gender” instead of “sex.” The Petitioner simply makes a bald assertion the use of “gender” was the result of “sex” and “gender” being used interchangeably. Again, the Petitioner has abandoned this argument.

Furthermore, a closer look at the statute indicates the quoted language is actually from the printed materials a medical provider is required to provide to a woman before she receives an abortion. And, as an aside, in Johnson County District Court case no. 2023-CV-3140, the district court recently temporarily enjoined enforcement of K.S.A. 65-6710(a)(3) because the Plaintiffs in that case “proffered credible evidence that many (potentially 30-40%) of the disclosures required by [K.S.A. 65-6710] are ‘medically inaccurate’ and inconsistent with generally accepted science of embryonic and/or fetal development.”

Petitioner similarly cites K.S.A. 65-6726, which is entitled “Abortion based on gender; prohibited” and states: “No person shall perform or induce an abortion or attempt to perform or induce an abortion with knowledge that the pregnant woman is seeking the abortion solely on account of the sex of the unborn child.” However, the title of the statute “is not dispositive because it is ‘prepared by the Revisor of Statutes and forms no part of the statute itself.’” *Hayes Sight & Sound, Inc. v. ONEOK, Inc.*, 281 Kan. 1287, 1328 (2006) (quoting *State v. Martens*, 274 Kan. 459 Syl. P3, 54 P.3d 960 (2002)). Therefore, the statutory title provided by the Office of the Revisor of Statutes

does not support the Petitioner's argument that sex and gender are used interchangeably by the Legislature.

In contrast to the statutes cited by the Petitioner, there is a statute which clearly indicates the Legislature understands the difference between sex and gender: K.S.A. 8-240(c). Prior to 2007, K.S.A. 8-240(c) stated, in relevant part: "Every application shall state the name, date of birth, sex, and residence address of the applicant. . ." In 2007, the Legislature amended the statute, changing the word "sex" to "gender." Courts ordinarily presume the Legislature intended to make a substantive change to the law when it revises an existing law. *Brennan v. Kan. Ins. Guar. Ass'n*, 293 Kan. 446, 458 (2011). By changing the word "sex" to "gender," in its 2007 amendment to K.S.A. 8-240(c), the Legislature clearly intended for a driver's license applicant to provide their gender, not sex.

Petitioner argues "[synonymous] usage of 'gender' and 'sex' is confirmed by modern dictionaries, which almost universally treat the terms of synonyms." Motion for Temporary Injunction, P. 7 (citing dictionaries from 1993, 2003, 2011, 2014, and 2015). The problem with this argument, however, is that even if dictionaries around the time of the 2007 change to K.S.A. 8-240(c) used "sex" and "gender" as synonyms, the Kansas Legislature did not, as evidenced by their intentional change of "sex" to "gender." Petitioner's argument actually makes Respondent's point because it arguably shows that under common meaning of the term "sex" in 2007, the Legislature could have left the word unchanged so as to be synonymous with "gender," yet, they did not. Clearly, the Legislature in 2007 did not view "sex" and "gender" as synonymous. As noted above, there is presumption that a change to existing law is substantive, *Brennan*, 293 Kan. at

458 (2011), which would not be the case if the change was to simply swap synonymous terms.

Petitioner argues “KDOR itself uses ‘gender’ and ‘sex’ interchangeably.” (Motion for Temporary Injunction, P. 7). But KDOR’s practice of placing ‘sex’ as a descriptor predates both the passage of Senate Bill 180 (2023) and the creation of the gender information mandate on the State credentials beginning in 2007. 2007 Kansas Session Laws Ch. 160 (S.B. 9). It is not an expression of legislative intent, nor is it evidence that KDOR uses the terms interchangeably.

The use of the ‘sex’ descriptor on face of the credential springs from an effort by KDOR to match standards recommended by the American Association of Motor Vehicle Administrators (AAMVA) to standardize training, IT system design, and uniformity amongst all United States. 2020 AAMVA DL/ID Card Design Standard, October 2020, pg. 54, 91, 92; See Also Personal Identification – AAMVA International Specification – DL/ID Card Design, 2005 March. Prior to the AAMVA card guidelines, there were well over 200 design variations on identity credentials. The AAMVA IT card design specifications have had unwieldy affect KDOR’s subsequent design for at the same time the AAMVA issued guidance on card design standards, it also provided a snapshot on state gender change policies. See AAMVA Resource Guide on Gender Designation on Driver’s Licenses and Identification Cards, September 2016, Attachment B (attached). According to AAMVA in 2020, all 45 reporting states indicated they permitted gender change and the five states not reporting have been independently determined to permit gender changes on driver’s licenses. The use of ‘sex’ in the AAMVA design specifications is mainly due to the historical practice naming fields in the various states’ databases and such naming conventions are easily changed at the table level.

Courts across the country are recognizing what the medical community has already recognized: “sex” and “gender” are distinct terms and are not interchangeable. Even the drafters of the model legislation which SB 180 was adopted nearly wholesale from acknowledge gender is not a synonym for sex. The statutes Petitioner relies on do not support his argument that sex and gender are used interchangeably because nothing in any of the statutes suggest that the Legislature did not mean what it said or did not intend to use the words it used. And despite Petitioner’s argument to the contrary, KDOR does not use “sex” and “gender” interchangeably. Instead, the use of the word “sex” on driver’s licenses is related to a third-party standard intended to standardize licenses across the country. Because sex and gender are not used interchangeably, Petitioner has not shown a substantial likelihood of success on the merits and the motion for temporary injunction should be denied.

C. Specific laws control over more general laws.

Even if this Court does not find that SB 180 unambiguously defines “sex” and not “gender,” this Court should still find that SB 180 does not apply to driver’s licenses based on K.S.A. 8-240 and K.S.A. 8-243. When two statutes are in conflict, a specific statute controls over a general statute. *In re Mental Health Ass’n of the Heartland*, 289 Kan. 1209, 1215 (2009). Here, K.S.A. 8-243 specifically controls the information that a license is to contain. It states, in relevant part: “Such license shall bear the class or classes of motor vehicles which the licensee is entitled to driver, a distinguishing number assigned to the licensee, the full legal name, date of birth, *gender*, address of principal residence and a brief description of the licensee. . .” (Emphasis added.)

K.S.A. 8-240 and K.S.A. 8-243 are more specific laws than SB 180. They identify the specific requirements for both the application for a driver's license and the license itself. Furthermore, as discussed above, the Legislature specifically amended K.S.A. 8-240 in 2007 to change the requirement that the application include the applicant's sex to a requirement that the application include the applicant's gender in 2007. The Court should find that they control over SB 180's more generalized language and deny Petitioner's motion for a temporary injunction.

D. KDOR can comply with Section 1, subsection (c) of SB 180 while providing driver's licenses that reflect a person's gender identity.

Even if the Court finds SB180 applies to KDOR's driver's license process, KDOR can comply with SB180 while following its current process of allowing gender marker changes on licenses. Section 1, subsection (c) states:

Any school district, or public school thereof, and any state agency, department or office or political subdivision that collects vital statistics for the purpose of complying with anti-discrimination law or for the purpose of gathering accurate public health, crime, economic, or other data shall identify each individual who is part of the collected data set as either male or female at birth.

The plain language of the statute requires a state agency that collects vital statistics to identify individuals in the collected data set as either male or female at birth. A Kansas driver's license is not "the collected data set." The collected data set is KDOR's KDOR's electronic database that warehouses all of a driver's historical information. The driver's license is merely a reflection at a point in time of some, but not all information regarding a driver. For example, a person's height, weight, and name may change over time, but that information as previously recorded still exists within the person's driving

record. For example, John Smith, age 17, 5'8", and 150 pounds, could be the same person six years later as Jane Smith, age 23, 5' 9", and 160 pounds. KDOR's collected data set will still have record this individual according to male sex at birth. That the data set "also" later reflects Jane Smith, the same individual, as female is not contrary to SB 180. KDOR will have complied in that the data set has identified the individual as either male or female at birth. What this Court cannot do is read into the statute words that are not there – that is, a requirement that the "shall *only* identify each individual . . . as either male or female at birth."

KDOR can collect and identify an applicant's sex at birth along with their history of gender designation while still issuing a license with an applicant's current gender marker. However, requiring an applicant's license display their sex at birth requires this Court to read additional language into the statute, something this Court cannot do. *Schneider*, 56 Kan. App. 2d at 762.

II. THE PETITIONER HAS NO, AND APPEARS TO NEVER HAVE HAD, EVIDENCE OF AN IRREPARABLE HARM.

The temporary injunction should be denied because Petitioner has presented zero evidence of any harm, much less irreparable harm. Petitioner alleged the irreparable injury is "the effect on law enforcement and lifesaving health activities in Kansas." However, the Petitioner couched his motion for temporary injunction in hypotheticals and has not provided any evidence of the validity of these harms. Indeed, after discovery, it appears the Petitioner never had any actual evidence of irreparable harm, merely hypotheticals.

Initially, one of the harms alleged by Petitioner is that driver's licenses "are used to record a person's status as an organ donor" and "[a] mismatch between the recorded and actual sex of a donor could deleteriously affect outcomes for the recipient." (TI, 9). Petitioner has abandoned this argument. This leaves two arguments regarding the effect on law enforcement.

First, Petitioner argues "[i]naccurate information *could* obviously affect whether a law enforcement officer *would* be able to accurately identify a person." (emphasis added) (*Motion for Temporary Injunction*, 8). Petitioners have no actual evidence of harm. Indeed, the evidence shows the opposite is true.

Shawnee County Sheriff Brian testified he had no personal knowledge of any specific examples of gender affecting a call. (Exhibit 1, Deposition of Sheriff Brian Hill, 27:18-22). Furthermore, Sheriff Hill testified he had no information from any of his officers that there was a problem with transgender issues and driver's licenses. (Exhibit 1, Deposition of Sheriff Brian Hill 30:4-10; 53:4 - 54:3). He did not know the process by which a gender-marker change could be procured. (Exhibit 1, Deposition of Sheriff Brian Hill 51:11-17).

Sergeant Erika Simpson testified similarly. She did not know how long Kansas has allowed gender-marker changes on its driver's licenses. (Exhibit 2, Deposition of Sergeant Erika Simpson 14:14-18). She has never encountered any difficulties as a patrol officer being threatened by a transgender person and has not ever filed a formal report identifying any type of problem with a transgender person. (Exhibit 2, Deposition of Sergeant Erika Simpson 14:22-25). She testified there are multiple avenues law enforcement can use to verify a detained individual's identity. (Exhibit 2, Deposition of Sergeant Erika Simpson 25:20 - 26:12). Sergeant Simpson testified she

was not aware if any of her fellow patrol officers had filed a formal concern regarding the gender of an individual being on a driver's license. (Exhibit 2, Deposition of Sergeant Erika Simpson 27:14-19).

Lieutenant James Burge testified similarly. He has never filed a formal report regarding a concern of any kind with a transgender person. (Exhibit 3, Deposition of Lt. James Burge 15:24 – 16:2). Furthermore, he is unaware of any issues related to identifying transgender individuals with a driver's license by any officer in his 23-year career. (Exhibit 3, Deposition of Lt. James Burge 16:3-8). Lieutenant Burge also indicated there were a number of redundant steps law enforcement could take to identify a potential subject. Exhibit 3, (Deposition of Lt. James Burge 25:15-20). Lieutenant Burge also indicated he did not know how long Kansas had allowed gender marker changes nor what was required to obtain a gender marker change. (Exhibit 3, Deposition of Lt. James 33:1-9). He testified that, in his 23-year career, he has not noticed any difference as far as law enforcement issues regarding gender in the identification of individuals. (Exhibit 3, Deposition of Lt. James Burge 33:10-21).

Finally, in an email to the AG's office, Lieutenant Theron Chaulk, of the Johnson County Sheriff's Department, wrote: "I have spoken to each and every officer in my division and, at this time, there are zero examples of gender affecting any call for service (service of civil work, traffic citations, warrant confirmation.....[sic] etc)." (Exhibit 4, Email from Lt. Theron Chaulk).

Petitioner has not managed to produce any evidence of irreparable harm during discovery. In fact, it is likely Petitioner never had any evidence—only hypotheticals—of harm. In response Respondent-Intervenor's Interrogatory 11, which asked the Petitioner to "[identify] the factual circumstances of all instances of such inaccurate

identification of a person which have actually occurred in Kansas which Petitioner was aware of before filing the [*Motion for Temporary Restraining Order and Temporary Injunction, and Memorandum in Support Thereof*].” Petitioner responded he had not identified particular instances that meet the stated parameters. (ROGs 7-8).

Even the cases cited by Petitioner do not support his claims. Petitioner cites *Simmons v. City of Chicago*, No. 14 C 9087, 2017 WL 497755 (N.D. Ill Feb. 7, 2017, to support its argument, contending that a “mismatch between the height listed on the warrant and on actual person arrested made [the] arrest improper.” (*Motion for Temporary Injunction*, 9). However, a closer reading of the Court’s *Memorandum Opinion and Order* shows the Petitioner’s reliance is misplaced. The Court did not find the arrest was improper based solely on the mismatch between the warrant and the individual. Instead, the warrant indicated the suspect was between 45 and 50 years old. Simmons was actually 67 years old. Simmons’ height was significantly taller than the height listed on the warrant and fell between the 75th and 85th percentile for height, while the suspect’s height listed on the warrant fell between the 5th and 25th percentile. Simmons’ hair did not match the description listed on the warrant. And Simmons had a speech impediment, which was not identified in the search warrant. The Court found “only Simmon’s gender and race—the most generic characteristics—precisely matched the warrant. Five other characteristics did not match, and at least two of these incongruities (height and hair) were profound.” Moreover, the officer who put Simmons in handcuffs did not check Simmons’s identification. *Id.* at * 2. This case cannot support a proposition that a driver’s license with a sex marker on it differing from the driver’s sex a birth presents a harm to law enforcement in a case where law enforcement never relied on the driver’s license for identification.

Perhaps more importantly, however, is that *Simmons* does not involve a transgender suspect. And, in *Simmons*, the warrant was procured with the assistance of confidential informant who provided the description of the suspect included in the warrant. It is entirely possible, even likely, that had the suspect presented as female, the confidential informant, without access to the suspect's driver's license, would have identified him as female.

The only other irreparable harm to law enforcement the Petitioner identifies is that it "could also be a problem in, for example, jail or prison operations." (Emphasis added). (*Motion for Temporary Injunction*, 9). But again, the petitioner has no evidence that allowing gender marker changes on driver's licenses causes any irreparable harm to law enforcement in this setting. Instead, Major Rick Newson testified that, for the Johnson County Detention Center, a driver's license was lower in the level of importance than other information to determine one's gender. (Newson, 44-45). Instead, an individual is scanned using a body scanner, which shows shadows of the curvature of the human body. (Newson, 51-52). "If there is an observable question, then more questions will be asked by the intake sergeant to help identify what they identify as, what the gender is and basically getting back to what their biological sex is." (Newson 52). The jail does not ever ask for an individual's driver's license. (Newson 58). It is not an initial identity document. (Newson 63). Further, Major Newson testified that before a person is put in a housing area there is a strip search done. (Newson 70).

Petitioner also cites *De Veloz v. Miami-Dade County*, 756 F. App'x 869 (11th Cir. 2018), to support this hypothetical argument. (TI, 9). Again, this case does not actually support Petitioner's arguments. As with *Simmons*, the plaintiff in this case is not

transgender. When she arrived at Miami-Dade Airport, Fior Pichardo De Veloz was arrested, transported to jail, strip searched, and correctly booked-in as female. She had female genitalia. However, due to high blood pressure, Pichardo was transported to the medical unit. Due to receiving hormone replacement therapy, a nurse in the medical unit believed she was male. Without examining her genitalia, and solely based on her receiving hormone replacement therapy, the medical staff reclassified Pichardo as male, and Pichardo was subsequently detained in an all-male facility. Again, Pichardo *was not transgender* and had been biologically female her entire life.

Petitioner's motion for temporary injunction proffered two harms to law enforcement and a harm to "lifesaving health activities" as the irreparable harm necessary to support the injunction. Petitioner abandoned the claim based on irreparable harm to "lifesaving health activities" and Petitioner has not provided any evidentiary support for his allegations of irreparable harm to law enforcement. Quite the contrary, Petitioner's own witnesses support the fact that there is *no irreparable harm*.

It is important to note that Petitioner did not allege failure to comply with the SB 180 as irreparable harm, nor that driver's licenses are issued for six years, as evidence of irreparable harm. Instead, Petitioner's argument was that noncompliant licenses remaining in circulation for six years presented a reasonable probability of continued irreparable harm as it pertained to law enforcement and lifesaving activities. Failure to support a point with pertinent authority, or to show why it is sound despite a lack of authority is akin to failing to brief the issue and is deemed waived or abandoned. *See State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020). Petitioner cannot now rely on this as evidence of irreparable harm.

III. PETITIONER IS NOT ENTITLED TO A REMEDY, BUT THERE ARE REMEDIES AVAILABLE TO THE PETITIONER.

Petitioner has failed to show a substantial likelihood of success on the merits. Petitioner has further failed to show a reasonable probability of irreparable harm exists without the injunction. Either of these, standing alone, would be fatal to Petitioner's request for a temporary injunction. Petitioner is not entitled to a remedy. Nonetheless, the Legislature could amend SB 180 to include "gender" in its definitions, or to specifically include SB 180's application to driver's licenses. As such, there are alternate remedies available to Petitioner.

IV. THE RESPONDENT WOULD LIKELY FACE NUMEROUS LAWSUITS IF IT COMPLIED WITH PETITIONER'S ERRONEOUS INTERPRETATION OF SB 180.

Petitioner argues Respondent cannot assert harm in complying with a validly enacted statute. However, Respondent anticipates that, if it is enjoined from processing gender-marker changes, Respondent would face a litany of lawsuits in both state and federal court. This is a drain on Respondent's resources as well as the resources of the State of Kansas. It is a real harm that will likely occur if the Respondent is enjoined from making gender-marker changes to driver's licenses based on SB 180.

V. THE PUBLIC BENEFITS FROM ENSURING THAT LAWS ARE ACCURATELY INTERPRETED.

Petitioner asserts “[t]he public will benefit from ensuring the information contained on a driver’s license is accurate.” (*Motion for Temporary Injunction*, 11). He asserts, “[a] supermajority of the Kansas Legislature has concluded that having immutable biological sex reflected in the driver’s license data set and in other data sets is in the public interest.” (*Motion for Temporary Injunction*, 11). However, this conclusion is based solely on Petitioner’s own subjective and erroneous reading of SB 180. Petitioner reads into SB 180 a definition of gender which does not exist in the statute. Similarly, Petitioner reads into SB 180 an application to the driver’s license itself, not merely the dataset. Contrary to Petitioner’s assertions, the public is better served by ensuring that laws are accurately interpreted based on the plain language of the statute, which controls over his non-binding opinion interpreting the statute.

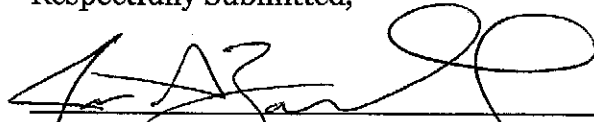
VI. THIS COURT SHOULD DENY PETITIONER’S MOTION FOR TEMPORARY INJUNCTION.

To prevail on a motion for temporary injunction, the plaintiff must show (1) a successful likelihood of prevailing on the merits; (2) a reasonable probability the plaintiff will suffer irreparable injury without an injunction; (3) the plaintiff lacks an adequate legal remedy; (4) the threat of injury to plaintiff outweighs whatever harm the injunction may cause the opposing party; and (5) the injunction will not be against the public interest. *Hodes*, 309 Kan. at 619. The Petitioner must show all of these factors apply in order to obtain the temporary injunction. He cannot.

Petitioner has not shown a substantial likelihood of success on the merits. Furthermore, the evidence in this case demonstrates that, not only has Petitioner not shown a reasonable probability that irreparable harm exists without the injunction, but

that Petitioner did not have evidence of irreparable harm when he filed the *Motion for Temporary Restraining Order and Temporary Injunction, and Memorandum in Support Thereof*. This Court should deny Petitioner's request for a temporary injunction because Petitioner has not demonstrated all of the required elements for a temporary injunction.

Respectfully Submitted,

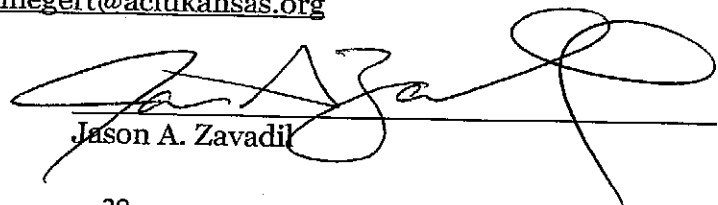


PEDRO C. IRIGONEGARAY, 08079
JASON A. ZAVADIL, 26808
Irigonegaray, Turney,
& Revenaugh, L.L.P.
1535 SW 29th Street
Topeka, KS 66611
(785) 267-6115 ph.
(785) 267-9458 fax
pedro@itrlaw.com
jason@itrlaw.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed electronically on this 20th day of November, 2023, to the following:

Jesse A. Burris:	jesse.burris@ag.ks.gov
William Skepnek:	William.skepnek@ag.ks.gov
Anthony Powell:	Anthony.powell@ag.ks.gov
Erin B. Gaide:	erin.gaide@ag.ks.gov
Douglas R. Dalglish:	Doug.dalgleish@stinson.com
Scott Hecht:	scott.hecht@stinson.com
Rose Saxe:	rsaxe@aclu.org
Aditi Fruitwala:	afruitwala@aclu.org
Karen Leve:	kleve@aclukansas.org
Sharon Brett:	sbrett@aclukansas.org
D.C. Hiegert:	dhiegert@aclukansas.org



Jason A. Zavdil

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, ex)
rel. KRIS KOBACH,)
Attorney General,)
)
Petitioner,)

v.) No. 23 CV 422

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

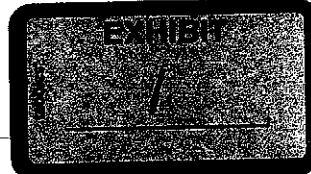
Respondents,)

and)

ADAM KELLOGG, KATHRYN)
REDMAN, JULIANA OPELIA)
GONZALES-WAHL, DOE)
INTERVENOR-RESPONDENT)
1, and DOE INTERVENOR-)
RESPONDENTS 2, on)
behalf of her minor)
child,)

Intervenor-)
Respondents.)

VIDEOTAPE DEPOSITION OF SHERIFF BRIAN
HILL, a Witness, taken on behalf of the
Respondents before Jane A. Blackerby, CSR #1369,
CCR #877, pursuant to Notice on the 26th day of
October, 2023, at the offices of Irigonegaray,
Turney & Revenaugh, L.L.P. 1535 SW 29th Street,
Topeka, Kansas.



Page 2

1 APPEARANCES
 2
 3 FOR THE PETITIONER:
 4 Mr. William Skepnek, Jr.
 5 Ms. Erica Gaide
 6 OFFICE OF THE ATTORNEY GENERAL
 7 120 SW 10th Avenue
 8 2nd Floor
 9 Topeka, Kansas 66612-1597
 10 785.296.2779
 11 William.Skepnek@AG.KS.GOV
 12 FOR THE RESPONDENTS:
 13 Mr. Pedro J. Irigonegaray
 14 Mr. Jason A. Zavadil
 15 IRIGONEGARAY, TURNEY & REVENAUGH, L.L.P.
 16 1535 SW 29th Street
 17 Topeka, Kansas 66611
 18 785.267.6115
 19 pedro@itriaw.com
 20 Mr. Ted Smith
 21 KANSAS DEPARTMENT OF REVENUE
 22 915 S.W. Harrison Street
 23 Topeka, Kansas 66611
 24
 25 FOR THE RESPONDENT-INTERVENORS:
 26 Ms. Sharon Brett
 27 Mr. D.C. Hiegert
 28 Mr. Doug Dalglish
 29 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
 30 P.O. Box 13048
 31 Overland Park, Kansas 66282
 32 913.303.3641
 33 sbrett@aclukansas.org
 34 hiegert@aclukansas.org
 35
 36 THE VIDEOGRAPHER:
 37 Mr. David Leyland
 38 VERITEXT LEGAL SOLUTIONS
 39 ALSO PRESENT:
 40 Mr. Justin Whitten
 41 Ms. Ashley Hubbard

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1 (Deposition commenced at 11:30 a.m.)
 2 THE VIDEOGRAPHER: We are on the
 3 record. Today's date is October the 26th, 2023.
 4 We are going on the record at 11:30 a.m. This is
 5 the video deposition of Brian Hill in the matter
 6 of the State of Kansas versus Harper, et al.
 7 Case number is 23 CV 422. This deposition is
 8 taking place at 1535 Southwest 29th Street in
 9 Topeka, Kansas. Will counsel please state your
 10 appearance and affiliation for the record.
 11 MR. IRIGONEGARAY: May it please
 12 the court, Pedro Irigonegaray on behalf of the
 13 Respondent. With me is my law partner, Mr. Jason
 14 Zavadil.
 15 MR. SKEPNEK: May it please the
 16 court, Will Skepnek on behalf of the Attorney
 17 General's Office. Plaintiff soon to be here will
 18 be Jesse Burris, assistant attorney.
 19 MS. BRETT: And Sharon Brett, along
 20 with D.C. Hiegert and Doug Dalglish for the
 21 intervenors.
 22 THE VIDEOGRAPHER: All right. Will
 23 the court reporter please swear -- oh, sorry, did
 24 I miss? Will the court report please swear in
 25 the witness.

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1 INDEX
 2 WITNESS: PAGE:
 3 SHERIFF BRIAN HILL
 4 Examination by Mr. Irigonegaray 5
 5 Examination by Ms. Brett 54
 6 Examination by Mr. Skepnek 54
 7 Examination by Mr. Irigonegaray 56
 8 Examination by Ms. Brett 57
 9
 10 EXHIBITS
 11 NO.: DESCRIPTION: MARKED:
 12 Exhibit I Affidavit 23
 13
 14
 15 (Reporter's Note: Exhibits were filed with the
 16 original transcript.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 5

1 BRIAN HILL,
 2 having first duly sworn, testified under oath as
 3 follows:
 4 EXAMINATION
 5 BY MR. IRIGONEGARAY:
 6 Q. Would you please state your name.
 7 A. Brian Hill.
 8 Q. And, Mr. Hill, what is your current
 9 employment?
 10 A. I'm currently the sheriff of Shawnee
 11 County.
 12 Q. And how long have you been the sheriff
 13 of Shawnee County?
 14 A. Since April of 2019.
 15 Q. Mr. Hill, have you ever been deposed
 16 before?
 17 A. I have, yes.
 18 Q. Okay. There are some rules that I like
 19 to go over with you. If you do not understand a
 20 question that I ask, please ask me to repeat it
 21 or rephrase it. Is that appropriate?
 22 A. Yes.
 23 Q. If at anytime you need to take a break,
 24 please let me know and we will accommodate that.
 25 When counsel asks a question, I would ask that as

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1 a courtesy to the court reporter you allow us to
2 finish the question before you respond. Do you
3 understand that?
4 A. Yes.
5 Q. Okay. Additionally, instead of saying
6 uh-huh or huh-uh it is important for the record
7 for you to state yes or no to any yes or no
8 question. Is that understood?
9 A. Yes.
10 Q. Okay. You understand that the
11 deposition we're taking is a formal judicial
12 proceeding?
13 A. Yes.
14 Q. And you understand that being under oath
15 you would be subject to the laws of perjury that
16 apply to any individual testifying under oath.
17 You understand that, don't you, sir?
18 A. Yes.
19 Q. You also understand that your deposition
20 may be used in a court of law to challenge your
21 credibility if you say something different later
22 on. You understand that?
23 A. Yes.
24 Q. Okay. And if you at anytime would like
25 -- I believe I already told you to take a break,

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1 just please let us know. Fair enough?
2 A. Yes.
3 Q. Okay. Do you have any questions of me
4 before I start?
5 A. No, sir.
6 Q. Okay. Give me a brief background of
7 your education.
8 A. I went to college in McPherson, Kansas.
9 Actually studied with a teaching emphasis, and
10 obtained a bachelor's of science and then went
11 into law enforcement.
12 Q. When did you receive your bachelor's
13 degree?
14 A. That's a good question, because I was --
15 I left McPherson in what, '89, and I actually
16 took one more class up here at Washburn to round
17 out and graduate from that degree, so early
18 Nineties, maybe '92 I've been a police officer
19 for a year or so.
20 Q. So it's your degree from which
21 university?
22 A. It is from McPherson. They transferred
23 the class from Washburn to McPherson.
24 Q. Okay. Then you said that you went into
25 law enforcement?

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1 A. Yes, sir.
2 Q. And where did you first commence your
3 law enforcement career?
4 A. Topeka Police Department.
5 Q. And what year would that have been?
6 A. In 1991.
7 Q. Fair to say that you went from college
8 into law enforcement?
9 A. Yeah. I did hold a job working at a
10 factory in McPherson son, Kansas for, I don't
11 know, a year and a half or so before I went in to
12 law enforcement.
13 Q. Okay. And since 1991 have you been
14 continuously, until today, employed in law
15 enforcement?
16 A. I retired in 2018 from the Topeka Police
17 Department, after being shot in the line of duty.
18 Took a year or so to recover. Then I came back
19 and worked for 501 Police Department for a little
20 less than a year before becoming sheriff of
21 Shawnee County.
22 Q. And is it fair to say then, from 1991 to
23 2018 you worked for the Topeka Police Department?
24 A. Yes, sir.
25 Q. Okay. And in what capacity commencing

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1 in 1991 until your retirement did you work for
2 the police department?
3 A. I worked as a uniformed patrol officer
4 for the first couple of years. Then I worked on
5 the CAT unit, which was the street crime action
6 team. I went from there to narcotics
7 investigation, and from there I went to the
8 detective division and spent the majority of my
9 career in homicide investigation major case.
10 Q. You are aware that in the case of State
11 of Kansas, ex rel, Chris Kobach versus David
12 Harper and Mark Burghart in their capacity,
13 official capacity and a number of other
14 individuals now involved as intervenors. You
15 have been designated as an expert witness?
16 A. Okay.
17 Q. You're aware of that?
18 A. I am aware that I prepared an affidavit
19 as to the relevance of the Kansas driver's
20 license. I -- I was unaware of who all was
21 involved in those lawsuits.
22 Q. And is that what you refer to as your
23 affidavit?
24 A. Yes, sir, it is.
25 Q. May I see it, please.

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1 A. Yes, sir.
2 MR. IRIGONEGARAY: We need a short
3 break. Jason, would you please make four copies
4 of that.
5 THE VIDEOGRAPHER: Please stand by.
6 The time 11:38 a.m., and we're going off the
7 record.
8 (Off the record.)
9 MR. IRIGONEGARAY: Let me start
10 over. We've just been handed an affidavit by
11 Sheriff Hill, an affidavit that I have not seen
12 before, neither has counsel for the intervenors.
13 When I asked the Attorney General's Office
14 present here counsel whether or not he had seen
15 that affidavit before, he's just told me that he
16 didn't know if it existed.
17 MR. SKEPNEK: That's not what I
18 said. I said I didn't know if we had the
19 finalized affidavit, so I know that.
20 MR. IRIGONEGARAY: Did you know of
21 its existence?
22 MR. SKEPNEK: I know that an
23 affidavit has been sent back and forth. I didn't
24 know if there's a final signed affidavit. There
25 had been discussion of one.

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1 MS. BRETT: But your witness has
2 shown up to the deposition with an affidavit
3 saying that that's his affidavit.
4 THE WITNESS: Well, I said at least
5 a report I prepared.
6 MR. SKEPNEK: Yeah, listen. I
7 don't believe we have a final affidavit that we
8 have given him to sign and have a final
9 affidavit. I'm confused about what the issue is.
10 MR. IRIGONEGARAY: Well, the issue
11 is that we are now taking the deposition of a
12 witness who signed an affidavit under oath. He's
13 told me that that is his affidavit, and we didn't
14 have it before the deposition.
15 MR. SKEPNEK: Listen, we did not
16 give him a final affidavit to sign. There's
17 affidavits that we had sent to him, you know, to
18 look at, but I don't know that -- we didn't say,
19 hey, this is the final affidavit that you're
20 going to, you know, swear under oath on.
21 MR. IRIGONEGARAY: But if you knew
22 that an affidavit was being exchanged for final
23 approval --
24 MR. SKEPNEK: I didn't know it was
25 being exchanged for final approval.

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1 MS. BRETT: So it's your position
2 that there was just an affidavit drafted, gone
3 back and forth and your witness came to this
4 deposition with that affidavit in hand?
5 MR. SKEPNEK: Yes.
6 MS. BRETT: And that's not his
7 affidavit?
8 MR. SKEPNEK: I am not -- I don't
9 believe that's a final. Now, he may have signed
10 it and he may believe that's his final affidavit,
11 but we did not send him a final affidavit to
12 sign.
13 MS. BRETT: But this is your expert
14 witness. So how are we supposed to prepare for a
15 deposition when there is an affidavit out there
16 that's never been presented to us and he is
17 basing his testimony on a document that was not
18 provided to us?
19 MR. SKEPNEK: I don't know -- are
20 you basing your testimony on that affidavit?
21 THE WITNESS: Well, the things in
22 there are --
23 MR. SKEPNEK: Are they true?
24 THE WITNESS: They are true, yeah.
25 MR. SKEPNEK: But I don't believe

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1 that -- I mean, listen, guys, did we receive
2 discovery that we haven't responded to? I mean,
3 when we did our --
4 MR. IRIGONEGARAY: This is
5 different. This is his affidavit under oath.
6 MR. SKEPNEK: We have not given him
7 a final. Listen, if he signed something, it
8 wasn't at our direction.
9 MR. IRIGONEGARAY: But you are --
10 did you prepare the affidavit?
11 MR. SKEPNEK: I did not prepare the
12 affidavit.
13 MR. IRIGONEGARAY: Who prepared the
14 affidavit?
15 MR. SKEPNEK: I do not know.
16 MR. IRIGONEGARAY: So was your
17 office involved in the preparation of that
18 affidavit?
19 MR. SKEPNEK: Likely, yes.
20 MR. IRIGONEGARAY: So if your
21 office was involved in the preparation of the
22 affidavit, you were aware that an affidavit had
23 been sent to the witness. Correct?
24 MR. SKEPNEK: I believe one at some
25 point has been sent. I don't know. I was not

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1 involved in that process.
2 MR. IRIGONEGARAY: Who was?
3 MR. SKEPNEK: I don't know.
4 MS. BRETT: I think we're going to
5 need all communications, then, with the witness
6 to figure out what happened here, but I don't --
7 I mean, my concern now is that we are not
8 prepared to go forward with the deposition that's
9 based on an affidavit -- if his testimony is
10 based on an affidavit that he has not produced to
11 us, that you have not produced to us. He's your
12 witness. He's not retained.
13 MR. SKEPNEK: Yes.
14 MS. BRETT: He is your expert
15 witness that you have designated.
16 MR. SKEPNEK: Yes.
17 MS. BRETT: Your designation was a
18 paragraph long. This is a four page or five page
19 document.
20 MR. SKEPNEK: I believe our
21 designated complied with the rules.
22 MS. BRETT: I can there's a debate
23 about that.
24 MR. SKEPNEK: That's fine, but I
25 mean, you know, there's not a court order saying

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1 otherwise. I believe we provided our --
2 MS. BRETT: So it's your position
3 that it's proper to have an expert witness that
4 you have designated show up to a deposition with
5 a copy of an affidavit in hand that his testimony
6 is going to be based off of and that you have
7 never produced to us?
8 MR. SKEPNEK: I don't know that his
9 deposition or his testimony is going to be based
10 upon that affidavit.
11 MS. BRETT: That's what he just
12 said.
13 MR. IRIGONEGARAY: And further,
14 it's an affidavit that was produced by your
15 office by someone who you do not -- you're not
16 able at this moment to identify.
17 MR. SKEPNEK: That's right.
18 MR. IRIGONEGARAY: This -- this
19 just puts us in a -- in a very difficult
20 position. It's not -- it's not fair to us. It's
21 not in line with the practice in district courts
22 in Kansas. I'm -- I'm very disturbed by this
23 and --
24 THE WITNESS: This has never been
25 signed by me. This was what I --

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1 MR. SKEPNEK: Yeah.
2 MR. IRIGONEGARAY: The fact that
3 it's not signed is not the issue right now. The
4 fact is that the attorney general's office in
5 anticipation of your testimony and in support of
6 their claims as Petitioner in the case at hand
7 prepared an affidavit which was submitted to you,
8 and at the time of this deposition knowing that
9 we were going to depose your deposition in
10 preparation for our hearing, failed to notify us
11 that an affidavit had been prepared by them, much
12 less that an affidavit had been submitted to
13 Officer Hill and that the attorney general's
14 office is not able to tell us at this point who
15 prepared the affidavit from the attorney
16 general's office. Didn't even know if the
17 affidavit had been signed. Let's do this. Let's
18 take a five-minute break. We need to conference
19 as to what we're going to do next. Off the
20 record, please.
21 (Recess.)
22 THE VIDEOGRAPHER: The time is
23 11:52 p.m., and we're back on the record.
24 MR. IRIGONEGARAY: Counsel, have
25 you had an opportunity during the break to

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1 ascertain who the author of the affidavit from
2 your office is?
3 MR. SKEPNEK: I spoke with fellow
4 counsel here, Jesse Burris, and I'll let Jesse
5 answer because he knows more than me, so.
6 MR. BRUNS: Do I need a microphone?
7 MR. IRIGONEGARAY: Yes. Let me
8 just hand you mine.
9 THE VIDEOGRAPHER: I can catch you
10 on this one. You're fine. Thank you, sir.
11 MR. BURRIS: So Jesse Burris, AG's
12 office. Sitting here right now my recollection
13 is that I received a draft affidavit from
14 someone, I don't remember who, and then I
15 communicated with -- about it with Matt
16 Patterson, general counsel of the Shawnee County
17 Sheriff's Office. It's been awhile, though, so I
18 would need to go back and look at my e-mails to
19 get further clarification or information. That's
20 like the basics of my recollection right now.
21 MR. IRIGONEGARAY: So I want to
22 make sure I understand. Did you receive this
23 affidavit or did you receive a different version
24 of this affidavit?
25 MR. BURRIS: It was probably

1 something different than that, is my guess.
 2 MR. IRIGONEGARAY: And where is the
 3 draft of that affidavit?
 4 MR. BURRIS: Well, I would assume
 5 in my e-mails, my e-mail account.
 6 MR. IRIGONEGARAY: Okay. So how
 7 many drafts of this affidavit do you recall?
 8 MR. SKEPNEK: Hold on, Counsel. I
 9 mean, listen, I get that you're upset about the
 10 affidavit, but it's a draft affidavit. We've
 11 never had a finalized affidavit that we said was
 12 going to be his testimony. Okay? And -- and
 13 right now we're not being deposed. If you guys
 14 don't want to move forward with this because you
 15 feel that's prejudicial, that's fine, but it's
 16 simply a draft affidavit. We have never sent
 17 anything final to Sheriff Hill that says this
 18 will be your testimony in this case.
 19 MR. IRIGONEGARAY: So in response I
 20 want to know, are you then declining to answer
 21 any more questions so that we can understand how
 22 this occurred or are you instructing Jesse just
 23 to not say anything else?
 24 MR. SKEPNEK: I'm not instructing
 25 Mr. Burris to say anything or not. What I'm

1 saying is we're not being deposed right now.
 2 MR. IRIGONEGARAY: I understand.
 3 MR. SKEPNEK: And I don't think
 4 it's proper to use this setting for that.
 5 MR. IRIGONEGARAY: I understand,
 6 but you understand that this was created not by
 7 the Respondent or the Intervenors. This problem
 8 has been created by the attorney general's
 9 failure to provide us an affidavit.
 10 MR. SKEPNEK: We don't have a final
 11 affidavit to provide you.
 12 MR. IRIGONEGARAY: I understand.
 13 MR. SKEPNEK: So what would you
 14 like us to provide if we don't have a final
 15 affidavit?
 16 MR. IRIGONEGARAY: An affidavit has
 17 been exchanged on now appears to be numerous
 18 occasions. The original affidavit from a source
 19 Mr. Burris cannot identify with several
 20 variations of the affidavit, and when the witness
 21 showed up today for his deposition he tells me
 22 he's relying on this affidavit for his testimony,
 23 so.
 24 MR. SKEPNEK: I don't know if
 25 that's what his testimony was. I don't know if

1 he said he was relying upon it.
 2 MR. IRIGONEGARAY: Okay. So let me
 3 ask -- let me just finish asking, then. Do you
 4 know how many versions of this affidavit --
 5 MR. BURRIS: I don't recollect.
 6 I'd have to check my records.
 7 MR. IRIGONEGARAY: And do you know
 8 who originally sent you the affidavit?
 9 MR. BURRIS: Sitting here right
 10 now, I don't recollect.
 11 MS. BRETT: I just to want make a
 12 note on the record as well before we move that
 13 the Intervenors served discovered request on the
 14 Attorney General's Office. Request for
 15 production No. 14 says, "All documents and
 16 communications upon which the Attorney General
 17 relies regarding the ability of law enforcement
 18 to identify a person related to the gender marker
 19 and/or sex designation on the person's driver's
 20 license," and the Attorney General's response was
 21 none. So if this communication is back and forth
 22 with the sheriff or with the sheriff's general
 23 counsel occurred prior to us serving this
 24 discovery request or your answer to this
 25 discovery request, then those documents have not

1 been produced. And so I would ask that they be
 2 produced because they are responsive directly to
 3 that discovery request, and they would have been
 4 beneficial in preparation for today's deposition.
 5 MR. IRIGONEGARAY: And furthermore,
 6 there is a duty to augment discovery, and I note
 7 that the date on this affidavit is on the 18th
 8 day of August, 2023. That means that the
 9 discovery was not truthfully answered, and that's
 10 extremely disturbing because we are now almost at
 11 the end of October and this affidavit, although
 12 it's unsigned and clearly it's not the first
 13 draft, based upon what we've been told, goes back
 14 to the 18th day of August.
 15 So we'll proceed with the deposition at
 16 this time, and we'll reserve seeking a remedy
 17 regarding this situation at the appropriate time
 18 with the district court.
 19 Q. (By Mr. Irigonegaray) Sheriff Hill, the
 20 information contained in this affidavit, although
 21 not signed, you've reviewed?
 22 A. Yes. I've read it before I walked in
 23 here.
 24 Q. How many other affidavits have you
 25 reviewed -- reviewed before you received this

1 one?
 2 A. I only recall one time a correspondence
 3 has been sent over to the general counsel and I
 4 asked something be changed in it, and that was
 5 it.
 6 Q. So when did you first receive an
 7 affidavit?
 8 A. Probably on the date that is on here, I
 9 would imagine. Again, I would defer that to
 10 Mr. Patterson's e-mail account, I mean when it
 11 came over, but.
 12 Q. The date on this affidavit is the 18th
 13 of August. If you edited the original affidavit,
 14 unless the edited version was returned on the
 15 same day, it would had to have been before August
 16 18th. Correct?
 17 A. Well, or they just changed whatever I
 18 asked to be changed in the affidavit and left
 19 everything else coming over the same, so the date
 20 could be the same on it. I don't know.
 21 Q. Okay.
 22 A. If that was ever changed or how that
 23 come to be.
 24 Q. Do you recall what -- let's do this.
 25 Let's mark this affidavit as Exhibit I.

1 (Hill Exhibit I was marked for
 2 identification by the reporter.)
 3 Q. (By Mr. Irigonegaray) And let me hand
 4 you what I've marked as Exhibit I, and would you
 5 compare it with the affidavit you brought and let
 6 me know whether or not it is an accurate copy of
 7 your affidavit?
 8 A. It appears to be the same copy, yes,
 9 sir.
 10 Q. And the highlighted yellow markings on
 11 the affidavit, those are your highlights?
 12 A. Yes, sir. I did that before I walked in
 13 here today.
 14 Q. Okay. And do you recall what you
 15 changed in the original affidavit that was sent
 16 to you?
 17 A. I do not recall specifically what that
 18 was, no.
 19 Q. Okay. Do you recall what it dealt with?
 20 A. My recollection of how this went was I
 21 went to the attorney general's office, had a
 22 conversation about what I believed the importance
 23 of the Kansas driver's license was to law
 24 enforcement. Worked with Mr. Patterson on what I
 25 was willing to testify to as to the importance of

1 that, and then there was an affidavit that was
 2 sent over that had something that was just
 3 slightly wrong. I don't remember what it was,
 4 but as I read through it I did think that was
 5 what I had meant during the conversation, and I
 6 asked that to be changed.
 7 Q. All right.
 8 A. And to my recollection, this is the last
 9 copy that -- or the second copy. Again, I would
 10 defer to Mr. Patterson's e-mail.
 11 Q. And just so the record is clear, who is
 12 Mr. Patterson?
 13 A. Matt Patterson is the counsel for
 14 Shawnee County Sheriff's Office.
 15 Q. Okay. Now, you just told us that you
 16 went to the attorney general's office?
 17 A. Yes, sir.
 18 Q. How did it come about that you went to
 19 the attorney general's office?
 20 A. I was asked if the Kansas driver's
 21 license, how it affected law enforcement, and
 22 went to Mr. Kobach's office over there and met
 23 with counsel in a room as to what I felt like the
 24 importance of the Kansas driver's license was.
 25 Q. Who asked you how the driver's license

1 issue impacted law enforcement officers?
 2 A. I don't recall specifically, but it was
 3 from the attorney general's office.
 4 Q. Did you receive a phone call, a letter,
 5 an e-mail?
 6 A. Could have been an e-mail. I would have
 7 to go back and try to figure that out.
 8 Q. Would you do so for us?
 9 A. Uh-huh. Yes.
 10 Q. And please submit it to your counsel so
 11 that we can have it. When do you recall being
 12 asked to go to the attorney general's office?
 13 A. I don't know that date off the top of my
 14 head. I could probably get that for you looking
 15 back on my calendar.
 16 Q. Fair to say it was before the 18th of
 17 August, 2023?
 18 A. Yes, sir.
 19 Q. Okay. And did you take any notes while
 20 you were at the attorney general's office?
 21 A. I did not.
 22 Q. Did you see the attorney general's
 23 office taking notes as you were talking?
 24 A. I believe there was individuals that
 25 were writing things down, but I --

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1 Q. Who was present?
2 A. That's -- I don't know that I remember
3 everybody's name.
4 Q. To the best of your recollection who was
5 present?
6 A. Well, I know Mr. Patterson was with me,
7 and then I'm sure there's a record of the
8 counselors that were in that meeting from the
9 attorney general's office, but I can't tell you
10 their name off the top of my head.
11 Q. You don't remember a single person that
12 was there in addition to Mr. Patterson?
13 A. There was a couple of attorneys there
14 about that asked, and it was -- and I'm sorry,
15 they introduced themselves to me, but I cannot
16 remember their names at this point.
17 Q. Either of these two gentlemen from the
18 attorney general's office present?
19 A. I don't believe either one of these
20 gentleman was there.
21 Q. Okay. So it was two other individuals,
22 attorneys from the attorney general's office.
23 Correct?
24 A. Yes, sir.
25 Q. Okay. And did you at that time give

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1 them truthful information?
2 A. Yes.
3 Q. And did you tell them about all
4 instances in which you were aware of problems
5 with transgender people and driver's licenses?
6 A. I had talked about specifically the
7 information on the driver's license and how
8 important it was to be an accurate form so that
9 we could track people.
10 Q. But that wasn't my question. Did you
11 share with the attorney general's office any
12 specific instances of an officer, either while
13 you were a police officer with Topeka Police
14 Department or in your capacity as the Sheriff of
15 Shawnee County, wherein a law enforcement officer
16 had an issue with a transgender person?
17 A. No, sir.
18 Q. In fact, as you sit here today you don't
19 know of a single instance in which that has been
20 a problem. Correct?
21 A. I do not.
22 Q. Okay. After you went to the attorney
23 general's office, and I believe your recollection
24 is as a consequence of an e-mail which was sent
25 to you, how many times did you visit the attorney

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1 general's office?
2 A. That was the only time that I recall
3 going over there, and then it was just e-mail
4 correspondence.
5 Q. Okay. And you have a record of all of
6 those e-mails?
7 A. Oh, it would have went through
8 Mr. Patterson.
9 Q. Okay. So Mr. Patterson would receive
10 the e-mails from the attorney general's office?
11 A. I assume, yes.
12 Q. Well, either you received them or
13 Mr. Patterson did. Did you receive more than one
14 e-mail from the attorney general's office?
15 A. I don't recall receiving an e-mail from
16 the attorney general's office. I got my
17 correspondence from Mr. Patterson.
18 Q. Okay. Perhaps I misunderstood you, but
19 I thought you said earlier you had received an
20 e-mail or you thought you received an e-mail from
21 the attorney general's office?
22 A. There was -- oh, well, yeah. Either
23 e-mail or a phone call. I'm trying to recall how
24 I ended up in that first meeting at Kris Kobach's
25 office.

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1 Q. Okay.
2 A. We were -- I was asked somehow, and
3 forgive me if I can't remember --
4 Q. It's okay.
5 A. -- exactly how I got over there as to
6 the importance of Kansas DLs, and I went over to
7 his office and met with some individuals. It was
8 a brief conversation on what I thought the
9 importance of Kansas DLs were. Mr. Patterson
10 then worked with the attorney general's office on
11 what I would be willing to testify to.
12 Q. Okay.
13 A. So I can get you other details about
14 things if you'd like, but I don't recall.
15 Q. Yes. We would like all communications
16 that involve you through Mr. Patterson and the
17 attorney general's office.
18 A. Okay.
19 Q. Okay? And we will follow up with a
20 formal request for that, but if you could start
21 gathering those matters.
22 Now, we've established that you have no
23 knowledge personally of any issues regarding
24 transgender individuals and driver's licenses.
25 The same would be true from all the officers that

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1 you supervise because had you known of those, you
2 would have put it in your affidavit. Correct?
3 A. If I would have known of it, yes, sir.
4 Q. Okay. So to your knowledge, it's not
5 just you, but you have absolutely no information
6 from any of your officers since you've been
7 sheriff that a problem with transgender and
8 driver's licenses exists. Correct?
9 A. Correct. I don't know of any specific
10 instances.
11 Q. Okay. Now, what I like to do is I like
12 to go over your affidavit, and we'll go over it
13 paragraph by paragraph.
14 A. Okay.
15 Q. You -- and by the way, let's do this.
16 Have you had the time to read that affidavit
17 fully?
18 A. Yes, sir.
19 MR. IRIGONEGARAY: Okay. I would
20 like for you, if you would administer him the
21 oath to sign that affidavit, please.
22 THE COURT REPORTER: I'm not a
23 notary.
24 MR. IRIGONEGARAY: Oh, you're not a
25 notary. Okay. Jason, would you have Nida come

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1 in here, please. Tell her to bring her seal.
2 Thanks. Hi, Nida. Nida, I want you to witness
3 as the notary the signing of an affidavit.
4 Q. (By Mr. Irigonegary) So Sheriff Hill,
5 before you sign the affidavit, Exhibit No. 1, and
6 here, if you would line the exhibit, the actual
7 exhibit. Exhibit No. 1 is an actual copy
8 verified by you of the affidavit which you
9 brought to this deposition today. Correct?
10 A. Yes, sir.
11 Q. And the affidavit marked as Exhibit
12 No. 1 is a truthful account of all the
13 information that you have available regarding
14 driver's license issues and transgender
15 individuals. Correct?
16 A. Yes, sir, to my knowledge.
17 Q. Okay. And although the affidavit is not
18 signed, do you agree that everything in that
19 affidavit is, pursuant to your knowledge, true
20 and correct?
21 A. Yes, sir.
22 MR. IRIGONEGARY: Okay. Nida.
23 Thank you, Sheriff.
24 MS. IMHOFF: Can I ask you to also
25 sign my book that just says I notarized the

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1 document for you?
2 THE WITNESS: Okay.
3 MR. IRIGONEGARAY: Thank you.
4 THE WITNESS: And the date would be
5 wrong on it.
6 MR. IRIGONEGARAY: Yes. Would you
7 please write below this affidavit was executed on
8 today's date, Nida. Thank you.
9 MR. SKEPNEK: Pedro, can I have a
10 copy of that, please?
11 MR. IRIGONEGARAY: Yes, of course.
12 Would you make an extra copy, please. In fact --
13 MS. IMHOFF: How many would you
14 like?
15 MR. IRIGONEGARAY: Let's do this.
16 So everyone has a complete copy, six copies,
17 please.
18 Q. (By Mr. Irigonegaray) Okay. So let me
19 return your affidavit to you. Exhibit No. 1, the
20 first paragraph describes that you currently
21 serve as Shawnee County Sheriff. Is that
22 correct, sir?
23 A. Yes, sir.
24 Q. Okay. And that you've been in that role
25 since April the 23rd, 2019. Correct?

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1 A. Yes, sir.
2 Q. And that you were certified as the law
3 enforcement officer in the state of Kansas since
4 1991. Correct?
5 A. Yes, sir.
6 Q. Okay. That you retired from -- No. 2 is
7 that you he retired from the Topeka Police
8 Department after 27 years of service. Correct?
9 A. Yes, sir.
10 Q. While you served as a uniformed patrol
11 officer on the street crime action team as a
12 narcotics investigation, as a member and
13 eventually a leader of the SWAT team and as a
14 major case detective. Correct?
15 A. Yes, sir.
16 Q. Okay. No. 3, that you have extensive
17 experience in narcotics investigations, homicide
18 investigations, major case investigations,
19 tactical entries, interviewing, interrogating and
20 arresting suspects, writing reports, completing
21 search warrant applications and executing search
22 warrants. I have executed thousands of arrests
23 and searches over the course of my law
24 enforcement career. Did I read that correctly?
25 A. Yes, sir.

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1 Q. 4. "Over the course of my career I
2 received extensive training with respect to and
3 as a Washburn University adjunct professor of
4 criminal justify. I have taught others about all
5 the things mentioned in the preceding paragraph.
6 Additionally, I have instructed law enforcement
7 officers and police academy cadets on firearms
8 and defensive tactics." Correct?
9 A. Yes, sir.
10 Q. No. 5. "Through my service with the
11 Topeka Police Department I received 20 service
12 awards, including the gold award for exceptional
13 police service and medal of valor. I was shot in
14 the line of duty in November 2016 during a major
15 case investigation." Did I read that correctly,
16 sir?
17 A. Yes, sir.
18 Q. No. 6. "Law enforcement officers use
19 driver's licenses to confirm the identify of
20 subjects daily and rely upon that information to
21 be accurate." Correct?
22 A. Yes, sir.
23 Q. Are there other forms of identification
24 that law enforcement can rely on?
25 A. There is, but predominantly street

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1 officers work primarily with driver's licenses.
2 It's the ID that they have when they come in
3 contact with individuals.
4 Q. Okay. To your knowledge, what happens
5 if an individual has a driver's license that says
6 they weigh 230 pounds and it's clear from looking
7 at them that they weigh, let's say, 150? What do
8 you do?
9 A. I don't do anything. It's -- if I can
10 plainly identify that person from the face on
11 that driver's license, I am assuming they have
12 had a weight change.
13 Q. Okay. What if their hair color is
14 different?
15 A. It happens, but again, if I can identify
16 that individual, it's not usually problematic.
17 Q. Okay. What if they had a beard and now
18 they don't?
19 A. Again, same answer.
20 Q. So you rely on facial appearance to
21 validate identity?
22 A. Well, predominantly when -- when we have
23 a driver's license it's age, sex. Then we run
24 the name, the date of birth, the sex of the
25 individual, and that's where you will get your

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1 hits that somebody would have a warrant, attempt
2 to locate, officer safety bulletin or whatever.
3 Those are the three main categories that we rely
4 upon.
5 Q. And those three categories again are?
6 A. Well, the name, the sex and the date of
7 birth.
8 MR. IRIGONEGARAY: Did you get --
9 MS. BRETT: Do you need one for
10 yourself?
11 MR. IRIGONEGARAY: Yes. Thank you.
12 Q. (By Mr. Irigonegaray) Have you ever had
13 an occasion to stop an individual that was
14 transgender?
15 A. Yes.
16 Q. And obviously, that stop did not present
17 any problem to you. Correct?
18 A. Well, I guess I should clarify stop,
19 because my contact was in an investigative
20 capacity with a narcotics investigation with an
21 individual that was transgender, and it didn't
22 present a huge problem. That person's driver's
23 license actually showed male, either -- either
24 way, but no, it wasn't -- as much as of a problem
25 for us locally because we knew who this

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1 individual was.
2 Q. I see. Okay. Is that the only
3 instance?
4 A. I have had another investigation with a
5 transgender individual that was involved in a
6 violent assault and was in the process of
7 transgenering into a male. I actually put them
8 in jail for charges and the jail called me and
9 said that it was not a male, and I was able to go
10 back and find records showing who that individual
11 was, and they had transgendered, but I was able
12 to figure that out through -- after the fact
13 looking at things.
14 Q. So it didn't present a significant
15 problem. Correct?
16 A. It did not at that time, no.
17 Q. Okay. All right. So then do people
18 from time to time change names?
19 A. Yes.
20 Q. Okay. Have you ever had that be a
21 problem?
22 A. I have personally not, no.
23 Q. Okay.
24 MR. IRIGONEGARAY: Off the record a
25 one moment, please.

1 THE VIDEOGRAPHER: Please stand by.
2 The time 12:21 p.m. and we're going off the
3 record.

4 (Off the record.)

5 THE VIDEOGRAPHER: The time is
6 12:23 p.m., and we're back on the record.

7 Q. (By Mr. Irigonegaray) Paragraph No. 7
8 states that the accuracy of information contained
9 in a state issued driver's license or
10 identification document is critically important
11 to the everyday functions of law enforcement
12 officers. Is that true?

13 A. Yes.

14 Q. Okay. When a law enforcement officer
15 has reason to believe that an individual has
16 violated the law, one of the officer's first
17 responsibility is to positively identify that
18 individual. Correct?

19 A. Yes, sir.

20 Q. Okay. No. 9. "Officers are required to
21 confirm identity for a myriad of reasons,
22 including the issuance of traffic citations,
23 national crime database checks, criminal
24 intelligent bulletins and to ensure officer
25 safety while engaging in the performance of their

1 duty." Correct?

2 A. Yes, sir.

3 Q. No. 10. "Officer must also positively
4 identify individuals in order to determine
5 whether the individual in their custody have
6 outstanding wants or warrants." Correct?

7 A. Yes, sir.

8 Q. No. 11. "Whether an individual may
9 lawfully possess a firearm, has a prior
10 conviction for a multitude of different driving
11 offenses, is banned from a local business or
12 is the subject of protection from abuse or
13 stalking order, depends on law enforcement's
14 ability to accurately identify the individual in
15 their custody." Correct?

16 A. Yes.

17 Q. No. 12. "If driver's licenses do not
18 reflect a person's biological sex, there are
19 multiple problems that may result for law
20 enforcement officers as follows." Correct?

21 A. Yes, sir.

22 Q. Now, what is biological sex?

23 A. Well, I'm referring to your history, who
24 you was born as. Your entire life leading up to
25 that point.

1 Q. Leading to what point?

2 A. If you've changed your sex on the
3 driver's license, if I -- if I stop Pat Smith and
4 Pat Smith as a male has wants and warrants and
5 things that are a problem that I should be
6 arresting him for, I may not even get a
7 confirmation on that when I say female because
8 that's one of the identifiers that law
9 enforcement uses. So that's my issue with all of
10 this. How do we track who you were with who you
11 are, because your criminal history matters. And
12 you have federal, state and local databanks that
13 provide information for law enforcement. So if
14 someone can walk into the DMV and change sex
15 without ever changing all of that, it puts us in
16 a position that, honestly, licenses will become
17 something we won't be able to rely on in law
18 enforcement.

19 Q. Are there any other methods through
20 which law enforcement establish identity?

21 A. Well, I mean, if we get into birth
22 certificates, trying to run NCICs on people, but
23 most police officers do not have the time. I
24 stopped you for a stop sign violation. I look at
25 your license, you got a warrant, you don't. I'm

1 going to release you, because we're not going to
2 detain you for the next hour as I try to run your
3 NCIC and then get all the way down to figure out
4 if you -- if that's all accurate. I guess my
5 issue with this all boils down to this. If this
6 is where we're going, you need to have a way to
7 interface with those databanks to let officers
8 know who you were from who you are now, because
9 all that history, whether you're prohibited from
10 carrying a gun, whether there's PFAs against you,
11 if there's officer safety bulletins from other
12 jurisdictions and I run that, I might not get an
13 alert on that.

14 Q. You say you might not. Correct?

15 A. Well, if I say female and they're
16 running and all the stuff is from males, the
17 likelihood of that dispatch telling me it's that
18 person is very unlikely.

19 Q. Other than the gender -- is there a
20 difference between sex and gender in your mind?

21 A. To me it just sounds like the same
22 thing.

23 Q. Okay.

24 A. Yeah.

25 Q. So other than the gender identification

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1 are there other markers in the driver's license
2 that are used for identification?
3 A. Well, it used to be Social Security
4 number, but they took that off because it
5 involved identity theft for Social Security
6 numbers, so now it's just the Kansas DL number
7 that are generated, but those DL numbers, to my
8 knowledge, don't interface with all these other
9 databanks. It's your name, sex, date of birth
10 that we get hits on things.
11 Q. There's also an address.
12 A. There can be, if you dig into those
13 things. There could be an address listed on a
14 warrant jacket, but it might not be in the actual
15 initial hit that an officer would be looking at.
16 Q. All right. The date of birth?
17 A. Yes.
18 Q. Okay. No. 13. "If driver's licenses
19 can be changed so they do not reflect a person's
20 biological sex, officers may not know to detain
21 fugitives who have changed the sex on their
22 driver's license after the date of the crime,
23 leading to their outstanding want or warrant in a
24 traffic stop. If the driver's license of the
25 driver's reflects a different gender than the

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1 gender corresponding to the sex of the wanted
2 person, the information may not precisely matched
3 the described individual in the warrant and the
4 officer may not execute the warrant due to the
5 doubts regarding identity." If an officer has
6 doubt regarding the identity, there are steps
7 that that officer can take. Right?
8 A. Well, they are if -- if you actually
9 suspect. I mean, you asked me earlier if anybody
10 had ever stopped anybody like this. Well, my
11 answer is no, because I wouldn't know. If
12 stopped somebody and let them go thinking it was
13 a female, I would maybe never know that I let a
14 guy go that had a warrant.
15 Q. So the reason for a stop, right, when
16 you stop someone?
17 A. It's a variety of reasons, but traffic
18 violations is usually one of the most common
19 ones.
20 Q. Okay. And your testimony would be,
21 then, that unless the gender at birth is on that
22 driver's license, people are going to get away
23 with crime?
24 A. Well, there's a possibility. If we
25 don't have a way to take who you're telling me

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1 you are today and match it with who you were for
2 the last however many years of your life, I
3 cannot accurately say that you had attempts to
4 locate, warrants, officer safety bulletins. I
5 know nothing other than today Pat Smith, female,
6 there's no wants and warrants for them. Oh,
7 okay. Well, Pat Smith, male, does have wants and
8 warrants. That's a whole other thing that I need
9 to be looking into. So my concern from a law
10 enforcement standpoint is not so much what we're
11 talking about here, but we need a way to track
12 who you're telling me you are today from who you
13 was yesterday, the day before. All your history
14 matters.
15 Q. No. 14. "If driver's licenses can be
16 changed so they do not reflect a person's
17 biological sex, it may cause significant safety
18 concerns to law enforcement if officer are unable
19 to ascertain an individual's true criminal
20 history." Same thing that you mentioned?
21 A. Yes, sir.
22 Q. All right. No. 16 -- or 15. "If
23 driver's licenses can be changed so that they do
24 not reflect a person's biological sex, it will
25 make the execution of search and arrest warrants

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1 more difficult. If a suspect answers the door
2 and presents a new driver's license in which the
3 sex has been changed, officers may not be able to
4 proceed with an arrest or search if the
5 underlying reason for the search is tied to the
6 individual's identity." Is that --
7 A. Yes. Yes.
8 Q. And again, biological sex, as you're
9 using it, requires the assigned at birth sex.
10 Correct?
11 A. Yes. What's on your birth certificate.
12 Q. Or gender.
13 A. Yes.
14 Q. All right. 16. "The subjects of search
15 and arrest warrants are often evasive.
16 Individual subject -- a search individual -- that
17 should be that are subject or subject to search
18 warrant" --
19 MS. BRETT: Subject to a search
20 warrant.
21 Q. (By Mr. Irigonegary) Yeah, should be
22 subject to a search warrant. Correct?
23 A. Yes. Probably.
24 Q. Okay. "Or arrest warrant, may attempt
25 to take advantage of the different sex on the

1 changed driver's license to avoid the search or
 2 arrest." Correct?
 3 A. Yes.
 4 Q. No. 17. "I'm specifically aware of the
 5 -- of a biological male who would commit criminal
 6 acts purporting to be a female and then remove a
 7 female wig and clothing in an attempt to evade
 8 arrest." Correct?
 9 A. Yes. I mean, those are personal
 10 experience kind of things. I've told you about
 11 the individual who was transgender and then would
 12 simply take off the female clothing and as a guy
 13 it was hard to identify. Now, I'm not sure this
 14 license would affect that one way or the other.
 15 I mean, you could still do that either way.
 16 Q. It's not uncommon for people to use a
 17 disguise when committing a crime, is it?
 18 A. It is not.
 19 Q. So No. 17 involves a disguise, not a
 20 transgender person. Correct?
 21 A. Well, that really was a transgender
 22 person who when the police would start looking
 23 for him as a female, he oftentimes would just
 24 take it off and be a male walking around. Now,
 25 locally we identified and we knew who that person

1 was so we can go find him, but there was times
 2 officers did not recognize him as a male from
 3 female, and -- but his license always was male.
 4 We knew who we was looking for when the ID came
 5 out.
 6 Q. Now, is this an individual that admitted
 7 to you being transgender, or are you relying on
 8 the fact that the individual would change
 9 disguise from time to time?
 10 A. This individual that was here for years
 11 and talked to law enforcement openly, had been
 12 arrested numerous times and so we come to know
 13 this person.
 14 Q. Right. But that wasn't my question. My
 15 question was, this individual that you mentioned
 16 in Paragraph 17, did that individual tell you at
 17 anytime that he or she is transgender as opposed
 18 to simply using disguises?
 19 A. Well, that individual used a female
 20 name, and yes, said he was a woman at that point
 21 in time.
 22 Q. Do you know what the difference is
 23 between -- let me rephrase.
 24 You know the difference between a
 25 disguise and a transgender individual. Correct?

1 A. I do. I do. This individual identified
 2 as a woman, and this was years ago. But yes, it
 3 wasn't just a disguise for him. He identified as
 4 a woman.
 5 Q. Okay. No. 18. "If driver's licenses
 6 can be changed so they do not reflect a person's
 7 biological sex, criminals may be able to
 8 establish alternative -- alternate -- alternate
 9 or different identities through the issuance of
 10 multiple drivers licenses. Correct?
 11 A. Yes.
 12 Q. And the issuance of multiple driver's
 13 licenses is a problem not just as you mention
 14 here regarding biological sex, one can obtain, if
 15 one has the criminal intent, a variety of
 16 different driver's license. Would that be a fair
 17 statement?
 18 A. It's possible. Yes.
 19 Q. Okay. No. 19. "If driver's licenses
 20 can be changed so they do not reflect a person's
 21 biological sex, it may pose a threat to the
 22 safety of our officers and cause confusion for
 23 officers encountering such subjects. For
 24 example, if a physical body search is necessary
 25 in a case, female officers should generally

1 conduct searches of a female subject. If the
 2 subject driver's license has been changed and the
 3 search individual is a biological male with
 4 anatomy and physical strength of a male, the
 5 female officers safety may be compromised."
 6 Correct?
 7 A. Yes, sir.
 8 Q. No. 20. "The more changed driver's
 9 licenses that there are in circulation, the
 10 greater chance of all of these law enforcement
 11 and safety problems may occur." Correct?
 12 A. Yes, sir.
 13 Q. And then finally, No. 21. "If the TRO,"
 14 and that's temporary restraining order, "in place
 15 in this case is lifted without an injunction
 16 ensuing that additional driver's licenses are not
 17 changed, then it is likely that many more
 18 driver's licenses will be changed by criminals
 19 who intend to use that change to deceive or evade
 20 law enforcement." Did I read that correctly?
 21 A. I believe that is a possibility, yes,
 22 sir.
 23 Q. Okay. Now, from Paragraph 13, if you go
 24 to Paragraph 13.
 25 A. Okay.

1 Q. To Paragraph 21, which of those did you
2 originally prepare or were those provided to you
3 in the affidavit that you originally received?

4 A. Well, if I'm understanding you right,
5 this is all information that I said was
6 problematic for law enforcement.

7 Q. But my question is, when you received
8 the affidavit --

9 A. Uh-huh.

10 Q. -- were Paragraphs 13 and 21 written for
11 you?

12 A. You mean did I write this myself?

13 Q. Yes.

14 A. No, I provided the content and
15 Mr. Patterson helped draft this affidavit.

16 Q. So it was Mr. Patterson that wrote the
17 affidavit?

18 A. Well, again, I asked him, because I
19 provided the content of what I believed was
20 problematic for law enforcement. That originally
21 came over, I believe, from the AG's office. I
22 asked something be changed and Mr. Patterson and
23 I read through this, and this was -- this was my
24 statement.

25 Q. So Paragraphs 13 through 21, you did not

1 write those photographs came from the AG's office
2 to Mr. Patterson?

3 A. I did not sit down and type any of this.

4 Q. I understand.

5 A. Yeah, I gave a statement and then it was
6 typed from our conversation of what I was
7 stating.

8 Q. And did you specifically state each and
9 every word in Paragraphs 13 to 21?

10 A. No, sir.

11 Q. What are the requirements needed in
12 Kansas to change gender on the driver's license?

13 A. I couldn't tell you what that is. It
14 was my understanding that they could -- somebody
15 would just walk in and make that assertion and
16 change their gender on the driver's license. I
17 don't know what that is. And again, my only
18 concern for all of this is we need a way to track
19 who you are today from who you were yesterday,
20 and you're going to have to tie that in to
21 federal, state and local databanks for all the
22 wants and warrants, officer safety bulletins and
23 all of those things.

24 Q. So you would want, for example, a
25 driver's license to be consistent with, let's

1 say, a passport?

2 A. I want it to be to where if we run it, I
3 know who is in front of me and I know what their
4 previous criminal history is so that officers are
5 not endangering themselves and because we don't
6 know who we're talking about.

7 Q. I see. Earlier I asked you about the
8 name. Can a legal name change create the same
9 problem?

10 A. Yeah, it probably could.

11 Q. You're not advocating that people are
12 not permitted to change names, are you?

13 A. I am not.

14 MR. IRIGONEGARAY: Let's take a
15 short break, please. Five minutes.

16 MR. SKEPNEK: That's fine.

17 THE VIDEOGRAPHER: Please stand by.
18 The time is 12:43 p.m., and we're going off the
19 record.

20 (Recess.)

21 THE VIDEOGRAPHER: The time is
22 p.m., and we're back on the record.

23 Q. (By Mr. Irigonegaray) Sheriff Hill,
24 earlier you mentioned your lack of experience
25 with any problems with transgender people,

1 identity and driver's licenses. Do you recall
2 that testimony?

3 A. Yes, sir.

4 Q. And also that you had never heard from
5 your department or your officers whether at the
6 sheriff's office or at the police department.
7 Correct?

8 A. Yes, sir.

9 Q. Now, as sheriff you are aware that there
10 are certain policies and procedures in place for
11 officers to report any type of a problem up the
12 chain of command. Correct?

13 A. Yes, sir.

14 Q. And at the top of that chain of command
15 you sit. Correct?

16 A. Yes, sir.

17 Q. And you have instructed your officers if
18 there is a problem, you want to know about it.
19 Correct?

20 A. Yes, sir.

21 Q. Okay. And relying on that policy and
22 procedure, again, you have not heard any -- of
23 any problems. Correct?

24 A. No, sir.

25 Q. Okay. How -- let me rephrase. Are you

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1 aware of other states and how they handle the
2 issue of gender on driver's licenses?
3 A. I don't know.
4 MR. IRIGONEGARAY: Okay. Well, I
5 don't believe I have any further questions at
6 this time.
7 MS. BRETT: Pass to me? Okay.
8 EXAMINATION
9 BY MS. BRETT:
10 Q. Thank you, Sheriff Hill. Just quickly.
11 Do you know any of the intervenors in this case?
12 A. No, ma'am.
13 MS. BRETT: Okay. That's the only
14 question I have.
15 MR. SKEPNEK: Me?
16 EXAMINATION
17 BY MR. SKEPNEK:
18 Q. Earlier I believe you said to counsel
19 that, you know, a lot of what you do for or some
20 of the work you do in the sheriff's department in
21 your -- and your other officers with the
22 sheriff's department do work with warrants. Is
23 that accurate?
24 A. Yes, sir.
25 Q. Can you walk me through that process,

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1 so, you know, you get the -- or I guess walk me
2 through what happens when you guys get a warrant
3 and how you investigator how you serve it or what
4 that process is, please.
5 A. Well, when I get a warrant it is
6 downloaded into the NCIC, local databases, so
7 that if an officer anywhere stops that individual
8 they can arrest them, and then here in Shawnee
9 County we have a specific warrants unit that goes
10 out and tries to track those individuals down.
11 Q. All right. I think you mentioned, I
12 think you said NCIC and local databases. So will
13 an officer sit and take the information from the
14 warrant, type that in and it will give a list of
15 people that it will populate? Is that how you
16 find those people? Is that what I understand?
17 A. Yeah, and it's probably more clerical
18 staff that does that instead of the officer
19 himself, but somebody's typing that in there.
20 Q. And as part of the information that they
21 type on there, would it be a person's sex or
22 gender marker?
23 A. Yes, sir.
24 Q. So it would be possible that if someone
25 has changed their sex or gender marker, that they

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1 might not show up on that list when they search
2 for them?
3 A. Possible, yes.
4 Q. And I think you made this clear but I
5 want to make sure. As far as ways to identify
6 people, when an officer comes in contact with an
7 individual as part of their duties, is a driver's
8 license, I guess, the main or the most effective
9 tool they have to help them identify a person?
10 A. It's definitely the most common tool
11 used, yes.
12 MR. SKEPNEK: That's all.
13 EXAMINATION
14 BY MR. IRIGONEGARAY:
15 Q. I forgot earlier, and this is outside
16 the scope of your cross, but the attorney
17 general's office does not represent you. Is that
18 correct?
19 A. No, sir.
20 Q. Who's your attorney?
21 A. Matt Patterson.
22 Q. Did you ever retain private counsel for
23 this case?
24 A. No, sir.
25 Q. And you have not been paid for your

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1 testimony here. Correct?
2 A. Correct. No. I simply was asked how
3 this would impact law enforcement, so I have done
4 my best to explain that.
5 Q. So you are a non-retained expert?
6 A. Correct.
7 MR. IRIGONEGARAY: I have nothing
8 further.
9 MS. BRETT: I have one clarifying
10 question based on the cross.
11 EXAMINATION
12 BY MS. BRETT:
13 Q. When you go to apply for a warrant,
14 that's with the court. Correct?
15 A. Yeah. If I'm trying -- are you talking
16 about a search warrant or something?
17 Q. Sure. So the questions that counsel was
18 asking you were about --
19 A. People who come out on criminal charges
20 who have warrants.
21 Q. Who have warrants against them?
22 A. Yes.
23 Q. What information is used to formulate
24 those warrants?
25 A. Well, the person's name, date of birth,

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1 sex. They'll have an address listed somewhere on
2 the warrant jacket usually. It's possible to
3 have Social Security numbers associated with
4 those. So the identifiers that are available,
5 yeah.

6 Q. And what is the source of those
7 identifiers?

8 A. It usually comes out of a district
9 court. So if it's through an investigation, if
10 I'm the investigator and I put in the case
11 together on an individual, I'll have to have a
12 suspect page that will have who this is that
13 they're going to charge. So as much identifying
14 information as I could put on that, and then that
15 will come out and the court will put the warrant
16 out with the identifying information they had.

17 Q. And so in formulating that documentation
18 that you're submitting to the court to obtain the
19 warrant, what are you relying on?

20 A. Well, a myriad of things, but Kansas
21 driver's license was always the go to standard
22 for who we're talking to, and predominantly a lot
23 of this you might be able to figure out in an
24 investigative capacity. It's the field officer
25 who is going to have the most issues, because all

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1 they're going to do is run a name, sex, date of
2 birth in the field, and if a dispatcher -- if
3 those don't pop up on screen, if you run a guy
4 you're not going to get information associated
5 with a female.

6 Q. So I just want to be clear here, though.
7 When you say they're going to run it from the
8 field, what are they basing it on when they're
9 running it from the field?

10 A. Well, the Kansas driver's license,
11 usually.

12 Q. So the information that's on driver's
13 license is what's used in the warrant
14 application?

15 A. It can be.

16 Q. When would it not be?

17 A. Well, somebody doesn't have a Kansas
18 driver's license.

19 Q. So what might they be using in that
20 circumstance?

21 A. Well, you would just -- the name, the
22 date of birth, Social Security number if they had
23 one.

24 Q. Okay.

25 A. Height, weight.

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1 Q. And that information then goes into the
2 warrant application and is part of the warrant?

3 A. It's part of the case investigation, and
4 then the court will issue the warrant.

5 Q. And then when that warrant is issued,
6 that's what you're putting into your various
7 databases on the back end?

8 A. That's my understanding.

9 MS. BRETT: Okay. That's all I
10 have.

11 MR. IRIGONEGARAY: Okay. I have
12 nothing further.

13 MR. SKEPNEK: We're good.

14 THE VIDEOGRAPHER: Okay. Please
15 stand by. The time 1:11 p.m., and we're going
16 off the record.

17 MR. IRIGONEGARAY: There's
18 something I need to put on the record. I
19 apologize. I forgot to do this. You have an
20 absolute right to read your deposition, and there
21 will be a sheet of paper provided for you in the
22 event that you see a spelling error or something
23 that you disagree with. You have the right to
24 read and sign or you can waive reading and
25 signing the deposition. If you read and sign or

Page 61

1 if you waive the deposition, I believe I earlier
2 told you that the deposition can be used at the
3 hearing. Which would you rather do?

4 THE WITNESS: I'm fine with waiving
5 that.

6 THE COURT REPORTER: Does anything
7 need copies of the transcript?

8 MS. BRETT: Yes.

9 MR. SKEPNEK: Yes.

10 (Deposition concluded at 1:12 p.m.)
11 (Whereupon, it was stipulated by
12 counsel and the witness that submission of the
13 transcribed deposition to the witness for
14 examination, reading and signing is waived and
15 that said deposition shall possess the same force
16 and effect as though read and signed by the
17 witness.)

18
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CERTIFICATE

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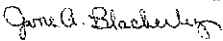
I, Jane A. Blackerby, a Certified Court Reporter in and for the State of Kansas, do hereby certify:

That prior to being examined the witness was by me duly sworn;

That said deposition was taken down by me in shorthand at the time and place hereinbefore stated and was thereafter reduced to writing under my direction;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

WITNESS my hand and seal this 10th of November, 2023.


Jane A. Blackerby, CCR #1369

SGT. ERIKA JO SIMPSON

1 A. He just said our experiences.

2 Q. And experiences in which specific area?

3 A. As a patrol officer.

4 Q. I understand. But you know what this
5 case is about, don't you?

6 A. Yes.

7 Q. Okay. So then what specifically were you
8 asked to provide answers for?

9 A. Oh. Whether or not sex mattered on a
10 driver's license or not, if we had had any
11 experiences dealing with either the changing of
12 sexes on a driver's license, or how it would
13 impact our experiences if it were changed.

14 Q. Okay. And for how long a period of time,
15 to your knowledge, has Kansas allowed individuals
16 to modify their driver's license to be in accord
17 with their gender?

18 A. I don't know.

19 Q. Have you ever filed a formal report of
20 any type of a problem with a transgender person?

21 A. No.

22 Q. Have you ever encountered any
23 difficulties as a patrol officer with being
24 threatened by a transgender person?

25 A. Me personally, no. I've been present on



5111 SW 21st Street
Topeka, KS 66604
785-273-3063
www.appinobiggs.com

6420 W. 95th Street
Suite 101
Overland Park, KS 66212
913-383-1131

80
Wick



SGT. ERIKA JO SIMPSON

1 A. This I do have experience with when I
2 speak on personal experiences. Usually this is
3 the issue that we deal with. It is people
4 providing a false date of birth or trying to
5 change their date of birth, whether -- it ranges
6 anywhere from juvenile trying to be older so they
7 can purchase alcohol, to a person that knows they
8 have warrants associated to their name. They
9 don't want to be identified so they'll provide a
10 false date of birth. And if we don't have --
11 when we search people it's name, sex, and date of
12 birth. Those are the three categories that we
13 use. And if that's altered there's a chance that
14 we'll -- we won't be able to obtain the necessary
15 records on that person to know that they are
16 wanted, to know that they are deemed violent
17 tendencies, armed and dangerous, mental
18 disabilities, any of those things. So we may miss
19 that information.

20 **Q. But as an officer if you believe that**
21 **this particular individual that you've stopped is**
22 **a suspect in a crime and the age doesn't match**
23 **what the descriptor is, you simply don't let that**
24 **person go, do you?**

25 A. No. We try to make sure that we verify

SGT. ERIKA JO SIMPSON

1 that we've identified who we have detained
2 correctly.

3 **Q. And there are redundant processes with**
4 **which that can be done, correct?**

5 A. There's multiple avenues that we can use,
6 yes.

7 **Q. Okay. The same thing is true about sex,**
8 **correct?**

9 A. In terms of having alternate.

10 **Q. Yes.**

11 A. Yes. We have different data bases that
12 we can rely on.

13 **Q. And the same thing is true about race.**

14 A. Race is different in my opinion, because
15 we kind of use a -- at least me specifically, I'll
16 speak for myself, use a generalized. We have the
17 ability to do that. They don't require us to put
18 in a specific race, so a lot of times when we
19 search people we put unknown so it doesn't put
20 them in one category.

21 **Q. Okay. So although potentially any of**
22 **those categories could present a problem to an**
23 **officer there are redundant ways in which those**
24 **issues, if they occur, can be addressed, correct?**

25 A. Yes.

SGT. ERIKA JO SIMPSON

1 MR. SKEPNEK: Object to form.

2 BY MR. IRIGONEGARAY:

3 Q. And you personally have never had an
4 issue as you mentioned earlier, and the one issue
5 that you recall was a situation where you were
6 present when another officer was in charge in a
7 domestic issue, correct?

8 MR. SKEPNEK: Object to form.

9 A. Yes.

10 BY MR. IRIGONEGARAY:

11 Q. And that did not involve a driver's
12 license, did it?

13 A. No, sir.

14 Q. When was the last time that you are aware
15 that one of your fellow patrol officers filed any
16 type of formal concern regarding the issue of
17 appropriate gender being on a driver's license?

18 A. I don't have any knowledge of any of
19 that.

20 Q. When you say you don't have any
21 knowledge, is you've never heard of such a thing,
22 right?

23 A. No, sir.

24 Q. You've never heard one of your officers
25 say that as a consequence of a gender appropriate

LT. JAMES LEE BURGE

1 driver's license and KDOR, and people changing the
2 sex of -- on their driver's licenses.

3 Q. Sex or gender?

4 A. Yes. Gender.

5 Q. Okay. And how do you fit into this case?

6 What -- what is -- what do you bring for this
7 case?

8 A. Any issues that it would cause my staff
9 as far as changing -- I'm sorry. Did you say it
10 was sex or gender? Which would you -- do you
11 have you preference?

12 Q. Let's say gender.

13 A. Gender. Changing the gender on the
14 driver's license, what effects that would have on
15 us.

16 Q. Since you joined the force in 1999.

17 A. 2000.

18 Q. 2000.

19 A. Yes.

20 Q. I beg your pardon. Yeah. You left the
21 Marines in 1999 and then you joined the force in
22 2000.

23 A. Yes sir.

24 Q. Since the year 2000 to the present have
25 you ever filed a formal report regarding a concern



LT. JAMES LEE BURGE

1 with a transgender person?

2 A. No, sir.

3 Q. In the 23 years that you've been a member
4 of the Johnson County Sheriff's Department have
5 you ever been told that any other officer in the
6 force had an issue with a driver's license and a
7 transgender person?

8 A. I don't believe so.

9 Q. Okay. After having received the e-mail
10 from Maj. Newson what did you next do regarding
11 this case?

12 A. I sent an e-mail back to him saying that
13 I would volunteer to assist with this.

14 Q. Okay. And how did you go about
15 assisting?

16 A. I just replied to the e-mail and offered
17 that I would be available if should something come
18 up.

19 Q. Okay. Did Maj. Newson ask you what you
20 could provide or how you could be of assistance?

21 A. No.

22 Q. So nobody ever asked you for specifics.

23 A. For specific incidents.

24 Q. Or a specific knowledge of any kind --

25 MR. SKEPNEK: Object to form.

LT. JAMES LEE BURGE

1 A. That's really long. Just to clarify
2 this. If an officer in the field contacts
3 somebody that has an altered ID card, driver's
4 license, and they call that in based upon the sex,
5 could we not be able to verify that -- that
6 person's history from the original sex?

7 BY MR. IRIGONEGARAY:

8 **Q. Yes.**

9 A. Yes. That's true.

10 **Q. However, that would be true if that was**
11 **all that was done, correct?**

12 MR. SKEPNEK: Object to form.

13 A. I don't understand what you're asking me.

14 BY MR. IRIGONEGARAY:

15 **Q. Okay. When we took Officer Newson's**
16 **deposition, Maj. Newson, he said that law**
17 **enforcement has a redundant number of steps that**
18 **can be taken to identify a potential suspect,**
19 **correct?**

20 A. Yes.

21 MR. SKEPNEK: Object to form.

22 BY MR. IRIGONEGARAY:

23 **Q. And, for example, if someone has changed**
24 **their name and the name on the driver's license,**
25 **for example, is not the same name as the person's**

LT. JAMES LEE BURGE

1 Q. Okay. What's required in Kansas for an
2 individual to change their gender identity on the
3 driver's license?

4 A. I have no idea.

5 Q. When did Kansas first begin to allow
6 transgender people to apply their correct gender
7 in driver's licenses?

8 A. Are you asking me to change it from one
9 to another? I -- I don't know.

10 Q. Since the year 2000 when you first began
11 to work as a patrol officer until the present you
12 haven't noticed any difference as far as law
13 enforcement issues regarding gender in -- in the
14 identification of people, correct?

15 MR. SKEPNEK: Object to form.

16 A. Any differences or --

17 MR. IRIGONEGARAY: Yes.

18 THE WITNESS: -- anymore of a struggle
19 than --

20 MR. IRIGONEGARAY: Yes.

21 THE WITNESS: No. Not really.

22 BY MR. IRIGONEGARAY:

23 Q. An alteration in the race of an
24 individual, could that the negatively impact an
25 officer's ability to safely handle a situation?

Burris, Jesse

From: Burris, Jesse
Sent: Thursday, August 17, 2023 3:40 PM
To: 'Chaulk, Theron, SHR'
Subject: RE: Effects of Altered Identification Cards - Lt. Chaulk

Thank you for letting me know, Lt. Chaulk.

I will contact you to discuss this further if needed.

Respectfully,

Jesse Burris
Assistant Attorney General
Office of Kansas Attorney General Kris Kobach

From: Chaulk, Theron, SHR <Theron.Chaulk@jocogov.org>
Sent: Thursday, August 17, 2023 9:10 AM
To: Burris, Jesse <Jesse.Burris@ag.ks.gov>
Subject: RE: Effects of Altered Identification Cards - Lt. Chaulk

CAUTION: This email originated from outside of the Office of The Attorney General of Kansas organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am happy to speak with you any time you wish. However, I will tell you now, I have spoken to each and every officer in my division and, at this time, there are zero examples of the gender affecting any call for service (service of civil paperwork, traffic citations, warrant confirmation.....etc). In other words, I don't believe I have anything useful for you. But you can contact me if you still want to speak about it. (913) 304-4327 I should be available all day.

From: Burris, Jesse <Jesse.Burris@ag.ks.gov>
Sent: Wednesday, August 16, 2023 4:10 PM
To: Chaulk, Theron, SHR <Theron.Chaulk@jocogov.org>
Subject: Effects of Altered Identification Cards - Lt. Chaulk

You don't often get email from jesse.burris@ag.ks.gov. [Learn why this is important](#)

***** This email originated from outside the organization. Use caution when opening attachments, clicking links, or performing any actions requested in this message. *****

Good afternoon, Lt. Chaulk.

As I'm sure you noticed, I received your contact information from Major Newson.

Would it be possible for us to schedule a time to discuss the subject matter Major Newson raised in his email (below)?

Thank you.

