

IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT, SHAWNEE COUNTY, KANSAS
CIVIL DEPARTMENT

STATE OF KANSAS, <i>ex rel.</i> , KRIS)	
KOBACH, Attorney General,)	
)	Case No. 23-CV-000422
<i>Petitioner,</i>)	Div. No 3
)	
v.)	
)	
DAVID HARPER, Director of Vehicles,)	
Department of Revenue, in his official)	
Capacity, and)	
)	
MARK BURGART, Secretary of)	
Revenue, in his official capacity,)	
)	
<i>Respondents,</i>)	
)	
and)	
)	
ADAM KELLOGG, KATHRYN)	
REDMAN, JULIANA OPHELIA)	
GONZALES-WAHL, DOE)	
INTERVENOR 1, and DOE)	
INTERVENOR 2, on behalf of her)	
minor child,)	
)	
<i>Intervenor-Respondents.</i>))	

PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE TO TEMPORARY
INJUNCTION

Respondents have unilaterally decided not to comply with the plain language of the Women’s Bill of Rights (SB 180), a law passed by a bipartisan supermajority of the legislature. In doing so, Respondents ultimately harmed the people of this state and its duly elected legislature. It is that legislature, not the unelected

bureaucrats at the Department of Revenue (KDOR), that the Kansas Constitution entrusts to set policy for the State.

Instead of admitting their errors, Respondents present a twisted, outcome-driven, ahistorical interpretation of the law that is disconnected from both the language of the statute and the facts on the ground. Their response to Petitioner's Motion for a Temporary Injunction is heavy on supposition and light on legal support. The arguments are either incorrect, irrelevant, or actually support the State's position. Respondents also ignore SB 180's plain language and its ordinary meaning. In short, their arguments are entirely without merit. The Court should dismiss those arguments and grant the State's request for a temporary injunction.

Argument

I. The relevant legal standard

As a refresher, the five factors necessary for issuing a temporary injunction are as follows:

(1) a substantial likelihood of eventually prevailing on the merits; (2) a reasonable probability of suffering irreparable future injury; (3) the lack of obtaining an adequate remedy at law; (4) the threat of suffering injury outweighs whatever damage the proposed injunction may cause the opposing party; (5) and the impact of issuing the injunction will not be adverse to the public interest.

Downtown Bar and Grill, LLC v. State, 294 Kan. 188, 191, 273 P.3d 709 (2012).

As shown in its motion, and in this reply, the State has satisfied each factor.

II. The State has a substantial likelihood of prevailing on the merits

The first factor, that there be a substantial likelihood of eventually prevailing on the merits, “is an essential predicate to obtaining a temporary injunction.” *Id.* at 199, 273 P.3d at 717. “The requirement exists because ‘[t]he purpose of a temporary or preliminary injunction is not to determine any controverted right, but to prevent injury to a claimed right pending a final determination of the controversy on its merits.’” *Steffes v. City of Lawrence*, 284 Kan. 380, 394, 160 P.3d 843, 853 (2007).

To obtain a temporary injunction, a plaintiff need only show a likelihood of success on the merits (rather than guaranteed success). *See id.* at 394-95 160 P.3d at 853. Respondents make several assertions that Petitioner cannot meet this burden. Respondents are wrong.

A. “Sex” and “gender” are commonly treated as synonyms by dictionaries and the Legislature

Their first erroneous argument comes in two parts. First, Respondents point out that the Women’s Bill of Rights only explicitly mentions “sex” and does not use the word “gender.” Then Respondents argue that “sex” and “gender” are not interchangeable in modern usage (and, therefore, the law doesn’t apply to K.S.A. 8-240(c)—a statute that only uses the word “gender”).

As the State pointed out in its initial motion, however, (1) dictionaries universally treat “sex” and “gender” as synonyms (Mot. 7), (2) legislative practice treats the terms synonymously (Mot. 6–7), and (3) Respondents’ own convention is to treat “sex” and “gender” as synonyms (Mot. 7).

In their response, Respondents give little credence to dictionary definitions showing “sex” and “gender” are synonyms, declaring that they do not show the

Kansas Legislature viewed the terms as synonyms. Resp'ts' Resp. 8–9. This contradicts the statutory interpretation principle that dictionaries are a good source for the “ordinary, contemporary, common meaning of words.” *Midwest Crane & Rigging, LLC v. Corp. Comm'n*, 306 Kan. 845, 851, 397 P.3d 1205 (2017) (internal quotes omitted). Instead, Respondents rely on a website from a professional organization for psychiatrists¹ and another website relating to health research to support their claim that the Legislature meant “sex” and “gender” to refer different things. According to Respondents and their sources, this is the more “modern” approach. Resp'ts' Resp. 3.

Of course, Respondents' sources are not exactly independent observers. *See generally Green v. Miss U.S., LLC*, 52 F.4th 773, 784 n.12 (9th Cir. 2022) (“[F]or controversies regarding transgenderism . . . [the] use or omission of certain words and phrases . . . often reflects a struggle over the social control of language in a crucial debate about the nature and foundation, or indeed real existence, of the sexes.” (internal quotes omitted)). But even if there were, there would still be a gap in Respondents' logic: there is no evidence that the Legislature actually relied on these supposed “modern” definitions (or even knew about them)—whether when it enacted the Women's Bill of Rights or sixteen years ago when relevant amendments were made to the driver's license statutes.² The best way to interpret statutory text

¹ Respondents launder this source by quoting a federal district court decision and just noting “Citations omitted.” Resp'ts' Resp. 5.

² Respondents also mention a November 16, 2023, paper from the Independent Women's Law Center, which supposedly supported SB 180. Obviously, a paper written months after SB 180 passed (not to mention the 2007 amendments to

is by its plain language and ordinary meaning. *See Montgomery v. Saleh*, 311 Kan. 649, 654-55, 466 P.3d 902 (2020). The Legislature uses ordinary words, intended to be understood by ordinary people, not the hyper-technical language—apparently used among medical practitioners—that Respondents are promoting. *See generally* Antonin Scalia & Bryan A. Garner, *Reading Law* 69–77 (2012) (discussing the ordinary-meaning canon). In this case, that entails recognizing that our law and our Legislature treat “gender” and “sex” as interchangeable terms.

Petitioner cited several statutes in its motion to show the Legislature follows this practice. First, K.S.A. 77-201 directs that “[w]ords importing the masculine *gender* only may be extended to females” (emphasis added). In Respondents’ eyes, this statute is unpersuasive for the modern-day definition of “gender” because the statute has existed in Kansas since 1949. Resp’ts’ Resp. 6. Yet, this statutory provision continues to comport with modern legal principles. *See Gender/Number Canon*, Black’s Law Dictionary (11th ed. 2019) (defining gender/number canon as “[t]he doctrine that in a legal instrument, in the absence of a contrary indication, the masculine includes the feminine (and vice versa), and the singular includes the

section 8-240(c) discussed *infra* p. 7-10) could not have been part of the Legislature’s consideration, no matter who wrote it. Nor is it relevant evidence of what the Legislature was thinking at the time. *See Davis v. City of Leawood*, 257 Kan. 512, 524–28, 893 P.2d 233 (1995) (post-enactment affidavit of lobbyist attorney who “‘helped to draft’ and lobbied for passage of [statute]” irrelevant to statutory construction); *see also McCarthy v. City of Leawood*, 257 Kan. 566, 574, 894 P.2d 836 (1995) (“[E]ven the post-enactment statements of legislators are generally not considered by Kansas courts.”).

plural (and mostly vice versa).”). Furthermore, K.S.A. 77-201 is still in effect. The Legislature thus presumably continues to view “sex” and “gender” and synonymous.

The State also pointed to K.S.A. 65-6710(a)(3), which states, “Gender, eye color and other traits are determined at fertilization.” Respondents argue that 65-6710(a)(3) should be ignored because it never uses the word “sex.” Resp’ts’ Resp. 6-7. This is true, but it’s beside the point. Respondents claim that “gender” really means “gender identity,” which they define as “a person’s inner sense of being a particular gender.” Resp’ts’ Resp. 5 (internal quotes omitted). But section 65-6710(a)(3) explicitly states that “gender” is determined at fertilization. Unless Respondents are claiming a single-cell embryo possesses an “inner sense” of having a particular “gender identity,” their interpretation makes no sense. Obviously, a newly fertilized egg cannot express a “gender identity.” Thus, “gender” must mean something other than “gender identity” in this statute. The logical conclusion is that saying “gender” is determined at fertilization in K.S.A. 65-6710(a)(3) is synonymous with saying that “sex” is determined at fertilization.

Finally, Respondents criticize Petitioner’s citation to K.S.A. 65-6726, which is entitled “Abortion based on *gender*; prohibited” but 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” (emphasis added). Respondents argue that the title is created by the Revisor of Statutes, and thus is not dispositive. Resp’ts’ Resp. 7. But rather than harming the State’s argument, the Revisor’s addition strengthens it. The Revisor

could have easily entitled K.S.A. 66-6726 “Abortion based on sex; prohibited.” The Revisor’s decision to use “gender” indicates people frequently see the two terms as interchangeable.

B. Legislative history shows “sex” and “gender” are thought of as interchangeable

After failing to refute both dictionaries and consistent Legislative usage, Respondents then pull out their last remaining weapon: the reenactment canon. Respondents’ argument on this point centers on K.S.A. 8-240(c). Prior to 2007, section 8-240(c) used the word “sex” in describing what information must be on a driver’s license application. But in 2007 the Legislature replaced “sex” with “gender.” And, according to Respondents, this must have been a substantive change. Because, otherwise, what was the point? *See Resp’ts’ Resp.* 8–9.

The problem is that the presumption that a change of language entails a change in meaning “does not apply to stylistic or non-substantive changes” or revisions of “prior statute[s] to provide for consistency of expression.” Scalia & Garner, *supra*, 256–57. And the 2007 change was plainly merely an attempt to clean up the statute and bring it in line with federal law.

The legislative history of the 2007 changes makes this clear. The original bill, HB 2390,³ was entitled “REAL ID; drivers’ licenses and identification cards.” Ex. 2, Minutes of the H. Comm. on Veterans, Military & Homeland Sec., Feb. 14,

³ Although the bill ultimately passed as SB 9, a conference committee to reconcile the competing proposals on this topic “agreed to place the provisions of HB 2390, as amended by [the] Senate Committee on Federal and State Affairs[,] into SB 9.” Ex. 1, Conference Committee Report Br., Senate Bill No. 9, at 5-9 (April 3, 2007).

2007. KDOR testified in favor of the bill, explaining the bill “mirrors federal requirements of the REAL ID Act, as well as standardizing terms so that all states speak the same language.” Ex. 3, Kan. Dep’t of Revenue, Testimony in Support of House Bill 2390 at 2 (Feb. 14, 2007). At a Senate committee hearing, KDOR again testified in favor of the bill, explaining, among other things, that it “creates a legal framework for coming into compliance with the REAL ID Act[.]” Ex. 4, Kan. Dep’t of Revenue, Testimony in Support of House Bill 2390 at 2 (Mar. 6, 2007). In other words, by KDOR’s own assertions, the amendment to K.S.A. 8-240(c) did not represent a substantive change from “sex” to “gender,” but was merely a word switch to mirror the federal REAL ID Act of 2005. *See also* Conference Committee Report Brief, Senate Bill No. 9, at 8-9 (noting that although the REAL ID Act references were removed from bill, the expectation was that the changes would put Kansas in line with federal law). Under the REAL ID Act of 2005, after a specified period of time had elapsed from enactment, federal agencies could not accept driver’s licenses or identification cards that did not meet minimum documentary requirements. Pub. L. No. 109–13, div. B, title II, § 202(a)(1) and (b), 119 Stat. 312. Specifically, driver’s licenses and identification cards had to include nine items. *Id.* at § 202(b)(1)-(9). One of those items was “[t]he person’s gender.” *Id.* at § 202(b)(3).

But if the legislative history of the 2007 changes is not enough, the legislative history of the Women’s Bill of Rights itself shows that the Legislature understood it would affect KDOR practices with regard to driver’s licenses. The testimony of Ellen Bertels, an attorney with Kansas Legal Services, is illustrative. Bertels’ job is

to “provide free legal representation to low-income transgender Kansans seeking name changes and gender marker changes.” Ex. 5, Transcript of the Testimony of Ms. Ellen Bertels before the Kansas House Committee on Health and Human Services on SB 180 on Monday, March 6, 2023, at 2:5–7. And she opposed SB 180 because “it essentially bans gender marker changes on state-issued identity documents like birth certificates *and driver’s licenses*.” *Id.* at 2:12–15 (emphasis added); *accord id.* at 2:20–25. Given this testimony, it is hard to say the Legislature did not intend to affect KDOR’s practices. An attorney—one who was a subject-matter expert in changing sex markers on Kansas driver’s licenses, *id.* at 2:5–7—told them that it would outlaw such changes. There were no questions asked during Bertels’ testimony, and no one on the committee disagreed with her description of what the law would accomplish, if enacted. It would be hard to find clearer evidence that, in passing the Women’s Bill of Rights, the Legislature intended to stop KDOR from making such changes in the future.

Respondents also point to K.S.A. 8-243(a), which requires a driver’s license to display the “gender” of the licensee.⁴ But it is undisputed that Kansas licenses do not display “gender” on the license, but rather “sex.” Now, if “sex” and “gender” are interchangeable, this is not an issue. By showing “sex” on the license, KDOR is also displaying their “gender,” as the terms are synonymous. But, if “sex” and “gender” are not interchangeable, then KDOR is saying that it is violating K.S.A. 8-243(a) by

⁴ This is likewise a creature of the 2007 amendments. Before then, state law did not specifically require sex/gender to be shown on driver’s licenses.

not displaying “gender” on the driver’s licenses. Respondents claim “sex” is displayed on licenses simply to match nationally recommended best practices. Resp’ts’ Resp. 9. While that might be a good reason, it is not one that justifies noncompliance with a statutory directive. If “gender” is in fact something different from “sex,” then KDOR has been systematically violating the law for the last sixteen years.

The point, of course, is that KDOR is *not* violating K.S.A. 8-243(a). Petitioner doesn’t think so and, if they’re being honest, Respondents don’t think so either. Their recently discovered distinction between “sex” and “gender” is merely a convenient dodge, adopted solely to put a legal gloss on their desire not to follow a statute they don’t particularly like (the Women’s Bill of Rights) because the logical conclusion is that “gender” and “sex” are being used interchangeably.

Respondents also assert K.S.A. 8-240 and K.S.A. 8-243 control over the Women’s Bill of Rights because they are specific laws, which control over a general law. Resp’ts’ Resp. 10–11. That is nonsensical. For one thing, the Bill does not conflict with those statutes (because, as the State has explained at length, “gender” and “sex” are synonyms). But even so, Section 1(c) of the Women’s Bill of Rights contains a specific duty, directing state agencies to “identify each individual who is part of the collected data set as either male or female at birth.” *See* 2023 Kan. Sess. Laws 1230, 1230. KDOR identifies individuals who are part of their data set on those individual’s driver’s licenses. Therefore, it is required to comply with SB 180. It is not clear how this duty is any more general than the duties in K.S.A. 8-243.

Furthermore, the Kansas Supreme Court has held that “older statutes . . . are subordinate to new enactments . . . , as the newer statute is the later expression of the legislative intent and so will control if there is a possible conflict between the two.” *Jones v. Cont’l Can Co.*, 260 Kan. 547, 556, 920 P.2d 939 (1996). So even if there were a conflict, the newer law (the Women’s Bill of Rights) would control.

C. Respondents’ cannot violate the law and comply with it at the same time

Finally, Respondents claim KDOR can comply with the Women’s Bill of Rights while still providing driver’s licenses that display a person’s “gender identity.” Resp’ts’ Resp. 11–12. Their argument is based on an inaccurate reading of Section 1(c). Respondents believe KDOR can maintain the “collected data set” in its electronic database without reflecting that information on driver’s licenses because a driver’s license is a snapshot of information at some point in time. Resp’ts’ Resp. 11–12. This argument ignores Section 1(c)’s requirement that the state agency “shall identify each individual who is part of the collected data set as either male or female at birth.” Failing to designate a licensee’s “sex” at birth on the driver’s license is a failure to “identify” the individual as male or female at birth. At any rate, the same basic argument KDOR is making was already made by another agency and rejected in federal court. *See Foster v. Stanek*, 2023 WL 5625433, at *8 (D. Kan. Aug. 31, 2023) (“Every time defendants identify someone’s sex—whether in a birth record or birth certificate—SB 180 appears to command them to identify that person as ‘male or female at birth.’). There is nothing in

Respondents argument that suggests this Court should not be persuaded by that earlier ruling.

III. Petitioner has demonstrated a reasonable probability of suffering an irreparable future injury.

Curiously, Respondents claim Petitioner did not allege KDOR's failure to comply with SB 180 was an irreparable injury. Resp'ts' Resp. 17. This is odd for two reasons. First, the irreparable injury is bound up with and discernible in the violation itself. As the State's initial motion argued, "Once a bill becomes a law, it is improper for . . . the executive branch to second-guess the wisdom of that decision." Mot. 11 (citing *Le Vier v. State*, 214 Kan. 287, 292, 520 P.2d 1325 (1974)). Or, as the initial petition put it, "we have a government of laws, and not of men. The Legislature makes the law, and the executive branch . . . must enforce it, whether they like it or not." Pet. 2 (internal quotes omitted). An agency's decision to simply ignore a law, then, damages the public interest in a representative government with a separation of powers, where the Legislature, not an executive agency, sets the State's policy on important issues. The Legislature has determined that the public interest demands that KDOR stop changing driver's-license sex markers in accordance with an individual's asserted gender identity, and that it do so starting July 1, 2023 (the effective date of SB 180). That Respondents would like to continue doing what they want for as long as this litigation lasts would naturally do irreparable harm to the public interest.

Second, even setting aside the harm inherent in the facts of this case, the State's motion explicitly asserted that, if KDOR refused to comply with SB 180 and

continued to issue noncompliant licenses, that would “present a reasonable probability of irreparable harm” because those licenses would be in circulation for six years and could not “be readily corrected until any issued licenses expire and must be renewed.” Mot. 9–10. Respondents provide no rejoinder to this assertion of irreparable harm.

Respondents also criticize the State’s asserted injury to law enforcement. In doing so, they rely on deposition testimony from several law enforcement officers who say that they were not aware of any specific instances where there have been problems with a transgender person and their driver’s license. Resp’ts’ Resp. 13–15.

As a starting point, there have been a total of 552 sex-marker changes approved by KDOR in the twelve years that they have allowed such changes.⁵ Given that there are millions of residents in the state of Kansas, it is not surprising that an individual officer has not encountered an instance where someone’s sex marker was an issue.

Regardless, in focusing on the lack of specific instances, Respondents miss the forest through the trees. Those same officers also testified about their belief that inaccurate driver’s licenses would cause public safety issues. Shawnee County Sheriff Brian Hill explained that law enforcement officers regularly use driver’s licenses to confirm the identity of suspects and they rely on that information to be correct. Ex. 7, Deposition of Sheriff Brian Hill, 34:18-22. Sheriff Hill explained that

⁵ See Ex. 6, KDOR Respondents’ Supplemental Responses to Petitioner’s First Set of Discovery Requests at 3.

his officers usually run a person's name, date of birth, and sex to see if a person has a warrant, attempt to locate, officer safety bulletin, or other notice. *Id.* at 35:22-36:2. "Those are the three main categories that [law enforcement officers] rely upon." *Id.* at 36:3-4. As a specific example, Sheriff Hill explained that, if he stopped someone who has a warrant as a male but he tells dispatch the person is a female based on the driver's license, he might not get confirmation on that warrant because sex is one of the identifiers used by law enforcing and that person's listed "sex" would not correspond with the record in the database. *Id.* at 40:2-18.

Sergeant Erika Jo Simpson also confirmed that law enforcement performs searches on people based on name, sex, and date of birth, so there is a chance that they will not be able to obtain the necessary records on a person if the person's sex has been altered. *Ex. 8, Deposition of Erika Jo Simpson, 25:1-19.*

It is important to note, in light of this evidence, the standard that applies at the temporary injunction phase. Suffering an irreparable injury does not require Petitioner to show a "virtual certainty" of injury, but rather merely a "reasonable probability." *Steffes*, 284 Kan. at 395. The reasonable probability standard is a much lower burden than the applicable burden of proof at a trial. *See Idbeis v. Wichita Surgical Specialists, P.A.*, 285 Kan. 485, 492, 173 P.3d 642 (2007).

Here, law enforcement officers testified at their depositions about the harm they believed inaccurate driver's licenses would cause. Driver's licenses are a common tool of law enforcement officers to identify suspects, victims, wanted persons, missing persons, and others encountered on a daily basis. *See, e.g., Hiibel*

v. 6th Judicial Dist. Ct., 542 U.S. 177, 181 (2004); *State v. Doelz*, 309 Kan. 133, 139, 432 P.3d 669 (2019); *State v. Manwarren*, 56 Kan. App. 2d 939, 947–49, 440 P.3d 606 (2019); *State v. Lees*, 56 Kan. App. 2d 542, 544, 432 P.3d 1020 (2019). Given these facts and evidence, it is reasonable to conclude that permitting inaccurate driver’s licenses to continue to be issued presents a “reasonable probability” of harm to the public and irreparable injury to Petitioner.

IV. No adequate remedy at law is available to Petitioner.

There is no adequate remedy at law here because Respondents cannot be sued for damages in their official capacity. *See Prager v. State*, 271 Kan. 1, 33–37, 20 P.3d 39 (2001). Respondents’ rejoinder is that an alternate remedy exists because the Legislature could always amend SB 180 to mean what Petitioner contends it means. Resp’ts’ Resp. 18. This response is odd to say the least. Legislative amendment is not a remedy at law, and Respondents provide no citation that says otherwise.

An adequate remedy at law is “[a] legal remedy (such as an award of damages) that provides sufficient relief to the petitioning party, thus preventing the party from obtaining equitable relief.” *Remedy*, Black’s Law Dictionary (11th ed. 2019). An equitable remedy, in contrast, is “[a] remedy, usu[ally] a nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usu[ally] monetary damages, cannot adequately redress the injury.” *Remedy*, Black’s Law Dictionary (11th ed. 2019). An injunction (temporary or

otherwise) is an equitable remedy. *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 226, 689 P.2d 860 (1984).

The test for granting a temporary injunction, therefore, does not ask the requesting party to show there is no possible path to obtaining a favorable result in any forum (such as a legislative amendment directing the result the party seeks), but whether the requesting party can obtain an adequate remedy at law (i.e., monetary damages). It is merely another manifestation of the well-known maxim that, when a “remedy at law is inadequate, equity will fashion a remedy that enforces . . . legal right.” *Mid-Am. Pipeline Co. v. Wietharn*, 246 Kan. 238, 251, 787 P.2d 716 (1990). As Petitioner has shown, and Respondents have not denied, monetary damages are not available here as a remedy. Thus, the equitable remedy of an injunction is appropriate.

V. No harm could come to Respondents from complying with a validly enacted statute.

In its temporary injunction motion and in this reply, Petitioner has detailed the irreparable injury it will suffer. And a temporary injunction would still allow Respondents to receive requests for sex-designation changes. It would simply require Respondents to wait to process the request while this case runs its course. Finally, Respondents will not be harmed by complying with a validly enacted statute. *See generally Kan. Bldg. Indus. Workers Compensation Fund v. State*, 49 Kan. App. 2d 354, 382, 310 P.3d 404 (2013).

Respondents assert KDOR would face “a litany of lawsuits” if prevented from processing sex-designation changes. Resp’ts’ Resp. 18. But this is speculative, at

best, and Respondents provide no authority to support their assertion that the potential threat of lawsuits is a harm this Court should consider. That is the sort of risk a legislature might consider when voting on a law in the first place, but it is not an appropriate consideration for an executive agency tasked with following that law. Indeed, allowing an agency to raise the risk of lawsuits would circumvent the prohibition on an agency's arguing the unconstitutionality of statutes—the issues are two sides of the same coin. *See generally Kan. Bldg. Indus. Workers Compensation Fund*, 49 Kan. App. 2d at 382, 310 P.3d, at 421 (2013) (“It defies the logic of the separation of powers doctrine to believe that a state agency, a creation of the legislature, charged by law with the enforcement of a certain set of laws, has any power to declare the enactments of its creator unconstitutional and unenforceable.”).

VI. The public will benefit from ensuring the information on driver's licenses is accurate.

Respondents briefing on this factor is conclusory and devoid of any legal support. *See Resp'ts' Resp.* 19 (citing no legal authority). Insofar as Respondents merely intend to argue that this factor rises and falls on the Court's interpretation of the Women's Bill of Rights, the State agrees. Respondents are correct that the public is better served by ensuring laws are accurately interpreted. *Resp'ts' Resp.* 19. In this case, the State is attempting to ensure the Women's Bill of Rights, passed by a supermajority of the public's representatives, is accurately interpreted and applied by Respondents. The public will benefit from SB 180 being accurately interpreted, as well as from the constitutional system being respected. *See City of*

Wichita v. Wallace, 246 Kan. 253, 257–58, 788 P.2d 270 (1990); *Le Vier*, 214 Kan. at 292.

Conclusion

Petitioner has satisfied all the requirements for a temporary injunction.

Respondents' arguments to the contrary are meritless. The Court should grant the requested temporary injunction.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
KRIS W. KOBACH

/s/ Abhishek Kambli

Kris W. Kobach, #17280

Attorney General

Anthony J. Powell, #14981

Solicitor General

Abhishek Kambli, #29788

Deputy Attorney General

Dwight Carswell, #25111

Deputy Solicitor General

William J. Skepnek, Jr., #25470

Assistant Attorney General

Jesse A. Burris, #26856

Assistant Attorney General

Erin B. Gaide, #29691

Assistant Attorney General

Memorial Building, 2nd floor

120 SW 10th Avenue

Topeka, Kansas 66612-1597

Tel: (785) 296-2215

Fax: (785) 291-3767

Anthony.Powell@ag.ks.gov

Abhishek.Kambli@ag.ks.gov

Dwight.Carswell@ag.ks.gov

William.Skepnek@ag.ks.gov

Jesse.Burris@ag.ks.gov

Erin.Gaide@ag.ks.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2023, the above document was filed with the Clerk of the Court, with a copy to all counsel of record via email.

Ted Smith
Kansas Department of Revenue
ted.smith@ks.gov

Pedro Irigonegaray
Jason A. Zavadil
*Irigonegaray, Turney, &
Revenaugh, L.L.P.*
Pedro@ITRRLaw.com
Jason@ITRRLaw.com

Sharon Brett
D.C. Hiegert
Karen Leve
*American Civil Liberties Union
Foundation of Kansas*
sbrett@aclukansas.org
dhiegert@aclukansas.org
kleve@aclukansas.org

Scott C. Hecht
Douglas R. Dalgleish
Paulina Escobar
Stinson, L.L.P.
Scott.hecht@stinson.com
doug.dalgleish@stinson.com
Paulina.escobar@stinson.com

Rose Saxe
Aditi Fruitwala
*American Civil Liberties Union
Foundation*
Rsaxe@aclu.org
afruitwala@aclu.org

/s/ Abhishek Kambli
Attorney for Petitioner

EXHIBIT 1

SESSION OF 2007

CONFERENCE COMMITTEE REPORT BRIEF SENATE BILL NO. 9

As Agreed to April 3, 2007

Brief*

SB 9 would codify practices of the Division of Vehicles (Division) that protect against fraud in the issuance of drivers' licenses. The bill would:

- Broaden the required employee training program to include training on document recognition and on federal rules used to determine lawful presence;
- Authorize the Division to disclose motor vehicle records to any federal, state or local agency to assist in carrying out the functions of the governmental agency;
- Require the Division to annually report in January to the House Committee on Veterans, Military and Homeland Security disclosures made to any federal, state, or local agency to assist in carrying out the functions of the governmental agency;
- Define "address of principal residence";
- Define state to mean a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands;
- Require the applicant for a driver's license or instruction permit to submit:

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

- Proof of age, proof of identity, as required by the Division and a photo identity document; or
- Non-photo identity document if it includes the applicant's full legal name, date of birth, and address of principal residence and social security number;
 - If the applicant does not have a social security number, the applicant would be required to provide proof of lawful presence and Kansas residency;
- Prohibit the Division from issuing a driver's license or an instruction permit to any person who fails to provide proof of lawful presence in the United States;
- Require the Division, before issuing a driver's license or an instruction permit, to require valid documentary evidence that the applicant:
 - Is a citizen or national of the United States;
 - Is an alien lawfully admitted for permanent or temporary residence in the United States;
 - Has conditional permanent resident status in the United States;
 - Has a pending or approved application for asylum in the United States or has refugee status;
 - Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry in the United States;
 - Has a pending or approved application for temporary protected status in the United States;
 - Has approved deferred action status; or

- Has a pending application of adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States;
- Permit the Division to issue a driver's license, valid for a duration specified in the bill, to a person who provides evidence of lawful presence as follows:
 - Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry in the United States;
 - Has a pending or approved application for temporary protected status in the United States;
 - Has approved deferred action status;
 - Has a pending application of adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or
 - Is an alien lawfully admitted for permanent or temporary residence in the United States;
- Prohibit the Division from issuing a Kansas driver's license to a person holding a driver's license issued by another state without making reasonable efforts to confirm the termination of the driver's license in the other state;
- Require that any person applying for a driver's license submit to a mandatory facial image capture;
- Provide authority for the Director of Vehicles to issue a driver's license, valid for one year, to an applicant who cannot provide valid documentary evidence but can provide compelling evidence of lawful presence;

- Authorize the issuance of a driver's licence which does not contain the principal address to persons who are program participants of KSA 75-455 and are attempting to escape from actual or threatened domestic violence, sexual assault, trafficking or stalking;
- Require that all drivers' licenses and identification cards have common machine-readable technology and have physical security features designed to prevent fraud;
- Require the driver's license examiner to compare the applicant with the Division's existing information and facial image database;
- Delete the provision that authorized a birth certificate from another country to be a document that may be used to obtain a replacement driver's license;
- Require the Division to maintain a suitable record of all data fields printed on drivers' licenses and identification cards issued by the State;
- Authorize the Division to cancel a driver's license if it determines that a person is not lawfully present in the United States;
- Make corresponding changes to the provisions in the bill regarding application for an identification card as were made to the provisions in the bill regarding application for a driver's license;
- Prohibit the Division from issuing an identification card to a person who holds a current valid driver's license unless the driver's license has been physically surrendered;
- Broaden the definition of "police officer" or "law enforcement officer" as defined by the Law Enforcement Training Act to include law enforcement agents designated by the Secretary of Revenue;

- Add “identification card” or “canceled driver’s license or identification card” to the criminal statute which lists the prohibited uses of a driver’s license;
- Require the Secretary of Revenue to provide a procedure to file a complaint for persons alleging discrimination or other topics related to the issuance of drivers' licenses and identification cards, and for the investigation of the complaint; and
- Require the Secretary to annually report in January to the House Committee on Veterans, Military and Homeland Security complaints made related to the issuance of drivers' licenses and identification cards.

Conference Committee Action

The Conference Committee agreed to place the provisions of HB 2390, as amended by Senate Committee on Federal and State Affairs into SB 9. HB 2390 would improve security for drivers' licenses and identification cards.

Background

SB 9, as introduced, proposed to repeal language in existing law that makes it unlawful to operate a motor vehicle equipped with television-type receiving equipment so located that the equipment is visible from the driver’s seat. This provision is now in SB 8.

The proponents of HB 2390, as introduced, included Joan Wagnon, Secretary of Revenue; Carmen Aldritt, Director of Vehicles; and a representative for Citizens for Immigration Reform.

No opponents testified on the bill.

The House Committee amended the bill to:

- Delete all references and provisions to the REAL ID Act;
- Delete the provision that required the Division to establish fraudulent document recognition training programs;
- Broaden the required employee training program to include document recognition and federal rules used to determine lawful presence;
- Clarify that the Division may disclose motor vehicle records to any federal, state or local agency to assist in carrying out the functions of the governmental agency;
- Require the Division to annually report in January to the House Committee on Veterans, Military and Homeland Security disclosures made to any federal, state or local agency to assist in carrying out the functions of the governmental agency;
- Delete the provision requiring the applicant to pay for the costs of the production of the driver's license, instructional permit, renewal or identification card;
- Require proof of age and proof of identity for application of a driver's license;
- Delete the provision requiring the applicant to provide proof from the Social Security Administration that he or she does not have a social security number when applying for a driver's license or an identification card;
- Require the applicant to provide proof of lawful presence and Kansas residency when applying for a driver's license or an identification card;
- Require the Division of Vehicles to make reasonable efforts to verify completeness of documentation required to prove age, identity, lawful presence and Kansas residency;

- Delete the requirement that the Division verify with the issuing agency the validity and completeness of each document required to prove age, identity and lawful presence;
- Delete all references to a temporary driver's license;
- Prohibit the Division from issuing a Kansas driver's license to a person holding a driver's license issued by another state without making reasonable efforts to confirm the *termination of the driver's license in the other state*;
- Authorize the issuance of a driver's license which does not contain a colored photograph to the following:
 - Any person who is outside the state and for whom the Division provides for renewal of driver's license by mail;
 - Any person belonging to a religious organization which objects to having their picture taken;
- Authorize the issuance of a driver's license which does not contain the principal address to persons who are program participants attempting to escape from actual or threatened domestic violence, sexual assault, trafficking or stalking;
- Delete the provision allowing the renewal, by mail, of a driver's license that expires while the person is outside the United States;
- Delete the provision requiring the Division to retain images of source documents for ten years;
- Make corresponding changes to the provisions in the bill regarding application for an identification card as were made to the provisions in the bill regarding application for a driver's license; and

- Make amendments of a technical nature.

The House Committee of the Whole amended the bill to:

- Require the Secretary of Revenue to provide a procedure to file a complaint for persons alleging discrimination or other topics related to the issuance of drivers' licenses and identification cards, and for the investigation of the complaint; and
- Require the Secretary to annually report in January to the House Committee on Veterans, Military and Homeland Security complaints made related to the issuance of drivers' licenses and identification cards.

The Senate Committee amended the bill to: define "state" and delete the provision dealing with a driver's license issuance which does not have a valid photo.

The fiscal note on the bill as introduced states that the agency is unable to estimate the amount of additional expenditures associated with the implementation of the bill because of the uncertainty on what would be required to implement the REAL ID Act. The bill, as amended, does not make reference to the REAL ID Act.

television type equipment in motor vehicles; drivers license fraud

EXHIBIT 2

Approved: 02/19/07
Date

MINUTES OF THE HOUSE COMMITTEE ON VETERANS, MILITARY AND HOMELAND
SECURITY

The meeting was called to order by Chairman Don Myers at 1:30 P.M. on February 14, 2007 in Room 241-N of the Capitol.

All members were present except:
Representative Bob Bethell- excused

Committee staff present:
Art Griggs, Revisor of Statutes Office
Athena Andaya, Kansas Legislative Research
Heather O'Hara, Kansas Legislative Research
Betty Caruthers, Committee Assistant

Conferees appearing before the committee:
Secretary Joan Wagnon, Secretary of Revenue
Carmen Alldritt, Director, Division of Vehicles

Others attending:
See attached list.

Chairman Myers called the meeting to order and opened hearings on **HB 2390 - REAL ID; drivers' licenses and identification cards.**

Chairman Myers recognized Secretary Wagnon for testimony as a proponent on the bill who in turn requested that Carmen Alldritt present testimony followed by them both standing for questions from the Committee.

Chairman Myers recognized Carmen Alldritt for testimony as a proponent. (Attachment 1) The importance of a drivers' license or identification card these days was stressed with the Department of Revenue having the tremendous job of developing processes with regards to issuance, security, and fraud prevention with these documents. With the exception of some sections of this bill, a number of items actually mirror what the federal requirements of the REAL ID Act look like. A big intent of this bill is to assist in fraud prevention and protection of individual identifications.

Chairman Myers pointed out the written only testimony received from Melinda Lewis, Director of Policy Advocacy and Research, El Centro, Inc. in opposition to the bill. (Attachment 2)

Chairman Myers asked about someone who cannot provide a valid social security number that they must provide evidence from the social security administration as to their ineligibility. Carmen stated that they may need to change that in this bill. Questions were asked regarding the date that the bill would take effect which was 3/1/08. Carmen noted that they could request an extension if need be for the REAL ID requirements to be in place. They see this as a "readiness" bill. They cannot enact certain new things of the driver's license laws until after the REAL ID Act goes into effect March 1, 2008. There was mention of changing the date of this bill and it going into effect July 1, 2007 due to statute books.

Representative Goyle expressed concerns about how Kansas cannot move forward on their own since the whole point of REAL ID is a network between states and Federally mandated. He was concerned about putting something in place now which may be harder to change later. There were a number of concerns noted around New Sec. 1. (f) which deals with disclosing information and not knowing what this will look like in the REAL ID Act. Secretary Wagnon made mention of the possibility of pulling this section out of the bill and Representative Goico asked about the possibility of making this section a new bill.

Secretary Wagnon stated that there are parts of the bill which need to get going now and other parts which they could wait on. She offered to bring to the Committee tomorrow a list of what they are currently doing and a list of things they cannot do now in order to help visualize what needs to go into effect now and where concerns are.

Representative Goico requested the possibility of a balloon with no reference to REAL ID.

CONTINUATION SHEET

MINUTES OF THE House Committee on Veterans, Military and Homeland Security at 1:30 P.M. on February 14, 2007 in Room 241-N of the Capitol.

Chairman Myers stated that the Committee would work the bill tomorrow and requested the above noted lists be brought to the Committee at that time as well as balloons. The Secretary stated they would also bring information regarding a fiscal note if the bill only dealt with what is necessary at the present time.

Chairman Myers announced that tomorrow the Committee would work HB 2210 followed by HB 2390.

Chairman Myers adjourned meeting at 2:45.

Next meeting is scheduled for Thursday, February 15, 2007.

EXHIBIT 3



*Kathleen Sebelius, Governor
Joan Wagnon, Secretary*

www.ksrevenue.org

TO: Chairman Don Myers,
Members of the House Veterans, Military and
Homeland Security Committee

FROM: Carmen Alldritt, Director, Division of Vehicles
Joan Wagnon, Secretary of Revenue

DATE: February 14, 2007

SUBJECT: House Bill 2390

A few short years ago a Driver's License (DL) was just that, a license to drive. Today a DL or Identification Card (ID) is the most important identity document a person can have in their possession. Therefore, it has become paramount for the Dept. of Revenue to develop, maintain, and enhance the policies, procedures, and processes used to ensure that the DL/ID documents that we issue, meet existing standards and that the measures are in place for the department to proactively prevent the fraudulent acquisition and use of those documents.

Whether or not the Real ID Act becomes a reality or is re-structured in some way has yet to be determined. What we do know is that the Kansas Department of Revenue (KDOR) takes the job of issuing and maintaining driver information very seriously. We already have a number of processes in place which we feel provide for a secure issue process and for security in the DL/ID document itself.

New Sections 1 and 2 of HB 2390 address public policy to deal with investigative and enforcement authority surrounding issuance of DL/ID. The provisions in this bill would enhance current processes and allow the Secretary of Revenue to further investigate and aid in the prosecution of those found to be involved in the fraudulent uses of DL/ID's.

As you know we went to a central issue DL/ID process approximately 2 years ago. At that time tools became available which have enhanced our ability to detect fraud. With those systems in place and the fraudulent document training our Driver License Examiners receive, we've become more savvy at detecting and tracking fraudulent activities.

Application for a DL or ID has become the first step in having the ability to open a bank account, fly, cash a check or apply for any number of government programs. As the issuing agent, KDOR's responsibility has grown in importance to ensure the issuance of a secure license document, issued only to the appropriate person, and is issued from a secure environment. The department is being asked to ensure the DL/ID applicant is, indeed, who they say they are. Among the requirements, applicants must provide the state with proof of identity, date of birth, address of principal residence, a social security number and evidence of lawful presence in the U.S.

DIVISION OF VEHICLES
DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA
Voice 785-296-3601 Fax 785-291-3755 <http://www.ksrevenue.org>

House Committee on Veterans, Military
and Homeland Security
2/14/07
Attachment 1

To help accomplish this task, and to enhance fraud prevention, HB 2390 addresses a number of items such as:

- Establishment of fraudulent document recognition training programs for employees engaged in DL/ID issuance.
- Ensure physical security of DL/ID document materials and the issue site.
- Facilitate the investigation of suspected fraudulent activity with regard to obtaining a Kansas DL/ID, vehicle title and registration fraud, or violations of licensure of vehicle sales and manufacturing statutes.
- Copies of original documents presented by an applicant will be retained by KDOR for a minimum of 10 years.
- Any increases in the costs associated with the production of a DL/ID would be passed to the applicant.

Please note, with the exception of Sections 1 and 2, this bill mirrors federal requirements of the REAL ID Act, as well as standardizing terms so that all states speak the same language.

Documented lawful presence is the integrity of our DL/ID system and the breeder documents presented by an applicant must be authentic. We have been gathering data since the first of the year regarding lawful presence and residence, and have found that approximately 30% of those turned away in large metropolitan areas was due to lack of proper documentation specifically related to lawful presence and proof of residency.

Currently the demand for legitimate Kansas DL/ID is at an all time high. With this demand comes the big business of supplying breeder documents to individuals desiring to enter the system through acquiring a DL/ID. One of the most important features of this bill would allow a data share between state agencies for the purpose of establishing/verifying an individual's identity. For example, electronic verification of birth and death records and digital photo exchange.

The most important thing to think about is the intent of this bill. There are individuals who, for whatever their motives, are intent on defrauding the system. KDOR is the agency entrusted to keep accurate records, and has worked diligently to maintain the integrity of our personal identities and that of our identification documents.

In summary, the Dept. of Revenue has taken a number of steps to provide Kansans with the most secure DL/ID documents currently produced in the U.S. To ensure the validity of those documents, to enhance current fraud prevention measures, and to provide for the authority to investigate suspected fraudulent activities, the department requests your support of HB2390.



Kathleen Sebelius, Governor
Joan Wagon, Secretary

www.ksrevenue.org

MEMORANDUM

TO: Chairman Brungardt
Committee on Federal and State Affairs

FROM: Carmen Alldritt, Director
Division of Vehicles

DATE: March 6, 2007

RE: HB 2390

A few short years ago a Driver's license (DL) was just that, a license to drive. Today a DL or Identification Card (ID) is the most important identity document a person can have in their possession. Therefore, it has become paramount for the Department of Revenue to develop, maintain and enhance the policies, procedures and processes used to ensure that the DL/ID documents that we issue meet existing standards. HB2390 will assist the Department to detect, prevent and proactively pursue applicants who attempt to defraud the system.

Application for a DL or ID has become the first step in having the ability to open a bank account, fly on a plane, cash a check, apply for government programs, even apply for a job. As the issuing agent, KDOR's responsibility has grown in importance to ensure the issuance of a secure identity document, issued only to the appropriate person and issued from a secure environment. The department strives everyday to ensure the DL/ID applicant is indeed, who they say they are. Among the requirements, applicants must provide the state with proof of identity, Kansas residency, lawful presence in the United States and a verifiable Social Security Number.

As many of you know we went to a central issue DL/ID process approximately 2 years ago. At that time tools became available which have enhanced our ability to detect fraud. With those systems in place we've become more savvy at detecting and tracking fraudulent activities.

The primary focus of House Bill 2390 is to strengthen existing state requirements that an applicant prove age, lawful presence, identity and Kansas residence. The bill achieves this goal by providing agents of KDOR with law enforcement authority to investigate

DIVISION OF VEHICLES
DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66612-1588
Voice 785-296-3601 Fax 785-291-3755 <http://www.ksrevenue.org/>

Sen Fed & State

Attachment 5
3-6-07

fraudulent applications. The bill also heightens the level of security and training the Division of Motor Vehicles must maintain with regard to its own employees and agents who manufacture, process, and distribute DL/ID's.

The House was diligent in working H2390 and as a result, it comes to you in very good shape. The Department of Revenue supports it completely. However, there are two technical amendments I would like to offer at the end of my testimony which arose as a result of newly released draft federal regulations regarding the REAL ID requirements.

Although this bill creates a legal framework for coming into compliance with the REAL ID Act, the bill does NOT address many of the fiscal concerns that will inevitably arise from the federal requirements. We are NOT addressing fiscal matters at this time because of the current, dynamic nature of REAL ID Act, for example:

- There is existing legislation before the Federal legislative branch attempting to modify the REAL ID provisions.
- The Division is still awaiting a finalized version of DHS regulations.
- Other states have raised significant concerns.

Kansas started this process with an advantage over many other states, because we already require proof of lawful presence. Furthermore, the State has previously adopted a central issuance system for distributing DL/ID rather than an immediate, over the counter process for distribution.

While I am not today asking this Committee for additional funding to cover the anticipated costs of complying with the REAL ID Act, Mr. Chairman, I believe it is my responsibility to advise you and the people of Kansas that we need to begin preparing for some inconveniences when securing driver's licenses and identification cards under Real ID when it is fully implemented. The price we all will have to pay for increased security may be longer waits for new or renewing licenses, higher costs to the applicant, and increased documentation requirements. The legislature will have to find ways to fund these additional requirements, which could be for increased staffing at the DL centers, computer systems, etc. We have not been able to put a number on these costs, yet, but the newly released regulations seem to indicate that our current appropriations will be insufficient.

For example, to renew my DL in 2009 I will need to provide documentation of who I am and where I live. It makes no difference that I've been a Kansas driver since I was 15 years old. I was born in 1951 and have one of those birth certificates that is black with white writing and a raised seal. I will need to get a certified birth certificate from Vital

Statistics. I got married so I'll need to provide my marriage license to verify the name change. This will have an even greater impact on those that have had their name changed because of divorce, adoption or any other legal action. At the time of renewal I'll have to wait for the examiner to make sure I've got everything I need and then the examiner will scan all documents into the system to be attached to my DL record. You can see how this will take more time at the counter, will require the DMV to store the records electronically (more storage systems and connectivity), and will increase the costs, as well as the hassle. So I'm starting now to remind people to check to see where YOUR information is and determine what you'll need to secure or replace prior to renewing your DL.

Not only will the impact be felt by each applicant, many state and local agencies, courts and other services will experience a significant increase for the production of certified documentation.

Finally, I would request the Committee consider two changes to the House Bill. The first requested change springs from the recently released draft regulations proposed by the Department of Homeland Security. The change removes existing photo exemptions and mandates that all applicants for driver's licenses and identification cards submit to facial image capture. (See Sec. 5(a)). The second change is a technical one that limits the term "state" to mean a State of the United States and recognized territories. (See Sec. 3(a)(5)).

Thank you for your consideration to approve HB 2390 with the two changes.

EXHIBIT 5

EXCERPTED TESTIMONY OF MS. ELLEN BERTELS

HEARING had before the Kansas House Committee on Health and Human Services on SB 180 on Monday, March 6, 2023, from 1:32 PM to 2:46 PM. Excerpted testimony of Ellen Bertels, an attorney with Kansas Legal Services, Inc., in opposition to SB 180 from 1:52:15 PM to 1:54:49 PM

Transcribed by: Carol A. Roberts, CSR
Supreme Court #1051

1 MS. ELLEN BERTELS: Good afternoon. My name is
2 Ellen Bertels. I am a life-long Kansan but I live in
3 Wichita now.

4 Um, I'm an attorney with Kansas Legal Services.
5 Through a Skadden Fellowship, I provide free legal
6 representation to low-income transgender Kansans seeking
7 name changes and gender marker changes.

8 I'm testifying today because SB 180 will have
9 profound negative consequences for my clients and other
10 trans Kansans like them.

11 SB 180 is harmful for many reasons as you've heard
12 already. But I'd like to focus on the fact that it -- it
13 essentially bans gender marker changes on state-issued
14 identity documents like birth certificates and driver's
15 licenses.

16 This bill requires that state agencies adopt a
17 definition of gender that includes trans inner-sex Kansans
18 because it adopts a, a, an overly narrow definition of
19 gender.

20 By saying that vital records must reflect a person's
21 sex assigned at birth, this bill makes it impossible for
22 trans folks to change the gender marker on their state-
23 issued identity documents.

24 This means that they can't obtain IDs that reflect
25 their true identities.

1 Statistics show that legislation like this is
2 extremely harmful to trans folks. When trans people are
3 not able to get -- get correct, uh, identity documents,
4 they are more likely to experience harassment,
5 discrimination and violence at the hands of others.

6 Additionally, this bill is also likely
7 unconstitutional. For more than a decade, Kansas had a
8 policy banning gender marker changes on state-issued
9 identity documents like birth certificates and gen -- or
10 and driver's licenses.

11 In 2019 in a case called *Foster v Anderson*, the
12 federal court in Kansas found this, uh, found this position
13 -- this policy position unconstitutional in violation of
14 the US Constitution's Fourteenth Amendment equal protection
15 and due process clauses.

16 SB -- Kansas is currently bound by a consent decree
17 that says that the State will not bound gender markers on
18 these state-issued vital records.

19 SB 180 likely violates this consent decree and will
20 drag the State into more expensive, wasteful and time-
21 consuming litigation.

22 In short, SB 180 denies trans Kansans full
23 recognition under law. And is likely to drag Kansas into
24 needless litigation on a fact where this policy has already
25 been found unconstitutional less than four years ago.

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I ask you to take these things into consideration
when deliberating on this bill. Thank you.

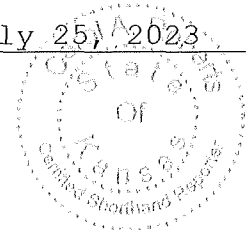
[END OF EXCEPTED TESTIMONY]

C E R T I F I C A T E

I, Carol A. Roberts certify that the foregoing transcript of excerpted testimony of Ms. Ellen Bertels in front of the Kansas House Health and Human Services Committee, held on March 6, 2023, was prepared using standard electronic transcription equipment and is a true and accurate record of the proceedings to the best of my knowledge and ability.

Signature Carol A. Roberts, CSR

Date July 25, 2023



IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, <i>ex rel.</i> KRIS KOBACH,)	
Attorney General,)	
)	
<i>Petitioner,</i>)	
)	
vs.)	Case No. 23 CV 422
)	Division No. 3
DAVID HARPER, Director of Vehicles,)	
Department of Revenue, in his official)	
capacity, and)	
MARK BURGHART, Secretary of Revenue,)	
in his official capacity,)	
)	
<u><i>Respondents.</i></u>)	

Pursuant to Chapter 60

RESPONDENT KDOR SUPPLEMENTAL RESPONSES TO PETITIONER'S FIRST SET OF DISCOVERY REQUESTS

Interrogatories (First Set)

3. How many sex-marker change requests has KDOR received each month since it issued on May 10, 2011, its policy titled "Requests for Gender Reclassification on Kansas driver's licenses and identification cards"? Give your answer on a month-by-month basis.

ANSWER:

See KDOR's Motion to Dissolve, Legal & Factual Background, Paragraph 8 (pg. 5), for gender changes processed through KDOR's central office between July 2019 and December 2022. KDOR is still working towards providing monthly totals between May 2011 and June 2018, and will supplement in subsequent discovery responses.

SUPPLEMENTAL RESPONSE 12.5.2023

KDOR needs to restate total Gender Change Requests for first half of CY 2023 from what is stated in Respondent PVD Motion to Dissolve, paragraph 8, pg. 5, filed on July 10, 2023. KDOR mistakenly added the transactions in first half of CY 2023 to be 278 when the correct number was 172. KDOR had mistakenly added (Jan 23 through May 23) numbers into its June 2023 number. Below is a month to month breakdown of gender changes conducted by KDOR.

Time Period	Gender Changes	Month (1, 2, 3, 4, 5, 6, etc.) Approx, manual review, may have repeated transactions or rejected transactions
Second Half of CY 2011	4	(no 5/11 transactions) 7:2, 12:2
First Half of CY 2012	1	5:1
Second Half of CY 2012	2	12:2
First Half of CY 2013	8	1:2, 3:2, 4:1, 5:2, 6:1
Second Half of CY 2013	5	9:2, 11:1, 12:2
First Half of CY 2014	7	1:2, 2:1, 3:1, 4:1, 5:1, 6:1
Second Half of CY 2014	5	7:2, 8:1, 12:2
First Half of CY 2015	8	1:1, 2:1, 3:2, 4:2, 5:1, 6:1
Second Half of CY 2015	8	8:1, 10:5, 11:1, 12:1
First Half of CY 2016	9	2:1, 3:2, 4:3, 5:1, 6:2
Second Half of CY 2016	12	7:3, 8:2, 9:2, 10:1, 11:3, 12:1
First Half of CY 2017	19	1:6, 2:1, 3:6, 4:3, 5:3
Second Half of CY 2017	12	7:1, 8:1, 9:3, 10:4, 12:3
First Half of CY 2018	18	1:1, 2:5, 3:1, 4:3, 5:6, 6:2
KS DOV Gender Changes Between 7.1.2011 and June 30, 2018	118	
Second Half of CY 2018 (projected)*	20	
First Half of CY 2019 (projected)*	20	
Second Half of CY 2019	22	7:5, 8:5, 9:5, 10:1, 11:6, 12:0
First Half of CY 2020	16	1:3, 2:5, 3:2, 4:0, 5:2, 6:4
Second Half of CY 2020	32	7:4, 8:5, 9:9, 10:4, 11:7, 12:7
First Half of CY 2021	35	1:3, 2:2, 3:11, 4:7, 5:5, 6:7
Second Half of CY 2021	53	7:16, 8:10, 9:11, 10:6, 11:4, 12:4
First Half of CY 2022	36	1:3, 2:2, 3:5, 4:9, 5:9, 6:9
Second Half of CY 2022	28	7:6, 8:10, 9:3, 10:1, 11:2, 12:6
First Half of CY 2023	172	1:2, 2:4, 3:6, 4:23, 5:71, 6:66

KS DOV Gender Changes Between July 1, 2019, and June 30, 2023	394	
Identified KS DOV Gender Change Events Between June 2011 and June 2023	552	

* Projected because KS Conducted System Change during FY 2019

That the responses provided above are accurate as reviewed on December 5, 2013.

/s/ Kent Selk

Kent Selk, Chief Driver's License Examiner for the State of Kansas

/s/ Ted E. Smith

Ted E. Smith, #16737

Attorney for KDOR

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

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

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

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

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