

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

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

Petitioner,

v.

Case No.: SN-2023-CV-000422

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

Respondents.

**KDOR'S RESPONSE TO MOTION TO MAINTAIN DRIVER'S LICENSE
RECORDS AND DELAY LIFTING OF THE INJUNCTION**

COMES NOW the Respondents, David Harper, Director of Vehicles, Kansas Department of Revenue, in his official capacity, and Mark Burghart, Secretary of Revenue, in his official capacity, Respondents-Appellants (collectively "KDOR"), by and through counsel, and in response to the State's *Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses*, alleges and states:

I. Petitioner's motion for KDOR to retain records of gender changes is knowingly misleading and duplicative of longstanding practice.

Respondent KDOR maintains an internal record of gender change in its driver's license database, including a record of changes since it resumed processing such changes on Wednesday, October 8, 2025. Petitioner knows that KDOR maintains these records because this fact was demonstrated during discovery and the temporary injunction hearing. Throughout litigation, KDOR has repeatedly and univocally demonstrated that records of gender field changes can be queried and are maintained. KDOR has long maintained, and will continue to maintain, transaction records on driver's license credential transactions as

required by K.S.A. 2025 Supp. 8-249. If this court accepted Petitioner's motion and ordered KDOR to retain records of gender changes for driver's licenses, nothing would happen. The order would be duplicative of KDOR's practice. To the extent Petitioner utilizes his motion to claim otherwise—despite his knowledge of KDOR's practice—it is misleading and patently incorrect.

II. Petitioner's baseless motion asks this court, in essence, to overturn the Court of Appeals decision.

Petitioner requests "that the Court temporarily delay the lifting of the temporary injunction until it decides this motion." (Petitioner's Motion, at p. 3). There are several legal problems with this assertion. Most importantly, this court does not possess the power to stay the lifting of the temporary injunction because the temporary injunction was automatically lifted when the Court of Appeals mandate was issued. Upon the mandate's issuance, Respondent KDOR began issuing gender changes for driver's licenses. This court cannot stay the lifting of the temporary injunction when the temporary injunction has been lifted for well over a week.

But more glaringly, there is no basis in fact or law for this court to disregard an act contrary to an appellate decision by delaying the lifting of the temporary injunction. In practice, Petitioner is asking this court to overturn the Court of Appeals' decision without citing one legal authority to support his request. Kansas law dictates the exact opposite of Petitioner's motion. K.S.A. 20-108 requires district courts "to carry the judgment or decree of the appellate court into execution; and the same shall be carried into execution by proper proceedings, by such district court, according to the command of the appellate court made therein." Similarly, K.S.A. 60-2106(c) states that an appellate court's mandate "shall be controlling in the conduct of any further proceedings necessary in the district court." This

means that “[t]o the extent an appellate court has spoken, the district court must listen and as required, act.” *State v. McMillan*, 319 Kan. 239, 257 (2024).

Petitioner’s motion is an attempt to extend an extraordinary remedy that the Petitioner has now lost on every appellate level. In invalidating this case’s temporary injunction, the Court of Appeals described preliminary injunctions as “extraordinary” and cautioned they are “never awarded as of right” and may not rest on speculation. *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 693, 725-26 (2025). Indeed, the court found the Petitioner “failed to meet its burden to establish the invocation of this extraordinary remedy. Because of the district court’s abuse of discretion, the KDOR has been unable to issue reclassifications of gender designations on Kansas driver’s licenses for two years while this litigation languished.” *Id.*

Rather than abide by the Court of Appeals’ direct order, Petitioner has filed the present motion seeking to delay the lifting of the stay. KDOR firmly believes that the Court of Appeals’ decision in *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680 (2025) is controlling authority squarely adverse to the relief now sought.

Conclusion

For the reasons stated above, this court should deny Petitioner’s *Motion for KDOR Respondents to Maintain a Record of Changes to Driver’s Licenses* because its request to maintain records is duplicative of current practice and his request to stay the Court of Appeal’s order is contrary to binding legal precedent.

Respectfully submitted,

/s/ Nicole M. Revenaugh

Pedro L. Irigonegaray (#08079)

Nicole M. Revenaugh (#25482)

Ryan T. Petersen (#30689)

IRIGONEGARAY & REVENAUGH

1535 SW 29th Street
Topeka, KS 66611
785.267.6115 (p)
785.267.9458 (f)
pedro@itrlaw.com
nicole@itrlaw.com
ryan@itrlaw.com
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Court on the 20th day of October, 2025, which automatically provided notice to following counsel of record:

Kris W. Kobach, #17280
Attorney General
Anthony J. Powell, #14981
Solicitor General
James R. Rodriguez, #29172
Assistant Attorney General
Memorial Building, 2nd Floor
120 S.W. 10th Avenue
Topeka, Kansas 66612-1597
Tel: (785) 296-2215
Fax: (785) 291-3767
Anthony.Powell@ag.ks.gov
Jay.Rodriguez@ag.ks.gov

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

Monica Bennett
American Civil Liberties Union Foundation of Kansas
mbennett@aclukansas.org
kleve@aclukansas.org

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

Douglas R. Dalglish
Paulina Escobar
Stinson, L.L.P.
doug.dalglish@stinson.com
Paulina.escobar@stinson.com

/s/ Nicole M. Revenaugh

Nicole M. Revenaugh (#25482)