

ELECTRONICALLY FILED  
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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT  
CASE NUMBER: SN-2023-CV-000422  
IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIV. 6

STATE OF KANSAS, ex rel. KRIS	)	
KOBACH, Attorney General,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 2023-CV-000422
	)	
	)	
DAVID HARPER, Director of Vehicles,	)	
Department of Revenue, in his official	)	
capacity, and	)	
MARK BURGHART, Secretary of Revenue,	)	
in his official capacity,	)	
	)	
<u>Respondents.</u>	)	

**KDOR’S MOTION FOR SANCTIONS**  
Pursuant to K.S.A. Chapter 60

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, (collectively “KDOR”), by and through the undersigned counsel, and respectfully moves this court under K.S.A. 60-211(c) for sanctions against the Petitioner Attorney General Kris Kobach and signed counsel Solicitor General Anthony Powell on the grounds that their motion for Respondent KDOR to maintain record of changes to driver’s licenses and block the Kansas Court of Appeals’ decision: (1) is being presented for an improper purpose to harass, cause unnecessary delay and needlessly increase the cost of litigation by duplicating litigation over a fact and practice established in discovery and (2) without any legal authority, asks this court to disregard a mandate of the Kansas Supreme Court and order of the Kansas Court of Appeals.

Petitioner has been zealous in seeking injunctive relief against a KDOR practice that has been in place for over a decade. But injunctive relief was not warranted as found by Court

of Appeals. And now, unfortunately, Petitioner's zeal has now gone too far because having had the injunctive relief Petitioner sought and obtained at the district court overturned by order of the Court of Appeals, Petitioner filed a motion seeking to thwart that order, unsupported by law or fact.

Respondent KDOR asks for a sanction of \$1 for having to respond to the Attorney General's harassing, unnecessary, and legally unsupported contentions. Respondent KDOR also respectfully requests that this court order remedial training for civil procedure and include an admonition to Attorney General Kris Kobach and Solicitor General Anthony Powell for their unfounded request that this court "temporarily delay the lifting of the temporary injunction until it decides this motion." (Petitioner's Motion, 3).

The mandate of the Court of Appeals was issued October 8, 2025. The injunction is lifted per order of the Court of Appeals. *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 684 (2025) ("[W]e reverse the district court's order and lift the temporary injunction."). Yet, Petitioner asks this court to disregard that order and "temporarily delay the lifting of the temporary injunction until it decides this motion." (Petitioner's Motion, 3). This proposition is plainly without merit: Petitioner is asking this court, a district court, to overturn a Court of Appeals decision that the Supreme Court has declined to review.

Petitioner noted at the time it filed its motion that the mandate has not yet been issued. *Id.* at 2. This is equally shocking: how can Petitioner file a motion in a court that has not yet had jurisdiction returned to it via the mandate? Petitioner cites no authority for the proposition that the district court could entertain its motion prior to the mandate being issued. Indeed, controlling Kansas law indicates the opposite. *See State v. Showalter*, 319 Kan. 147, 173 (2024) ("Of course, the district court cannot enforce the judgment until the mandate has issued.")

Petitioner's efforts, when taken as a whole, show Petitioner has attempted an end-run around the decision of the Court of Appeals and Supreme Court, attempting to delay lifting of the injunction that was improperly granted as determined by the Court of Appeals.

These sanctions are equally appropriate for Petitioner's request for preservation of driver's license information because the Attorney General knows, through discovery and the injunction hearing, that Respondent KDOR *already* maintains individualized records of all driver's licenses. (KDOR's Response to *Petitioner's First Set of Discovery Requests*, Ex. 1, at 3; ROA Vol. 7, Ex. 2, at pp.160-163). Indeed, Respondent KDOR is certain that Petitioner is acutely aware of KDOR's practice of maintaining individualized driver's license records in its independent database because Attorney General Kobach participated as lead counsel for the State at the injunction hearing and questioned KDOR's employee, Kent Selk, about the functions of the database himself. (Ex. 2, at pp.160-163). Therefore, this demand only serves to harass and cause unnecessary delay over an established and unequivocal fact and practice.

When Respondent KDOR was notified on October 6, 2025, by Petitioner of his indefensible motion, Respondent KDOR immediately reached out to Petitioner to inquire whether the motion was filed with this court. It was. Respondent KDOR then asked Petitioner to withdraw the groundless motion by noon on October 7, 2025, or Respondent KDOR would seek sanctions against Petitioner. But Petitioner has not withdrawn his motion, and now Respondent KDOR must unfortunately file this sanctions motion.

## **I. Background**

On July 7, 2023, Attorney General Kobach filed his *Petition for Mandamus and Injunctive Relief* asking a district court in Shawnee County to enforce Senate Bill 180 in accordance with the Attorney General's reading. He also moved for a temporary injunction while the suit was pending. After discovery, the district court held an evidentiary hearing and

granted the temporary injunction. Respondents appealed to the Court of Appeals who reversed the district court's temporary injunction order for a variety of reasons, but primarily, because Petitioner could not even meet two of the five prerequisites for issuance of a temporary injunction. In reversing the case, the Kansas Court of Appeals ordered the case to be remanded for a hearing before a new judge. *Harper*, 65 Kan. App. 2d at 725-26. Petitioner filed a petition for review with the Kansas Supreme Court, which denied the petition on September 29, 2025.

A week later, Petitioner filed a baseless "*Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses*," the subject of this motion for sanctions. In Petitioner's motion, he represents that "the mandate has not yet been issued." (Petitioner's Motion, 2). And on two separate occasions, on October 7, 2025, and October 8, 2025, Solicitor General Powell sent an email warning Respondent KDOR to not issue pertinent driver license's changes until the appellate court mandate was issued. On both occasions, Respondent KDOR assured him that it would follow Kansas Supreme Court Rule 7.03 (2025 Kan. Ct. R. 63-64). *See Showalter*, 319 Kan. at 173 ("Therefore, a judgment on appeal is not considered final until the mandate has issued."); *State v. Eisenhower*, 305 Kan. 409, 411-12 (2016) (explaining that "[o]nce notified of the mandate by the Clerk of the Appellate Courts, the district court" can then act because it "will immediately obtain jurisdiction.").

Not only is it disingenuous for Petitioner to seek relief by delaying the lifting of a temporary injunction when he is well aware that the mandate, via Rule 7.03, would be issued "7 days after" Monday, September 29, 2025, it is also insincere for Petitioner to hold Respondent KDOR to Rule 7.03 and not follow it himself. How could the court even rule on Petitioner's motion until the mandate was issued? And once the mandate issued, the injunction would be lifted, so how is there any basis for asking this court to not lift the injunction pending

resolution of a motion filed before the court regained jurisdiction? There simply was no legal basis supporting Petitioner's requested relief to delay lifting of the injunction.

## **II. Sanctions**

Under K.S.A. 60-211(b)(1) and (2), an attorney such as Petitioner Attorney General Kobach and signed counsel Solicitor General Anthony Powell, when filing their motion on October 6, 2025, certified that to the best of Petitioner's knowledge, information and belief formed after reasonable inquiry under the circumstance, they were not presenting the motion "for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation," and their "legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Here, on October 6, 2025, Petitioner requested this court defy the Court of Appeals' decision and, in turn, defy the petition for review denied by the Supreme Court.

If after notice and opportunity to respond under K.S.A. 60-211(c), Petitioner cannot show that his motion was not presented for any improper purpose or that his legal contentions are warranted by existing law, this court may impose "an appropriate sanction on any attorney, law firm or party that violated the statute or is responsible for a violation committed by its partner, associate or employee." K.S.A. 60-211(c). The State of Kansas is subject to K.S.A. 60-211. K.S.A. 60-211(e). A sanction may include an admonishment and an order to pay the other party or parties the "reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper." K.S.A. 60-211(c); *Wood v. Groh*, 269 Kan. 420, 431 (2000) ("We hold that the plain meaning of K.S.A. 1999 Supp. 60-211(c), coupled with the legislative intent of the statute, allows courts to impose nonmonetary sanctions in the form of admonitions . . . . The district court has the discretion to determine what type of sanctions are appropriate in a given case.").

“The imposition of sanctions pursuant to [K.S.A. 60-211] is discretionary with the trial court, and its ruling on sanctions will not be disturbed on appeal absent an abuse of discretion.” *Wood*, 269 Kan. at 429. There, our Supreme Court said:

“Courts should take the following factors into consideration when determining whether to sanction a party and what kind of sanction to impose:

- (1) whether the improper conduct was willful or negligent;
- (2) whether it was part of a pattern of activity or an isolated event;
- (3) whether it infected the entire pleading or only one particular count or defense;
- (4) whether the person has engaged in similar conduct in other litigation;
- (5) whether it was intended to injure;
- (6) what effect it had on the litigation process in time or expense;
- (7) whether the responsible person is trained in the law;
- (8) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and
- (9) what amount is needed to deter similar activity by other litigants.” *Id.* at 431.

Petitioner’s conduct here is willful. Attorney General Kobach has engaged in similar conduct in other litigation. The motion affects the litigation process in time and expense. As the State’s chief legal officer, Attorney General Kobach is trained in the law. And even if Petitioner’s conduct cannot alone be deterred by financial sanctions, similar present and future conduct of his can be discouraged by court-ordered remedial training and an admonition.

### **III. Petitioner’s motion is presented for an improper purpose to harass, cause unnecessary delay, and needlessly increase litigation costs.**

Petitioner moves this court to order Respondent KDOR “to maintain a detailed and individualized record for all driver’s licenses that fail to reflect the licensee’s biological sex as defined by SB 180.” He reasons that if this court “ultimately concludes that SB 180 requires driver’s licenses to reflect licensees’ biological sex as birth, as the State maintains, then any changes to driver’s licenses . . . will need to be corrected to conform to the law.” (Petitioner’s Motion, 3). Putting aside the merits of whether this court can and should order antecedent relief

to Petitioner if he is ultimately successful, this request is harassing, causes unnecessary delay, and needlessly increases litigations costs.

Petitioner knows, through discovery and the temporary injunction hearing, that Respondent KDOR already utilizes the practice he requests. He therefore willfully knows a court order mandating Respondent KDOR to do something it already does is redundant and consequently only serves to harass and cause unnecessary delay. KDOR already maintains records of all driver's license transactions, including gender reclassification transactions, through its licensing database. These records include the gender marker at the time of issuance, any supporting documentation, and subsequent amendments. KDOR has maintained such records for more than a decade, and this capacity was fully described during the injunction proceedings. KDOR's recordkeeping procedures are comprehensive and sufficient to identify any class of licenses should future legal determinations require additional administrative action.

Although Petitioner's motion is not a second lawsuit, it is nevertheless a redundant, improper legal vehicle to duplicate litigation over an established fact and practice. *See Kezhaya v. City of Belle Plaine, Minnesota*, 78 F. 4th 1045, 1050 (2023) (“[T]he rule against duplicative litigation seeks to promote judicial economy and to protect parties from vexatious and duplicative litigation over the same subject matter.”). This motion wastes this court and Respondent KDOR's time because it forces the two to handle and respond to a settled fact.

As evidenced by Petitioner Attorney General Kobach being the State's chief legal officer, he is trained in the law and he and his office, including the State's Solicitor General, should know better than to file a vexatious motion that misleads a court. *See State v. Finch*, 128 Kan. 665, 280 P. 910, 911 (1929) (“[T]he Attorney General is the chief law officer, subject only to direction of the Governor and the Legislature.”). This case was remanded to a different

district court judge who has not been a participant in the discovery process or privy to the injunction proceedings. The new judge has no way of knowing that Petitioner's request is something that Respondent KDOR *already* does. In this way, Petitioner seeks to mislead this court by taking advantage of its unfamiliarity with the case. The only way for Petitioner's egregious and bad faith request to be checked and corrected would be for Respondent KDOR to point this court's attention to discovery and the injunction proceedings or for this court to intently search through "significant discovery." *Harper*, 65 Kan. App. 2d at 685. Moreover, had Petitioner conferred with Respondent KDOR before filing this motion, Respondent KDOR could have explained how the first request is unnecessary in light of KDOR's existing practice.

**IV. Petitioner's motion contains legal contentions unwarranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law.**

Petitioner's second request, to "temporarily delay the lifting of the temporary injunction," boldly balks at the Kansas Court of Appeals' mandate that the district court's issuance of the temporary injunction was legally groundless and therefore *must* be "reversed." *Harper*, 65 Kan. App. 2d at 725-26. Make no mistake: Petitioner is asking this court, a district court, to overturn the Kansas Court of Appeals' decision. Petitioner's unjustifiable legal contention is also evidenced by the fact that he does not provide even *one* legal authority to support his request. And he asks this court to ignore K.S.A. 20-108 and K.S.A. 60-2106(c), which consecrate the seniority of the Kansas Court of Appeals over a district court.

In *State v. McMillan*, 319 Kan. 239, 257 (2024), the Kansas Supreme Court explained the hierarchy of Kansas courts and the role of a district court after an appellate court has spoken:

"K.S.A. 20-108 and K.S.A. 60-2106(c) discuss the effect of the mandate. 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.’

As explained in *State v. Soto*, 310 Kan. 242, 252, 445 P.3d 1161 (2019), these statutes ‘enforce the hierarchy of Kansas courts, ensuring that appellate orders [are] not . . . ignored by lower courts. They were not designed to set up broad limits on subject matter jurisdiction once a case was remanded.’ In other words, ‘To the extent an appellate court has spoken, the district court must listen and, as required, act.’ 310 Kan. at 252, 445 P.3d 1161. The mandate rule thus incorporates preclusion principles by preventing district courts from acting contrary to points finally settled by appellate courts. But the statutes do not prohibit district courts from taking other steps necessary to dispose of the case. ‘Such issues may have been allocated for decision in the district court in the first place and then untouched by appellate proceedings.’ 310 Kan. at 256, 445 P.3d 1161.”

These Kansas statutes and case law establish that this court cannot ignore orders by the Court of Appeals. This court is required to listen and act according to those orders. Indisputably, Petitioner asks this court either knowingly or negligently, to disobey a Kansas appellate court who has spoken on this issue. The Court of Appeals was *clear* that Petitioner’s motion for temporary injunction was meritless. *Harper*, 63 Kan. App. at 725-26 (“[T]he State is required to meet all five prerequisites for a temporary injunction, and they have not met at least two, [so] there is no need to examine the other three.”) This court cannot continue to enforce a meritless injunction.

Once again, Petitioner’s conduct is willful. With Petitioner’s role as chief legal officer, it would be unfathomable for him to ignore the rudimentary rule that this court cannot overturn a Court of Appeals decision. Attorney General Kobach has previously engaged in sanctionable conduct, as described more fully below, including misleading a court, failing to follow court rules, and improper supervision of lawyers and non-lawyers. However, this motion is arguably more egregious because here, Petitioner knowingly ignores a court order.

**V. Respondent KDOR respectfully requests this court grant relief in the form of sanctions against Petitioner Attorney General Kobach and Solicitor General Anthony Powell.**

Petitioner Attorney General Kobach’s sanctionable conduct is part of a pattern of activity. He has been sanctioned for misleading a court, for failing to follow court procedures and rules, and for failing to properly supervise lawyers and non-lawyers. *See Fish v. Kobach*, 267 F.Supp.3d 1297, 1302-03 (D. Kan. 2017) (holding that a magistrate judge properly fined Kris Kobach \$1000 for “misleading the court.”); *Fish v. Kobach*, 309 F.Supp.3d 1048, 1119 (D. Kan. 2018) (sanctioning Kris Kobach to continuing legal education credit “of 6 hours for the 2018-2019 reporting year in addition to any other CLE education required by his law license” for failure to familiarize himself with federal rules); *see also* Sherman Smith, *Kobach enters diversion over court conduct*, The Topeka Capital-Journal (Oct. 28, 2019, 7:46 P.M.), <https://www.cjonline.com/story/news/politics/state/2019/10/28/kris-kobach-enters-diversion-over-conduct-in-voter-registration-case/2424424007/> (reporting that Kris Kobach entered into a diversion agreement with the Kansas Disciplinary Administrator’s Office agreeing to a public notice that “he didn’t properly supervise lawyers and non-lawyers.”)<sup>1</sup>; Sherman Smith, *Kobach used state funds to pay for court-ordered class*, The Topeka Capital-Journal (Jan. 22, 2019, 9:24 P.M.), <https://www.cjonline.com/story/news/politics/state/2019/01/22/kris-kobach-used-state-funds-to-pay-for-court-ordered-class/6224684007/>. He is not a first-time offender of questionable, sanctionable legal conduct.

This court should issue monetary sanctions against Petitioner Attorney General Kobach and Solicitor General Anthony Powell for harassing and causing unnecessary litigation

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<sup>1</sup> Despite the fact that Kansas Disciplinary Administrator’s Office diversion agreements are almost always confidential, Kris Kobach’s diversion agreement, was public. The disciplinary administrator’s office indicated they could pull the public portion of the file and provide a copy to Respondent KDOR, if so requested. If this court wishes to see the public notice, Respondent KDOR will assist in obtaining that document.

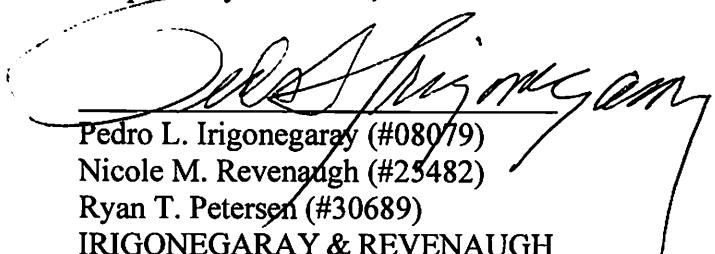
delay and expense with his motion. But given Petitioner Attorney General Kobach's previous conduct, Respondent KDOR urges this court to issue whatever sanction necessary, such as remedial training classes and an admonition, to discourage similar present and future conduct by Attorney General Kobach.

Nothing in this motion for sanctions, however, should be construed to forgo any other sanctions, including but not limited to, Petitioner denying factual contentions that are warranted on the evidence—*like the fact established during discovery that Respondent KDOR maintains individualized records of driver's licenses*—under K.S.A. 60-211(b)(4).

### CONCLUSION

For the reasons stated above, Respondent KDOR respectfully requests the court grant sanctions against Attorney General Kobach and Solicitor General Anthony Powell.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

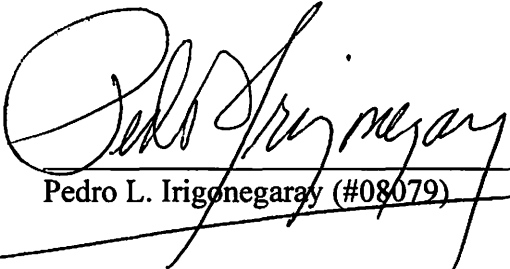
I hereby certify that the foregoing document was electronically filed with the Court on the 23rd day of October, 2025, which automatically provided notice to following counsel of record:

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## Exhibit 1

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**

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

*Petitioner,*   )

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,                             )

*Respondents.*   )

Pursuant to Chapter 60

**Petitioner's First Set of Discovery Requests**

**Interrogatories (First Set)**

1. Describe how the Kansas Department of Revenue ("KDOR") collects and verifies the information that it puts on a licensing document (e.g., driver's license, instructional permit, etc.) or state-issued identification card. Your answer should include what documents or other sources of information KDOR reviews, and whether and how KDOR verifies such information. If the process is different for licensing documents and identification cards, describe those processes separately.

ANSWER:

The documents that are primarily relied upon by KDOR are set out in its form

"DE-56a. A pdf can be obtained at: <https://www.ksrevenue.gov/pdf/de56a.pdf>.

Any applicant documentation used to establish identity, lawful presence, and

Kansas residency are reviewed by the driver's license examiner and scanned to

the applicant's electronic file. Gender is an aspect of identity.

The issuance process between driver's license and identification cards are similar.

When there is a variance in name or gender information with the submitted documentation, the examiner is required to determine the basis for the variance and explain such basis in the electronic record. E.g., name difference will require evidence of name change order (name change order, divorce decree etc.); gender difference (gender change form – up until issuance of temporary restraining order).

2. Describe in detail the process for changing the sex marker on one's license or identification card that was in place before the filing of this suit. Your answer should include the name or number of any required forms, a list or description of required supporting documents, and a description of KDOR's internal process or workflow for reviewing, approving, and executing such changes.

ANSWER:

See attached Gender Reclassification Policy - User Guide of March 22, 2019. (Policy). Normally, a gender change applicant will begin the process by asking for gender change at a driver's license station. The applicant will be redirected to work through the Topeka central office and make application consistent with the Policy. If the Division approves the application, the Division will mail correspondence to the applicant directing the applicant to visit their local exam station and to submit the Topeka central office correspondence to the regular driver's license examiner conducting the transaction, to support the gender change. Since 2019, the process required the State central driver's license office to approve applications.

3. Before the filing of this suit, what, if anything, did KDOR do to verify what individuals claim about their sex, gender, or gender identity while seeking to change the sex marker on a license or identification card?

ANSWER:

See Respondent KDOR's response to Interrogatory No. 3. The Topeka central office would review the medical documentation provided and when questions arose, would follow up with the applicant and/or the medical provider.

4. What databases or other systems of records does KDOR maintain that include data pertaining to holders of either (or both) licensing documents or identification documents?

ANSWER:

The State's driver's license system is used to record current gender information and retain the history of changes to the gender information. There is a vendor application (Idemia) that supports the actual issuance of credentials by way of capture, evaluation, and storage of captured images and documents. Since 2019, KDOR staff have also maintained an Access database that has been updated as gender change requests have been forwarded to the Topeka Central Office. The two tables of the database are being attached to this response with the personal information removed.

5. What governmental entities (other than KDOR) or officers use or have access to



the databases or systems of records referred to in the preceding interrogatory? How is that use or access accomplished?

ANSWER:

The governmental entities use is categorized by entities that can make changes to the system record (driver's license and identification card record information, and entities that have inquiry only access to the system record. The third parties that can make changes to system records have contractual agreements with KDOR.

Entities capable of making changes:

- a. DL Examiners hired by the State, Kansas Department of Revenue, Division of vehicles.
- b. County Treasurers in most State counties. (rural counties)
- c. Credential Vendor – Idemia Identity & Security USA LLC.

Entities with Active, Inquiry Only Access:

- a. Kansas Bureau of Investigation through its KCJIS interface;
- b. Kansas Department of Families; and
- c. Kansas Department of Health and Environment.

6. 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.

7. How many "gender change requests" has KDOR denied 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:

The information on denied requests is not maintained. The applicant either returned with the required documentation (Medical letter specifically addressing the issue) or the gender remained the same. Since 2019, there are at least four requests that were denied for insufficient documentation – these requests were refused upon recording and final review. More were refused but not recorded because initial documentation was insufficient upon first review and customer did not contest the issue or submit additional, required documentation.

8. What is the total number of credentials that KDOR has issued 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:

KDOR is still working towards developing month to month numbers and will supplement in later discovery responses.

KDOR has been able to determine CY year totals going back to 2011, and they are set out below:

2011: 752,818  
2012: 837,323  
2013: 841,588  
2014: 670,760  
2015: 675,142  
2016: 872,408  
2017: 896,527  
2018: 726,028\*  
2019: 867,576  
2020: 638,772  
2021: 751,228  
2022: 786,767

\*Approximate number within 5% of actual totals. KDOR when through system change mid-year in 2018.

9. Has KDOR's treatment or use of information pertaining to gender or sex changed since the enactment of 2007 Senate Bill 9? If so, describe those changes in full, including the timing and reason therefor.

ANSWER:

KDOR's treatment of gender changes had to be formalized based on technological changes required by the REAL ID Act of 2005 and 2007 Senate Bill 9. To work towards compliance with the Federal requirements for credentialing, KDOR had to incorporate physical scanning and pdf capture of documentation provided to a driver's license examiner that was used as the primary source for identification and lawful presence. Between 2007, when SB 9 became law, and

2011, KDOR worked towards the incorporation of document scanning in all transactions. Near or around 2011, Kansas was dealing with the issue of how to harmonize submitted, inconsistent but valid documentation. An applicant could provide both a birth certificate and a U.S. passport (or Social Security Card) with differing names. KDOR had to develop front counter processes for dealing with such inconsistencies. The processes required the applicant to provide an additional government document that justified the variance of name in the documents. (e.g., marriage certificate, divorce decree, or legal name change order).

This process also became necessary for gender changes where the underlying identify documentation varied. A common example is that the U.S. Passport or out of state driver's license had a gender that was different than supplied birth certificate. The May 10, 2011, memorandum was necessary to support consistent procedures from one driver's license examiner to the next. The memorandum was also created to improve customer service for any new license applicant (near or around the age of 14 – 16) that had a different gender than what was recorded on the applicant's birth certificate. This policy was enacted to assist the customer, ensure the documentation received was consistent with the state of the record, and to guard against fraudulent or mishandled transactions.

On or around March 22, 2019, KDOR updated its Gender Reclassification Policy in its user guide to provide clear instructions to driver's license examiner staff. The 2019 policy is similar in many ways to the policy implemented in 2011 but mandated that gender change requests be managed through the Topeka main office.

10. Has KDOR ever used the word “gender” on any licensing document or on any identification document? If so, please identify those documents and the time period during which the word “gender” was used.

ANSWER:

KDOR has not used the term “gender” on the face of its driver’s licenses or identification cards. KDOR uses the term “gender” in its 2011 and 2019 policies on gender change.

KDOR has relied on American Association of Motor Vehicle Administrators’ (AAMVA) standards for card design.

11. When and why did KDOR begin allowing people to change the sex designation on their licensing or identification documents for reasons other than an accidental data-entry error?

ANSWER:

See KDOR’s Response to Interrogatory No. 9. Prior to May 10, 2011, there wasn’t instruction provided to the driver’s license examiners. The decision on whether to record a new gender in the driver’s license system and express it on the credential was left up to the driver’s license examiner at the counter, and an ad hoc decision based on the application information submitted.

In addition to needing to create a bridge document (medical letter) between conflicting documentation (see KDOR’s Response in Interr. No. 9), KDOR was

interested in serving all its customers under the motor vehicle drivers' license act, including customers asking for accommodation under new gender classification, created in 2007.

That the responses provided above are accurate as reviewed on September 11, 2023.

/s/ Kent Selk

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

Certificate of Service

That these discovery responses were mailed to Petitioner on September 11, 2023, and an electronic version was also emailed to Jesse A. Burris at [jesse.burris@ag.ks.gov](mailto:jesse.burris@ag.ks.gov), and to the physical address at:

/s/ Ted E. Smith

Ted E. Smith, #16737  
Attorney for KDOR

### **Requests for Production (First Set)**

1. Produce all records, regardless of form, to which Petitioner's interrogatories (above) apply or pertain.

Attached.

2. Produce the "driver's license . . . database" to which Respondents referred in their July 10, 2023, Motion to Dissolve Temporary Restraining Order (p. 5, ¶ 8).

1. KDOR has provided a excel tables that are derived from a KDOR maintained

database. The information has been modified to remove personal information associated with the applicants. (This information is a highly personal nature under K.S.A. 74-2012(b). (Years 2019 through 2023)

2. KDOR objects to the full database being provided because its disproportional to the needs of the case and would be unduly costly to the State. The full database is an instanced server with many simultaneous services and licensed applications that requires multiple full-time equivalents to maintain and constant production data running in and out of the system to function. KDOR justifications are also derived K.S.A. 60-226(b)(1), (2)(A)(i) & (B). If KDOR is ultimately ordered to turn over such systems that a protective order be issued prohibiting the Petitioner's use or redistribution. (Years 2011 through 2019) Furthermore, KDOR is still refining its search queries as to differentiate between gender changes that were made due to data entry or clerical mistakes and gender changes due to medical declarations and will supplement responses to Interr. No. 8, requesting month to month numbers.

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## Exhibit 2

2024 Mar 18 AM 9:29

CLERK OF THE SHAWNEE COUNTY DISTRICT COURT

CASE NUMBER: SN-2023-CV-000422

PII COMPLIANT

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION THREE  
STATE OF KANSAS

STATE OF KANSAS, ex rel. KRIS KOBACH, )  
Attorney General, )  
Petitioner, )  
vs. ) CASE NO:  
2023-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.)

TRANSCRIPTOFMOTION HEARING

Proceedings had before the HONORABLE TERESA L.  
WATSON, JUDGE, THIRD DIVISION, at Topeka, Kansas, on  
the 10th day of January, 2024.

APPEARANCES

For the State: Mr. Kris Kobach  
Attorney General  
Mr. Anthony J. Powell  
Solicitor General  
Mr. Will Skepnek  
Mr. Jesse Burris  
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For the Intervenor:

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## I N D E X

## On Behalf of the State:

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
Kent Michael Selk	92	130	160
Brian Hill	165	171	175
		171	
Richard Newson	176	184	195

## On Behalf of the Respondent KDOR:

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
James Oehm	202	209	215	
		212		

## On Behalf of the Respondent Intervenor:

Adam Kellogg	219	246	253	254
Kathryn Janelle Redman	255	278		

## For the State:

<u>Exhibits:</u>	<u>Offered</u>	<u>Admitted</u>
No. 5	122	
No. 7	98	98
No. 12	124	
No. 17	97	97

## For the Respondent KDOR:

<u>Exhibits:</u>	<u>Offered</u>	<u>Admitted</u>
No. 108	218	218
No. 109	218	218
No. 110	129	129
No. 111	129	129

1 with these gender change processes and explaining it  
2 to them?

3 A. To me being sensitive of their request, even if it's  
4 a denial, yes.

5 Q. Now, Mr. -- General Kobach asked you some questions,  
6 too, about the number of denials you had and the list  
7 we had provided.

8 Is it possible that maybe -- well, I'll withdraw  
9 that question. Thank you.

10 MR. SMITH: That's all the questions I have.

11 THE WITNESS: Okay.

12 MR. DALGLEISH: No questions, Your Honor.

13 THE COURT: No questions. Okay.

14 Mr. Kobach, anything else?

15 MR. KOBACH: Very brief redirect, Your  
16 Honor.

17 REDIRECT EXAMINATION

18 BY MR. KOBACH:

19 Q. Hi, Mr. Selk, we're almost done.

20 You were asked by opposing counsel about the --  
21 how outside agencies have a window into the driver's  
22 license database; is that right?

23 A. Yes, sir.

24 Q. Do outside agencies have access to all of the data  
25 that KDOR has within a given driver's license record?

1 A. It depends on the agency. Certain agencies are  
2 redacted, they only see certain amount. Law  
3 enforcement sees their specific ones that they would  
4 like to see. But anything that's on a driver's  
5 license physically, the law enforcement officer can  
6 see.

7 Q. That's on the actual physical card?

8 A. They can. They can also -- they have a history  
9 record, too, of driving offenses, which is pertinent  
10 to them because of habitual violators or individuals  
11 that have been driving while suspended or things of  
12 that nature. So they can look at -- law enforcement  
13 does get the individual's driving history, so to  
14 speak.

15 Q. So when you say driving history, you'd be talking  
16 about driving offenses that are known to KDOR; is  
17 that correct?

18 A. Correct, sir.

19 Q. What about the merging, I recall -- let's back up. I  
20 can give you context.

21 I recall when I was secretary of state we could  
22 see some things in the KDOR database, but other  
23 things we had to call and ask KDOR for further  
24 information; is that correct?

25 A. Correct.

1 Q. And is that essentially the same with law  
2 enforcement? They could see the things you mentioned  
3 on the driver's license and the violations, but to  
4 see beyond that they have to request it?

5 A. At times, could be.

6 Q. Earlier you were asked by opposing counsel whether  
7 something was a vital statistic and you gave an  
8 answer. Could you please define vital statistic?

9 A. I don't have a definition for vital statistics.

10 Q. Does a birth certificate contain vital statistics?

11 A. It's from vital statistics, so I would say yes.

12 Q. Is a date of birth a vital statistic?

13 A. It's part of a vital statistic.

14 Q. Is a person's weight a vital statistic?

15 A. I don't know if that's a vital statistic or not.

16 Q. Okay. Is a person's eye color a vital statistic?

17 A. I guess it could be seen that way.

18 Q. And is a person's sex a vital statistic?

19 A. I would say yes.

20 Q. KDOR doesn't make statutes or enact statutes, does  
21 it?

22 A. No, we can't. That's legislature. But yes, we do  
23 present and --

24 Q. You were asked by opposing counsel about how, you  
25 know, whenever agencies or legislators or law

1 enforcement contact you. If a law enforcement agency  
2 felt that there was something in Kansas law that  
3 needed to be changed, would they come to you?

4 MR. DALGLEISH: Objection, speculation,  
5 foundation. Also outside the scope of the direct.

6 THE COURT: Overruled.

7 A. They have in the past, yes.

8 BY MR. KOBACH:

9 Q. What would be an example of them coming to you in the  
10 past?

11 A. Even as simple as the commercial driver's license  
12 changing from up to five years. We speak back and  
13 forth with them on that. You're putting me on the  
14 spot, so I'm trying to remember exact specifics.

15 But we do confer with them all the time on the  
16 driver's license or the data of a driver's license is  
17 going to change. Even as minor as we reduce the  
18 suspension time for somebody from 90 days to 60 days  
19 or anything like that for specific suspension reasons  
20 and things of that nature.

21 Q. When it comes to the decision about whether Kansas  
22 allows driver's licenses to modify or change the sex,  
23 is that something that's within your discretion or is  
24 that within the legislature's discretion?

25 A. That is not in my discretion.