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CASE NUMBER: DG-2026-CV-000112
PII COMPLIANT

IN THE SEVENTH JUDICIAL DISTRICT
DOUGLAS COUNTY DISTRICT COURT
CIVIL DEPARTMENT

DANIEL DOE; *et al*.,

Plaintiffs,

v.

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

Defendants.

No. DG-2026-CV-000112
Div. No. 4

DEFENDANT STATE OF KANSAS *EX REL* KRIS KOBACH'S

MOTION TO DISMISS

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INTRODUCTION

Senate Bill 244 does two simple things. It requires that Kansas driver's licenses and birth certificates record the holder's biological sex—an objective, verifiable fact—and it requires that multiple-occupancy private spaces in public buildings, such as restrooms and locker rooms, be designated for one sex and used accordingly. These requirements apply to every Kansan equally. They impose no penalty on anyone for who they are, and they codify practices—accurate government records and sex-separated intimate facilities—that are as old as the State itself.

Plaintiffs nonetheless ask this Court to declare SB 244 facially void under six different provisions of the Kansas Constitution. Each theory suffers from the same fundamental defect: it would require this Court to recognize a constitutional right that no Kansas court has ever recognized. The Kansas Bill of Rights secures negative rights: guarantees against government interference. Plaintiffs demand positive ones: a right to compel the State to print preferred information on the State's own documents, and a right to configure the State's own buildings according to personal preference. No Kansas court has ever located such rights in the Bill of Rights, and the Kansas Supreme Court has expressly refused invitations to expand Section 1 beyond the narrow context of abortion in which it has been applied. *See Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1012–13 (2024).

Plaintiffs' burden is heavier still because their claims are facial challenges. They must establish beyond a reasonable doubt that SB 244 is unconstitutional in

every conceivable application. They cannot. Indeed, this Court has already observed as much in denying Plaintiffs' request for a temporary restraining order. Ord. at 6.

Controlling precedent forecloses what remains. In the past two terms, the United States Supreme Court has held that laws separating athletic teams by sex do not classify on the basis of transgender status, *West Virginia v. B.P.J.*, 2026 WL 1868739, at *14 (U.S. June 30, 2026); that a law does not classify on the basis of sex merely because its application references sex, *United States v. Skrmetti*, 605 U.S. 495, 511–12 (2025); and that recording sex at birth on a government identification document "no more offends equal protection principles than displaying [the holder's] country of birth," *Trump v. Orr*, 146 S. Ct. 44, 46 (2025). Because Kansas's equal-protection guarantee is coextensive with its federal counterpart, *Rivera v. Schwab*, 315 Kan. 877, 894 (2022), those holdings control here.

Plaintiffs' remaining theories fare no better. Their procedural due process claim rests entirely on speculation about hypothetical future enforcement, and SB 244 in any event provides notice, administrative appeal, and full judicial review. Their free speech claim fails because a driver's license is the government's speech, not the licensee's. And their single-subject claim fails because every provision of SB 244 is germane to the subject expressed in its title: the identification of biological sex.

These deficiencies are legal, not factual. No amendment can cure them. The Petition should be dismissed with prejudice.

BACKGROUND

On February 18, 2026, the Kansas Legislature passed SB 244. SB 244 requires the sex marker on Kansas driver's licenses to display the holder's biological sex. *See* SB 244 §§ 3(a)(8), 4(g)(1)–(2). Prior to SB 244, Kansas driver's licenses could be revised to display a sex marker of a person's choice. SB 244 also prohibits people from entering intimate facilities designated for the opposite sex in public buildings and requires that intimate spaces in public buildings be designated for a single sex. *Id.* § 1(a)(4)–(5), (b)(1), (g)(1). SB 244 was passed by a supermajority of both the Kansas House and the Kansas Senate. Functionally, the law conforms driver's licenses and intimate spaces to an individual's biological sex.

The driver's license portion of SB 244 renders any license displaying the wrong sex invalid. SB 244, § 4(g)(1). The intimate spaces portion of SB 244 requires government entities that own or lease public buildings to designate private spaces for a single sex and take steps to prevent members of the opposite sex from entering them. *Id.* § 1(b)(1). Government entities that violate this requirement are subject to penalties up to $125,000 for repeat violations. *Id.* § 1(d). The law also forbids individuals from entering spaces designated by a government entity as for the opposite sex. *Id.* § 1(g)(1). If the governing body or chief administrative officer receives a complaint regarding violation of the law, they are required to investigate and, if a violation is identified, issue a written notice to the violator. *Id.* § 1(g)(1). A second violation carries a $1,000 penalty, and subsequent violations are class B misdemeanors. *Id.* § 1(g)(2)–(3). SB 244 also creates a private right of action

allowing a person harmed by a violation of the law to bring an action for $1,000 in liquidated damages, declaratory relief, and injunctive relief. *Id.* § 1(h).

Just as it is codified by SB 244, biological sex is enshrined in other areas of law across the United States. As the Supreme Court recently reaffirmed, "females and males have inherent physical differences" that are "enduring." *W. Virginia v. B.P.J. by Jackson*, No. 24-38, 2026 WL 1868739, at *3 (U.S. June 30, 2026) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). Transgender people, like the Plaintiffs here, may subjectively experience "incongruence between gender identity and biological sex," *United States v. Skrmetti*, 605 U.S. 495, 502–03 (2025), but biological sex is a fundamental reality upon which our constitutional system is built.

On February 26, 2026, Plaintiffs Daniel Doe, Matthew Moe, Kyle Koe, Nicholas Noe, Cameron Broyles, and Dakota West filed suit against the State of Kansas, the Kansas Department of Revenue and Division of Vehicles, KDOR officials Mark Burghart and Deann Williams, the Kansas Department of Administration, and Secretary of Administration Adam Proffitt, seeking declaratory and injunctive relief against SB 244. Plaintiffs claim that they are harmed by SB 244 because they do not want their biological sex displayed on their licenses and they wish to use bathrooms and locker rooms of the opposite sex. Am. Pet. ¶¶ 185–95. They allege that, before SB 244, they were allowed to display a sex different than their biological sex and were allowed to access intimate spaces of the opposite sex in public buildings. *Id.* ¶¶ 5–6. Even though most of the Plaintiffs regularly post

on social media about their desire to be recognized as a member of the opposite sex, Plaintiffs claim that SB 244 affects their ability to use those licenses without disclosing private information.

The Amended Petition asserts six constitutional claims. First, Plaintiffs claim that the intimate spaces provisions violate procedural due process under Section 18 of the Kansas Bill of Rights by failing to provide sufficient detail in its enforcement provisions. Am. Pet. ¶¶ 196–202. Second, Plaintiffs claim that the Act violates rights to personal autonomy under Section 1 of the Kansas Bill of Rights by requiring people to carry a driver's license that identifies their biological sex and by forbidding access to intimate spaces by members of the opposite sex. *Id.* ¶¶ 203–08. Third, Plaintiffs claim that the Act violates their right to privacy under Section 1 of the Kansas Bill of Rights by requiring them to disclose their biological sex. *Id.* ¶¶ 209–16. Fourth, Plaintiffs claim that the Act violates the guarantee of equal protection under Section 2 of the Kansas Bill of Rights and violates the right to equality under Section 1 of the Kansas Bill of Rights because the law discriminates on the basis of sex and "targets" transgender people. *Id.* ¶¶ 217–27. Fifth, Plaintiffs claim that SB 244 violates free-expression protections under Section 11 of the Kansas Bill of Rights by requiring them to present documents identifying their biological sex. *Id.* ¶¶ 228–35. Sixth and finally, Plaintiffs claim that SB 244 violates Article II, § 16 of the Kansas Constitution because it contains more than one subject and has an improper title. *Id.* ¶¶ 236–41.

Plaintiffs request a facial declaration that SB 244 is void and unenforceable in its entirety or, alternatively, unconstitutional as applied to transgender and intersex individuals. *Id.* pp. 51–52. They also seek temporary and permanent injunctive relief restraining Defendants and their agents from enforcing the Act in its entirety. *Id.*

Immediately after bringing suit, Plaintiffs sought a temporary restraining order barring enforcement of SB 244. As part of the litigation over the temporary injunction, Kansas agreed to stay, for two weeks, traffic enforcement against individuals whose driver's license had been invalidated by SB 244, in order to allow Kansans to obtain compliant licenses. On March 10, 2026, the Court denied Plaintiffs' motion for a temporary restraining order, explaining at page six that "Plaintiffs have not demonstrated that enforcement of this Act will necessarily, in all instances, result in Constitutional violations."

LEGAL STANDARD

In ruling on a motion to dismiss, courts "accept the facts alleged in the petition as true, along with any inferences that can be reasonably drawn therefrom." *Bd. of Cnty. Comm'rs of Sumner Cnty. v. Bremby*, 286 Kan. 745, 751 (2008). "However, this does not mean the court is required to accept conclusory allegations on the legal effects of events the plaintiff has set out if these allegations do not reasonably follow from the description of what happened or if these allegations are contradicted by the description itself." *Gatlin v. Hartley, Nicholson, Hartley & Arnett, P.A.*, 29 Kan. App. 2d 318, 319 (2001). Dismissal with prejudice for failure to state a claim is warranted where it is clear that the petition's

"deficiency cannot be eliminated through the pleading of additional facts." *Brull v. Sec'y of Kan. Dep't for Aging & Disability Servs.*, 557 P.3d 1237 (Kan. App. 2024) (unpublished opinion).[1]

ARGUMENT

Plaintiffs ask this Court to do something extraordinary in Kansas constitutional jurisprudence—invent new substantive constitutional rights found nowhere in the Kansas Bill of Rights, and indeed to invent positive rights. The Kansas Bill of Rights and the federal Bill of Rights contain only negative rights—rights that "prohibit[] government action[s]." *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 894 (2008). Prohibited government actions include breaking up a peaceable assembly, Kan. B. of R. § 3, denying the bearing of arms, Kan. B. of R. § 4, and compelling a particular form of worship, Kan. B. of R. § 7. Positive rights, by contrast, compel the government to act—to do something for the individual asserting the right. To date, the Kansas Supreme Court has identified *only one* positive right in the Kansas Constitution, found not in the Bill of Rights but in Article 6, § 6: the right to demand that the Legislature "make suitable provision for finance" of the public schools. *See id.* (citing *Montoy v. State*, 278 Kan. 769, 771

[1] The Court may take judicial notice of the constitutional and statutory materials discussed below without converting this motion into one for summary judgment. "[W]hen matters outside the face of the pleadings are proper objects for judicial notice, a motion to dismiss need not be treated as a summary judgment motion." *Rodina v. Castaneda*, 60 Kan. App. 2d 384, 387 (2021). Courts may take judicial notice of "everything which may affect the validity or meaning of such constitution or statute," *City of Topeka v. Gillett*, 32 Kan. 431 (1884), and of "what the journals of the legislature contain," *In re Div. of Howard Cnty.*, 15 Kan. 194, 213 (1875).

(2005)). Plaintiffs ask this Court to invent two new positive rights in the Kansas Bill of Rights: the right to compel the government to put desired information on government documents, and the right to configure government buildings according to personal preferences. These rights appear nowhere in the constitutional text, and they would be the first positive rights found in the Kansas Bill of Rights by any court. Moreover, Plaintiffs demand that this Court transform an existing negative right (prohibiting the state from denying a woman access to abortion procedures) into a positive right. This unprecedented demand must be rejected.

I. All Plaintiffs' claims are facial challenges

Plaintiffs' claims constitute facial challenges to SB 244 and must be adjudicated as such. Constitutional challenges to statutes can be facial, as applied, or both. A facial challenge "is 'an attack on a statute itself as opposed to a particular application.'" An as-applied challenge, by contrast, "focuses on the statute's constitutionality as applied to a particular factual scenario." *Hodes & Nauser, MDs, P.A. v. Kobach*, 318 Kan. 940, 971 (2024) (Wilson, J., concurring).

The standard for succeeding on a facial challenge is demanding. Plaintiffs must plead and prove that "no set of circumstances exist" in which SB 244 survives the applicable level of scrutiny. *Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 850 (1997). Because SB 244 makes no suspect classification and burdens no fundamental right, Plaintiffs' burden is increased by "a presumption of constitutionality." *Barrett ex rel. Barrett v. U.S.D. No. 259*, 272 Kan. 250, 256 (2001). This means that if "there is any reasonable way to construe a statute as

constitutionally valid, the court must do so." *State v. Scherzer*, 254 Kan. 926, 938 (1994). Plaintiffs thus bear the burden of establishing *beyond a reasonable doubt* that SB 244 infringes a constitutional right in every one of its applications. *State v. Engles*, 270 Kan. 530, 531 (2001); *State v. Robinson*, 303 Kan. 11, 278 (2015).

For these reasons, "[a] facial challenge to the constitutionality of legislation is 'the most difficult challenge to mount successfully.'" *State v. Jones*, 313 Kan. 917, 927 (2021). A showing that SB 244 "might operate unconstitutionally under some conceivable set of circumstances" would be "insufficient to render it wholly invalid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Accordingly, this Court must uphold SB 244 so long as "the law is constitutional in at least some of its applications." *United States v. Rahimi*, 602 U.S. 680, 701 n.2 (2024); *see also id.* at 708–09 (Gorsuch, J., concurring).

Plaintiffs have not alleged, nor could they, that SB 244 is unconstitutional in every instance. Federal law, for example, recognizes that recipients of federal funds may "provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33. In *B.P.J.*, Justice Gorsuch similarly explained that "while Title IX generally prohibits discrimination on the basis of biological sex, Congress has taken pains to emphasize that 'nothing' in its mandate 'sh[ould] be construed' as forbidding separate-sex living facilities in school settings, signaling that sex separation doesn't always amount to discrimination under the statute. §1686." *West Virginia v. B.P.J.*, 609

U.S. __, 2026 WL 1868739, at *18 (2026) (Gorsuch, J. concurring). And Justice Thomas noted that "sex is an immutable 'biological' characteristic; it is binary; and 'man' and 'woman,' 'boy' and 'girl,' are the terms that correspond to adults and children of each sex." *Id.* at *17 (Thomas, J. concurring). While Plaintiffs may quarrel with these examples, they show that SB 244 has a plainly legitimate sweep.

To try to end-run the high bar for facial challenges, Plaintiffs claim to plead an as-applied challenge "in the alternative." Am. Pet., p. 5, ¶ B. For example, Plaintiffs' prayer for relief requests that the Court "[i]ssue a [d]eclaratory [j]udgment that the Act's provisions with respect to driver's licenses violate Sections 1, 2, and 11 of the Kansas Bill of Rights on their face or, in the alternative, as applied to (1) transgender individuals and (2) intersex individuals whose gender identity differs from their sex assigned at birth." *Id.* A judgment that applies to all individuals "whose gender identity differs from their sex assigned at birth" is, first, an entirely subjective and unknowable category of individuals; and, second, a request that the act be declared invalid *on its face* for any person in that category. No part of that depends on any particular application. They describe the ordinary operation of SB 244, and they seek relief for an entire class. That is a facial challenge in substance. Plaintiffs cannot avoid the burden of a facial challenge merely by labeling their claims "as applied." Because the relief they seek would "reach beyond the particular circumstances of these plaintiffs," Plaintiffs must satisfy the standards governing a facial challenge. *See John Doe No. 1 v. Reed*, 561

U.S. 186, 194 (2010). To achieve that relief, Plaintiffs must prove that SB 244 can never be applied constitutionally, a burden which they do not and cannot carry.

As the Court explained in its order denying Plaintiffs' motion for temporary restraining order, a facial injunction would require the Court "to assume that every employer who values and respects an employee would react in every instance by firing or harassing that employee. Or that every acquaintance would react with disfavor to having this information revealed to them. Or that every restroom visit is fraught with the potential for violence or embarrassment if this law is not immediately suspended. Or, especially, to assume the Legislature intended to promote such negative experiences when the law was passed." Ord. at 5. Because those assumptions are unreasonable, Plaintiffs' claims must fail.

II. Plaintiffs' procedural due process claims are not justiciable, and SB 244 does not deny procedural due process in any event.

Plaintiffs' initial complaint alleged that both the driver's license and restroom provisions of SB 244 violated their procedural due process rights. The amended complaint omits the driver's license claim, leaving only a claim about the restroom provisions. Because Plaintiffs' argument rests on speculation about due process violations that might occur were they to violate the Act, they lack standing, their claims are not ripe, and they fail on the merits regardless.

Section 18 of the Kansas Constitution Bill of Rights has been interpreted to provide a procedural due process right. *See League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 806 (2024). "The basic elements of procedural due process are notice and an opportunity to be heard at a meaningful time and in a meaningful

manner." *Winston v. State Dep't of Soc. & Rehab. Servs.*, 274 Kan. 396, 409 (2002) (quotation marks omitted). In determining whether a due process violation exists, the Court "must first determine whether a protected liberty or property interest is involved and, if it is, the [C]ourt must then determine the nature and extent of the process which is due." *Id.*

A. Plaintiffs lack standing to raise their procedural due process claims, which are also not ripe.

Kansas courts only have jurisdiction to decide actual cases or controversies. *See Gannon v. State*, 298 Kan. 1107, 1119 (2014). The Kansas case-or-controversy requirement, which is based on the separation of powers, requires that "(a) parties have standing; (b) issues not be moot; (c) issues be ripe, having taken fixed and final shape rather than remaining nebulous and contingent; and (d) issues not present a political question." *Id*. Two of these requirements—standing and ripeness—are absent for Plaintiffs' procedural due process claims. Plaintiffs allege only speculative injuries that may never occur.

"Under the traditional test for standing in Kansas, a person must demonstrate that [1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct." *Kan. Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 678 (2015) (quotation marks omitted); *Gannon*, 298 Kan. at 1123. To be cognizable, an injury must be "concrete, particularized, and actual or imminent." *Gannon*, 298 Kan. at 1123. Allegations of possible future injury do not satisfy the requirements of standing; a "threatened injury must be 'certainly impending' to constitute injury in fact." *Sierra Club v.*

Moser, 298 Kan. 22, 33 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). The burden of establishing standing is on the Plaintiffs. *Gannon*, 298 Kan. at 1123.

Plaintiffs offer no coherent argument as to how SB 244 has or will imminently impose civil or criminal penalties on them without due process. Their argument is based on speculation: that they will violate SB 244, that their violations will be identified and reported, and that enforcement action will occur. Even if enforcement action is taken, due process protections would apply,[2] and there is no indication that Plaintiffs would be denied those protections. Any suggestion otherwise is conjecture. Plaintiffs have not demonstrated an actual injury, nor is their fear of future due process violations certainly impending. They also cannot establish that enforcement action would be taken without due process in every set of circumstances—as required to demonstrate a facial violation.

For similar reasons, Plaintiffs' claims are not ripe. To be ripe, issues must have "taken fixed and final shape rather than remaining nebulous and contingent." *Gannon*, 298 Kan. at 1119. The ripeness doctrine prevents courts "from entangling themselves in abstract disagreements over administrative policies" and protects "agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 807-08 (2003). Until

[2] SB 244, § 1(g)(1) provides that, for a first offense, an agency must provide written notice of the violation and the procedure for an administrative appeal; § 1(g)(2) provides that any second offense or third offense must be prosecuted in court by the Attorney General or a District Attorney.

enforcement action is taken, Plaintiffs' concern that they might be denied due process remains nebulous and contingent. They have not yet suffered—and likely never will suffer—a concrete injury.

Plaintiffs also lack standing to raise claims regarding SB 244's application to any intersex individuals. SB 244 uses K.S.A. 77-207's definition of "sex," and K.S.A. 77-207 provides that "an individual born with a medically verifiable diagnosis of 'disorder/differences in sex development' shall be provided legal protections and accommodations afforded under the Americans with disabilities act and applicable Kansas statutes." Plaintiffs' complaint alleges that "[i]ntersex is a term used to describe a wide range of natural bodily variations, which some medical professionals refer to as 'differences of sex development.'" Am. Pet. at 10. Thus, SB 244 allows for the accommodation of intersex individuals.

The Petition makes no allegation that Dakota West, the only intersex Plaintiff, has requested and was denied an accommodation under K.S.A. 77-207. Dakota has therefore failed to plead an actual or imminent injury and lacks standing. Any concern that SB 244 will result in enforcement action against Dakota without due process is even more speculative than as to the other Plaintiffs. Even if Dakota does not request an accommodation ahead of time, the first violation of the multiple-occupancy private spaces provisions of SB 244 only results in a written notice of violation that can be administratively appealed. SB 244, § 1(g)(1). Dakota could request an accommodation as part of that administrative appeal, and any

conjecture that an accommodation request would be denied is insufficient to support standing.

Additionally, Dakota West's claims should be dismissed for lack of standing because she can no longer establish a cognizable injury traceable to SB 244, much less that a favorable ruling would redress it. To establish standing, "plaintiffs in Kansas courts must satisfy a two-part test: they must demonstrate a 'cognizable injury' and 'a causal connection between the injury and the challenged conduct.'" *POM of Kan., LLC v. Kobach*, 319 Kan. 764, 769–70 (2024) (quoting *League of Women Voters*, 317 Kan. at 813. West's theory of injury rests entirely on her status as a Kansas resident who drives on Kansas roads, carries a Kansas driver's license, and accesses restrooms in Kansas government buildings. Am. Pet. ¶¶ 150, 158, 162, 164. But West relocated to Knoxville, Tennessee, on June 16, 2026, and is no longer a Kansas resident. Ex. A, West Depo. at 12:17–20. West thus faces no "impending, probable" harm from SB 244—only the speculative possibility that she might one day return to a state whose laws no longer govern West—and any residual injury is neither traceable to Defendants' enforcement of an inapplicable Act nor redressable by this Court. *See POM*, 319 Kan. at 772 (internal quotation marks omitted). West's claims should be dismissed for lack of standing.

B. Plaintiffs have not alleged a protected liberty or property interest that is affected by SB 244 prior to a second violation.

To the extent Plaintiffs believe that the enactment of SB 244 itself, as opposed to a speculative enforcement proceeding in the future, denied them due process, they lack any liberty or property interest sufficient to support their

requested relief. And "[i]n the absence of a protected property or liberty interest, there can be no due process violation." *Landmark Nat'l Bank v. Kesler*, 289 Kan. 528, 544 (2009).

From Plaintiffs' original briefing, they appear to believe that they "have an established due process interest in accessing government spaces." Pl. Br. at 14. Presumably, what they mean is that they have a right to use their preferred restroom. The only case they cited does not recognize such a right—it involves a right to continued employment by the government. *See McMillen v. U.S.D. No. 380, Marshall Cnty.*, 253 Kan. 259, 263-64 (1993). *McMillen* is not relevant, and it actually goes against Plaintiffs. In *McMillen*, the court recognized that the property interest could only be provided by state law, 253 Kan. at 263, and here, SB 244 does not create any property interests, and it certainly does not establish that Plaintiffs have a property interest in using their desired restroom.

Plaintiffs allege that individuals subject to the restroom restriction are given insufficient due process for the first violation. Am. Pet. ¶ 200. But the result of a first violation is merely a "written notice of such violation" informing the person that future violations may result in fines or criminal penalties. SB 244, § 1(g)(1). In other words, a warning. And a warning does not deprive Plaintiffs of any property or liberty interest. No protected interest comes into play until a second violation of the Act, which can result in a civil penalty.

C. SB 244 provides sufficient notice and process.

Plaintiffs also fail to state a due process claim based on their allegations about inadequate notice and procedural protections. They claim that SB 244's multiple-occupancy private space provisions fail to give adequate notice about what is prohibited. Am. Pet. ¶¶ 198-201. Those provisions are straightforward: when a multiple-occupancy private space in a public building is designated for use only by individuals of one sex, individuals must use the facility corresponding to their biological sex. SB 244, § 1(g)(1). While Plaintiffs may dislike the law, there is nothing confusing about it.

Plaintiffs appear to allege that the enactment of SB 244 itself deprived them of due process, claiming that they lacked "a meaningful opportunity to present objections." Am. Pet. at 43. But to the extent that Plaintiffs had any protected property or liberty interest in accessing multiple-occupancy private spaces designated for individuals of the opposite sex (which they did not), SB 244 could eliminate that interest without further process. SB 244 was legislative action that applied to uniformly to all Kansans. "[T]he legislative process itself generally provides all the process that is due when legislation results in the complete or partial deprivation of protected property interests of more than a few individuals." *Scribner v. Bd. of Educ. of U.S.D. No. 492*, 308 Kan. 254, 263 (2018); *see also Xcaliber Int'l Ltd. LLC v. Att'y Gen. State of Louisiana*, 612 F.3d 368, 382 (5th Cir. 2010) ("Generally speaking, legislative actions are non-individualized determinations that affect a wider class of individuals, whereas adjudicative actions

involve individualized assessments that affect a smaller number of people in a more exceptional manner."). As the U.S. Supreme Court has explained:

> Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.

Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915).

SB 244 applies to all Kansans, not just Plaintiffs or a handful of individuals. It was a legislative action and no more process was due than the legislative process itself. "Plaintiffs, thus, are challenging . . . legislative, not adjudicative, actions, and official action that is legislative in nature is not subject to the notice and hearing requirements of the due process clause." *KT&G Corp. v. Att'y Gen. of State of Okla.*, 535 F.3d 1114, 1142 (10th Cir. 2008).

Plaintiffs also allege that the multiple-occupancy private space provisions allow an individual to be held responsible for a first offense without procedural due process. Am. Pet. ¶ 200. Plaintiffs assume that due process violations will occur should they violate the law—in other words, they assume bad faith on the part of any government employee involved in enforcement. But courts must adhere to a presumption of regularity in official conduct. "[T]he presumption of regularity of official conduct prevails until overthrown by proof." *Hendrickson v. Sheetz*, 112 Kan. 296 (1922); *see also U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001).

Plaintiffs' argument ignores the various constitutional and statutory protections that necessarily attend any government adjudication of individual interests. SB 244 expressly provides for notification and an administrative appeals process after the government entity determines that an individual has violated SB 244 a first time—a finding that carries no penalty whatsoever. SB 244 § 1(g)(1). With respect to buildings owned and operated by the State, Kansas government entities are well-adept at providing administrative adjudications through the Office of Administrative Hearings (OAH), and it was not improper for the Legislature to permit entities to fold in SB 244 violations into their existing processes.[3] It should be noted that adjudications of administrative law judges in the OAH, or other final agency actions by state agencies, are appealable to the district and appellate courts of Kansas under the Kansas Judicial Review Act. *See* K.S.A. 77-603. Second and subsequent violations do not result in any penalty unless the attorney general or the relevant county or district attorney prosecutes an action in the relevant district court of Kansas. SB 244 § 1(g)(2)-(3). Thus, after a warning for a first offense—which is itself appealable—no individual could be subjected to any penalty outside of a judicial proceeding where all the forms of due process will be observed.

In sum, Plaintiffs' argument ignores the express procedural protections in SB 244, ignores the presumption of regularity, and rests on speculation about possible future due process violations. Plaintiffs lack standing, and they have failed to

[3] *See* SB 244 § 1(g)(1)(C) (requiring notice of administrative appeal procedure following finding of violation); K.A.R. 133-1-2 (authorizing state agencies to request that OAH preside over an administrative hearing).

establish any procedural due process violation on the face of SB 244. Because this is a facial challenge, Plaintiffs do not come close to establishing that no conceivable circumstance exists under which the statute would operate constitutionally.

III. SB 244 does not infringe on the constitutional right to personal autonomy, which applies only to abortion decisions.

SB 244 does not infringe on Plaintiffs' asserted right to personal autonomy. Section 1 of the Kansas Bill of Rights protects rights that are either expressly enumerated in the constitution or are natural rights rooted in Kansas history and tradition. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 644 (2019) (*Hodes I*). No enumerated right, and no natural right, is infringed by requiring an accurate sex designation on a driver's license or birth certificate, or by reserving multiple-occupancy facilities designated for one sex to individuals of that sex.

In *Hodes I*, the Kansas Supreme Court recognized a natural right to personal autonomy implicit in the words "liberty, and the pursuit of happiness" in Section 1. *Id.* at 643–44. But that right was recognized as fundamental only in one limited application: a woman's decision whether to have an abortion. S*ee id.* at 646. Thus, the only right *Hodes* recognized "allows individuals to control their own bodies, to make health care decisions, and to make decisions about whether to bear or beget a child," *id.* at 649–50. It concerns *bodily* autonomy. It does not concern control over the contents of state documents such as driver's licenses and birth certificates, nor control over the configuration of state buildings. And it cannot be stretched to every aspect of how "people present themselves to the world." Am. Pet. ¶¶ 206, 207.

Nor would such an extension be workable. Under *Hodes I*, "strict scrutiny . . . applies when a fundamental right is implicated," *id.* at 663, and once "a plaintiff proves an infringement [of a fundamental right]—regardless of degree—the government's action is presumed unconstitutional," *id.* at 669. On Plaintiffs' theory, not merely SB 244 but every state law that restricts anyone's personal autonomy in any way would be presumptively unconstitutional.

The Kansas Supreme Court squarely rejected that reading in *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995 (2024) (*Hodes II*), holding that *Hodes I* "examined the inalienable natural right to personal autonomy in the specific context of abortion, which necessarily limited the scope of its holding." *Id.* at 1013. In dissent, Justice Stegall warned that *Hodes I* would throw open the courthouse doors to novel constitutional claims like Plaintiffs'. *Id.* at 1063 (Stegall, J., dissenting). The majority rejected that expansive interpretation as "based on a faulty underlying premise" that *Hodes I* protects "all activities related, however tangentially, to personal autonomy." *Id.* at 1012. The majority expressly disclaimed that *Hodes I* had an "unlimited scope," ruling instead that the right concerns only the "intimate, personal, and profound act of deciding to have an abortion." *Id.* at 1013; *see also id.* at 1012 (limiting *Hodes* to "deeply personal reproductive health decisions"). Plaintiffs' theory—that there is a personal autonomy right to control how the State labels them on the State's own documents, or to override access restrictions in government buildings—is exactly the broad reading of *Hodes I* that the Supreme Court disclaimed.

In any event, Plaintiffs fail to analyze how their asserted right to access spaces of the opposite sex and to have the government state information different than their biological sex on their licenses could even possibly be considered a fundamental natural right under the Kansas Constitution. *See id.* at 1013 ("each asserted right must be carefully examined and evaluated independently in the context of its own unique implications on an inalienable natural right found under section 1."). "Without a similar legal analysis to determine whether the activities posited by [Plaintiffs] are included in the meaning of personal autonomy as contemplated by section 1," the claim cannot stand. *Id.*

Nor could Plaintiffs perform that analysis if they tried. The Kansas Bill of Rights secures only negative rights. *See Sebelius*, 285 Kan. at 894. Kansas courts have never held that Section 1's protection of natural rights—always negative rights—establishes a positive right to compel the government to change its documents or grant unlimited access to public spaces. This Court should not be the first to endorse Plaintiffs' unprecedented constitutional theory.

Measured against the right actually recognized in *Hodes I*, Plaintiffs' claim fails on its face. SB 244 regulates two things: the information the State records on the State's own identification documents, and the designation of multiple-occupancy private spaces in the State's own buildings. Neither involves Plaintiffs' bodies. SB 244 does not require or prohibit any medical treatment. It does not touch any decision "whether to bear or beget a child." *Hodes I*, 309 Kan. at 650. It does not compel any Plaintiff to undergo, forgo, or disclose any medical procedure. It does not

regulate how Plaintiffs dress, groom, speak, or identify themselves to others. It regulates the government's documents and the government's facilities. A sex marker on a state-issued license is not an intrusion into anyone's body, and a rule about who may enter a state-owned locker room is not a regulation of anyone's healthcare. Whatever the outer boundary of the *Hodes I* right may be, it does not reach the filing cabinet or the restroom door. Plaintiffs' personal autonomy claim should be dismissed.

IV. Plaintiffs have not demonstrated that the Kansas Constitution protects a right to informational privacy, much less a right applicable here.

Plaintiffs also allege that SB 244 infringes on their right to informational privacy, but such a right has never been recognized under Section 1 of the Kansas Constitution, the asserted basis for this claim. Like Plaintiffs' other Section 1 claims, their asserted privacy right claim attempts to invent a constitutional right. The Kansas Constitution does not contain the word "privacy." And Plaintiffs cannot offer a single Kansas Supreme Court precedent expressly supporting their contrived right. They cite *Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 920 (2006), but that case expressly declined to recognize any privacy right in the Kansas Constitution: "We have not previously recognized—and need not recognize in this case despite petitioners' invitation to do so—that such rights also exist under the Kansas Constitution." *Id.* at 920. Likewise, the analysis in *Tiller v. Corrigan*, 286 Kan. 30 (2008), was limited to "*federal* constitutional privacy interests." *Id.* at 47 (emphasis added).

Plaintiffs also rely on inapplicable federal caselaw and suggest that the Kansas Constitution should be interpreted to provide similar rights. There are at least two problems with this argument. First, the Kansas Supreme Court made clear in *Hodes I* that Section 1 of the Kansas Constitution Bill of Rights should not be interpreted in lockstep with the federal Constitution's Due Process Clause. 309 Kan. at 624-27. And there is no good argument based on the unique text or history of the Kansas Constitution to support recognition of a newfound right to informational privacy.

Second, even if the Kansas Constitution were to mirror federal law, Plaintiffs cannot show that SB 244 infringes on any federal constitutional right to informational privacy. The U.S. Supreme Court has never expressly recognized a constitutional right to informational privacy, *see NASA v. Nelson*, 562 U.S. 134, 161 (2011) (Scalia, J., concurring), and no such privacy right is expressly mentioned in the U.S. Constitution. Plaintiffs' allegations sound in substantive due process, but the U.S. Supreme Court has held that the Due Process Clause only "protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (cleaned up). This analysis requires "a 'careful description' of the asserted fundamental liberty interest," *id.* at 721, not broad, generalized characterizations.

Plaintiffs have not identified a particularized right "deeply rooted in this Nation's history and tradition" either to force the State to display gender identity rather than biological sex on driver's licenses or to use whatever shared bathrooms, locker rooms, or similar facilities they wish regardless of their biological sex. Plaintiffs' transgender agenda is of recent vintage, not part of our deeply held constitutional traditions.

Even if there were a right to informational privacy as a general matter, it would not apply to a person's transgender status. The limited cases where lower federal courts have recognized some right to informational privacy involved instances of the government collecting personal information from a specific individual and disseminating that information without a legitimate reason. *See, e.g., Herring v. Keenan*, 218 F. 3d 1171 (10th Cir. 2000) (disclosure of individual's HIV status, by government official to individual's employer, violated right to informational privacy). They do not support the contention that there is a right to privacy that prevents a state from collecting basic information about biological sex and adding that information to a driver's license[4] or requiring individuals to use multiple-occupancy private spaces corresponding to their biological sex. Furthermore, much of the federal precedent on which Plaintiffs might rely was decided before the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's*

[4] Indeed, driver's licenses list a variety of personal data, including birthdate (age), weight, and height. Biological sex is no different. Age and weight are also vital statistics that some individuals may feel discomfort about sharing with others. But that does not give rise to a constitutional right to prevent the State from including such vital statistics on government documents.

Health Organization, 597 U.S. 215 (2022), which overturned the foundation on which much of the prior caselaw involving "privacy" rights had been based.

Notably, Plaintiffs do not challenge the State's ability to include a gender marker on driver's licenses or to maintain separate multiple-occupancy private spaces in public buildings for men and women. The issue therefore is not whether a distinction (and any corresponding disclosure) between men and women can be made but whether that distinction should be based on biological sex as opposed to gender identity. Plaintiffs have identified no constitutional grounds for privileging transgender ideology over biological reality.

V. SB 244 does not violate equal protection.

SB 244 does not deprive Plaintiffs of equal protection. Equal protection requires that the law treat similarly situated people alike. *State v. Little*, 58 Kan. App. 2d 278, 279 (2020). Under SB 244, Plaintiffs will hold identification documents that record biological sex and use facilities corresponding to their biological sex—just like everyone else.

Plaintiffs bring their equal protection claim under both Section 1 and Section 2 of the Kansas Bill of Rights, contending that Section 1 "guarantees equal protection beyond the Fourteenth Amendment." Am. Pet. ¶ 220. It does not. In *Rivera v. Schwab*, the Kansas Supreme Court located the "textual grounding of equal protection guarantees" in Section 2, held that Kansas's guarantee is coextensive with the federal Equal Protection Clause, and directed that Kansas courts "shall be guided by United States Supreme Court precedent" in applying it.

315 Kan. 877, 894 (2022). There is no free-floating Kansas equal protection right broader than the Fourteenth Amendment, and Plaintiffs identify no Kansas authority creating one. The analysis therefore begins and ends with the United States Supreme Court's equal protection jurisprudence—jurisprudence that, in the last two terms, has squarely addressed and rejected the very theories Plaintiffs advance.

Twice in the past two terms, the Supreme Court has considered equal protection challenges to state laws that, like SB 244, turn on biological sex, and twice the Court has upheld them.

In *United States v. Skrmetti*, the Court upheld Tennessee's prohibition on gender-transition interventions for minors. 605 U.S. 495 (2025). The plaintiffs there argued—just as Plaintiffs argue here—that the law classified on the basis of sex "because its prohibitions reference sex" and "because application of the law turns on sex." *Id.* at 511–12. The Court held that "[n]either argument is persuasive." *Id.* A law does not trigger heightened scrutiny merely because sex is embedded in its operation; what matters is whether the law "prohibit[s] conduct for one sex that it permits for the other." *Id.* at 514–15. Because Tennessee's law applied evenhandedly to both sexes, rational basis review applied, and the law was upheld in light of the State's legitimate interests in regulating medical interventions for minors.

In *Little v. Hecox*, decided together with *West Virginia v. B.P.J.*, the Court upheld state laws reserving girls' and women's athletic teams to biological females.

2026 WL 1868739 (U.S. June 30, 2026). There, the Court recognized that separating athletics by sex draws a line based on sex—but held that such line-drawing is constitutionally warranted in the athletic context, where "females and males have inherent physical differences" that are "enduring." *Id.* at *3 (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). Sex-separation in sports serves the important governmental objectives of competitive fairness and safety for female athletes, and reliance on biological sex—rather than gender identity—is substantially related to those objectives precisely because it is the biological differences between the sexes that justify separation in the first place. *Id.* at *14. Critically, the Court further held that such laws do not classify on the basis of transgender status, *id.*, and that "transgender status is not a suspect class requiring heightened equal-protection scrutiny," *id.* at *17; accord *Skrmetti*, 605 U.S. at 517; *id.* at 549–58 (Barrett, J., concurring).

Together, these cases establish the governing framework: (1) a law does not classify on the basis of sex merely because it references sex or its application turns on sex; (2) where the government does separate the sexes in contexts marked by real physiological differences, such as athletics, that separation is constitutional; and (3) transgender status is not a suspect classification. The Court completed the picture in *Trump v. Orr*, holding that recording sex at birth on a government identification document "no more offends equal protection principles than displaying [the holder's] country of birth," because "the Government is merely

attesting to a historical fact without subjecting anyone to differential treatment." 146 S. Ct. 44, 46 (2025).

Kansas courts evaluate equal protection claims in three steps: the court (1) identifies the nature of the legislative classification and whether arguably indistinguishable classes are treated differently, (2) selects the level of scrutiny, and (3) tests the classification's relationship to the legislative goal under that scrutiny. *Miami Cnty. Bd. of Comm'rs v. Kanza Rail-Trails Conservancy, Inc.*, 292 Kan. 285, 315–16 (2011); *Villa v. Kansas Health Pol'y Auth.*, 296 Kan. 315, 324 (2013). "If there is no classification or disparate treatment, there is no equal protection violation." *Villa*, 296 Kan. at 324.

Applying *Skrmetti*, *Hecox*, and *Orr* at step one, SB 244 makes no suspect classification.

First, SB 244 does not classify on the basis of transgender status. The Act does not use the word "transgender," imposes no unique requirement on transgender individuals, and nothing in its operation turns on whether an individual is transgender. All biological women (transgender or not) use facilities designated for women; all biological men (transgender or not) use facilities designated for men; and every license records its holder's biological sex. If sex-separated athletic teams do not classify on the basis of transgender status, *Hecox*, 2026 WL 1868739, at *14, sex-separated restrooms and accurate sex markers certainly do not.

Second, SB 244's driver's license and birth certificate provisions do not classify on the basis of sex at all. Every license issued to every Kansan records the same objective information: the holder's biological sex. That is precisely the "attest[ation] to a historical fact without subjecting anyone to differential treatment" that *Orr* held raises no equal protection concern. 146 S. Ct. at 46. And under *Skrmetti*, the mere fact that the license provisions "reference sex" or that their "application turns on sex" does not create a sex classification. 605 U.S. at 511-12. SB 244 does not "prohibit conduct for one sex that it permits for the other," *id.* at 514-15—it requires the same accuracy from everyone. All biological women, whether transgender or not, must use facilities designated for women. All biological men, whether transgender or not, must use facilities designated for men. When facilities are not designated for a single sex, anyone can use them. And each person's identification documents will indicate biological sex. There is no differential treatment of arguably indistinguishable classes.

Third, even if the Court were to conclude that SB 244's facilities provisions draw a sex-based line, *Hecox* establishes that such line-drawing is constitutional where it is warranted by the context. Intimate spaces are such a context. Like athletics, multiple-occupancy private facilities are places where the "inherent physical differences" between the sexes matter, *Hecox*, 2026 WL 1868739, at *3, and where sex-separation serves the important governmental objectives of personal privacy, safety, and dignity in states of undress. See *Roe v. Crutchfield*, 137 F.4th 912, 925 (9th Cir. 2025) ("That some students in a state of partial undress may

experience embarrassment, shame, and psychological injury in the presence of students of a different sex is neither novel nor implausible.") (internal quotations omitted). Designating those facilities by biological sex, rather than self-declared gender identity, is substantially related to those objectives, because it is biological sex, not gender identity, that gives rise to the privacy and safety interests sex-separation protects. SB 244's facilities provisions therefore satisfy intermediate scrutiny even if it applies, just as the sports laws in *Hecox* did.

Plaintiffs resist this precedent by invoking *Bostock v. Clayton County*, 590 U.S. 644 (2020), to argue that SB 244 draws a facial sex-based classification. *Bostock* is inapposite. It construed the word "discriminate" in Title VII in the context of an employee's termination; it did not address constitutional equal protection, identification documents, or facilities. The Supreme Court has repeatedly declined to extend *Bostock* beyond Title VII. *See B.P.J.*, 2026 WL 1868739, at *9 ("Title VII and *Bostock* are not relevant in this different statutory and factual context"); *Skrmetti*, 605 U.S. at 520. And *Bostock* itself expressly disclaimed any application to "bathrooms, locker rooms, or anything else of the kind," 590 U.S. at 681. Unlike the employers in *Bostock*, SB 244 does not punish transgender people for being transgender. It requires only that facilities be used according to biological sex and that identification documents record biological sex accurately. These requirements are not injurious, and an individual's sex plays no role in their application.

In the absence of a suspect classification or infringement of a fundamental right, SB 244 must be reviewed under the rational basis standard and upheld if "any conceivable" state of facts supports it. *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993). The State "has no obligation to produce evidence or empirical data," and Plaintiffs must "negative every conceivable basis" for the law. *State v. Genson*, 59 Kan. App. 2d 190, 212 (2020), *aff'd*, 316 Kan. 130 (2022). Rational basis may therefore be established on the pleadings. *See Hettinga v. United States*, 677 F.3d 471, 479 (D.C. Cir. 2012).

SB 244's requirements easily meet the rational basis standard. Under the law, single-sex government facilities, originally instituted for the protection and privacy of individuals of each sex, are closed to individuals of the opposite sex. Sex-segregated facilities reflect real and longstanding concerns for safety and privacy in intimate spaces. *See, e.g.*, *Roe v. Crutchfield*, 137 F.4th 912, 925 (9th Cir. 2025) ("That some students in a state of partial undress may experience embarrassment, shame, and psychological injury in the presence of students of a different sex is neither novel nor implausible.") (internal quotations omitted). These same concerns are addressed, for example, in Title IX of the Civil Rights Act. 20 U.S.C. § 1681, *et seq*. Title IX was enacted more than fifty years ago to establish equal educational opportunities for women. Yet, as the U.S. District Court for the District of Kansas recently noted:

> Title IX provides that a recipient may maintain 'separate living facilities for the different sexes.' 20 U.S.C. § 1686. This 'instruction is the authoritative expression of Congress's view that separating the two sexes "where personal privacy must be preserved" is not the type of

> discrimination prohibited by the statute.' *Texas*, 2024 WL 2947022, at *32 (citing 118 Cong. Rec. 5,807 (Feb. 28, 1972)).

Kansas v. United States Dep't of Educ., 739 F. Supp. 3d 902, 921 (D. Kan. 2024), *appeal dismissed,* No. 24-3097, 2025 WL 1914861 (10th Cir. Mar. 13, 2025).

In Title IX, "it is clear from the statutory language that the term 'sex' refers to the traditional binary concept of biological sex." *Id.* at 920. Because separate facilities *support* equal opportunities for women, allowing opposite-sex access to those facilities on the basis of gender identity "would subvert Congress' goals of protecting biological women in education." *Id.* at 923. Further, mandating opposite-sex access to facilities could "require schools to subordinate the fears, concerns, and privacy interests of biological women to the desires of transgender biological men to shower, dress, and share restroom facilities with their female peers." *Id.* Just like Title IX, SB 244 rationally separates facilities by biological sex, not gender identity. Both laws are justified by the government's rational interest in maintaining sex-segregated facilities to protect personal safety and privacy in intimate spaces.[5]

SB 244's driver's license requirements are rational as well. Driver's licenses are used to identify individuals in countless settings—interactions with law enforcement, private commercial transactions, and in the provision of healthcare—and the State has a legitimate interest in ensuring that licenses contain objective,

[5] Title IX is not the only federal law mandating that access to single-sex facilities is determined by biological sex. *See, e.g.*, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, Exec. Order No. 14,168, 90 Fed. Reg. 8,615, 8,617 (Jan. 20, 2025) ("The Attorney General shall issue guidance to ensure the freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964.").

accurate, and unchangeable information. Because gender identity may change over time while biological sex does not, recording biological sex furnishes a more reliable and consistent record of identification, while providing law enforcement and healthcare professionals necessary information about biological sex when it matters.

Governments have a well-recognized interest in maintaining accurate records. *See, e.g.*, *Barrett v. Virginia*, 689 F.2d 498, 503 (4th Cir. 1982) ("How prison officials choose to organize their records is quintessentially an administrative matter in which the courts should not intervene."). And accurate sex-markers on identification documents are especially important in the law enforcement context, where they help officers accurately identify the subjects of arrest warrants, determine appropriate search techniques, locate accurate criminal histories of suspects, and maintain consistent records across various law enforcement record systems. Accurate driver's licenses also play a role in the enforcement of SB 244's facilities requirements. And they assist medical professionals treating patients in emergency situations, when the patient may not be able to provide information necessary for appropriate care. The Legislature acted rationally to support these interests with SB 244's driver's license requirements.

No court has ever held that accurate sex-identification requirements fail rational-basis review—including the Court of Appeals in *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680 (2025), which set aside a temporary injunction concerning a different statute on evidentiary grounds without ruling on the rational

basis of requiring accurate sex identification on licenses. *See id.* at 700-01. Like the sex-designations on many forms of identification issued by many different governments, SB 244's requirements have a rational basis and should be upheld.

Instead of analyzing Plaintiffs' claims under the rational basis standard, Plaintiffs push for intermediate or strict scrutiny. But heightened review depends on a classification that does not exist in SB 244. Because SB 244 does not make a transgender classification or an impermissible sex-based classification, intermediate and strict scrutiny never come into play. *See B.P.J.*, 2026 WL 1868739 at *14; *Skrmetti*, 605 U.S. at 511–12.

As a last attempt at heightened review, Plaintiffs allege that SB 244 is "overinclusive and underinclusive" and reflects "animus." Am. Pet. ¶ 226 (citing *State v. Limon*, 280 Kan. 275, 295 (2005)). Rational basis forecloses that inquiry: a statute must be upheld if any conceivable state of facts supports it, whether or not the Legislature acted on that basis. *Beach Commc'ns*, 508 U.S. at 315. While animus may not serve as a rational basis, *Romer v. Evans*, 517 U.S. 620, 632 (1996), there is no evidence that SB 244 was motivated by animus. Nor does the Petition provide anything but unsupported and conclusory allegations of overbreadth. When courts have found animus motivating a statute, the statute made a status-based distinction "inexplicable by anything but animus." *Limon*, 280 Kan. at 300 (quoting *Romer*, 517 U.S. at 632). SB 244 makes no status-based distinction, and its provisions are easily explained as a rational means to a legitimate state interest. Animus plays no role. Plaintiffs' equal protection claim should be dismissed.

VI. SB 244 does not violate anyone's free speech rights.

Plaintiffs argue that SB 244's driver's license requirements violate their freedom of speech, protected under Section 11 of the Kansas Bill of Rights. But a driver's license is the State's speech, not the licensee's. When the State speaks, the constitution's freedom of speech clause does not apply to the content of its speech. *Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009).

In *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), the Supreme Court held that state-issued license plates are government speech. Even though the public could submit designs for state approval, "Texas license plates are, essentially, government IDs. And issuers of ID typically do not permit the placement on their IDs of messages with which they do not wish to be associated." *Id.* at 212 (internal quotation marks omitted). Kansas driver's licenses are likewise government-created IDs that "have traditionally been used for government speech, are primarily used as a form of government ID, and bear the State's name." *Id.* at 216. No one attributes the ID's message to the holder. While Plaintiffs note that Kansas permits licensees to elect to include some information—organ donor, veteran, deaf, or disability status—on licenses, that makes them indistinguishable from the license plates in *Walker*. 576 U.S. at 212, 219. In fact, driver's licenses are not, and have never been, public forums for individual expression, which is why "persons who observe designs on IDs routinely—and reasonably—interpret them as conveying some messages on the issuer's behalf." *Id.* at 212 (cleaned up). The driver's license is not a canvas upon which an individual

paints an image of oneself. It is a document designed by the government, issued by the government, and controlled by the government. Individuals do not speak through their driver's licenses; the government does. No Kansas court has ever held otherwise.

Because the license is government speech that no one attributes to the licensee, SB 244 compels nothing from Plaintiffs. "Sex" and "gender" carry the same statutory meaning, SB 244 § 6(a)(1), so a compliant license reflects the law rather than forcing any licensee to adopt an ideological viewpoint. Nothing in SB 244 prevents Plaintiffs from expressing their own understanding of those terms, and nothing in SB 244 requires Plaintiffs to say, or to consent to the proposition, that the biological sex recorded on a license is the same as their gender identity.

Neither does a compliant license force Plaintiffs to disclose that they are transgender. Any inference an observer might draw arises from the government's speech, not Plaintiffs'. Moreover, the possibility that a person examining a driver's license might draw a conclusion about the licensee's gender identity exists for every licensee, whatever that licensee's gender identity may be. This distinguishes the sex-designation on a license from Plaintiffs' cited cases, in which a "sex offender" designation on the license was found unconstitutional in a couple of other states.

Moreover, Plaintiffs' free speech arguments are incoherent when applied to the status quo: a license which states information about gender identity has all the same issues with respect to compelled speech as a license with a biological sex marker. If any information on a driver's license is not compelled, none of it is. And

no court has held that government licenses, in general, infringe on the freedom of speech.

In short, SB 244-compliant driver's licenses contain government speech not attributed to the licensee that compels no one to say anything. No licensee is required to change their speech or expression. Because the license is the State's speech in every case, the claim fails whether considered facially or as applied. The analysis does not vary with a licensee's gender identity, transgender status, or intersex status. The State says the same thing, in the same way, on every license it issues. Plaintiffs have failed to state a free speech claim.

VII. SB 244 does not violate the single-subject rule under Article 2, § 16 of the Kansas Constitution.

Plaintiffs have failed to allege a plausible single-subject rule claim. All elements of SB 244 relate to the subject expressed in the bill's title—"identification of biological sex"—which concerns how the government classifies and identifies individuals on state-issued documents and in state-owned facilities.

The single-subject rule in Article 2, § 16 of the Kansas Constitution provides: "No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes." Article 2, § 16 expressly dictates that "[t]he provisions of this section shall be liberally construed to effectuate the acts of the legislature." This command "dovetails with the separation of powers doctrine" and the long-recognized principle that courts "presume a statute to be constitutional, resolve all doubts in favor of a statute's validity, and require that a statute must

clearly violate the constitution before it may be struck down." *KNEA v. State*, 305 Kan. 739, 749 (2017).

An act is valid if its provisions "are all germane to the subject expressed in the title." *Id.* at 752-53. And the "subject can be as comprehensive as the legislature chooses, as long as it constitutes a single subject and not several different ones." *Id.* at 753; *see also Bowman v. Cockrill*, 6 Kan. 311, 334-35 (1870) ("[I]t must always be left entirely within the discretion of the legislature to say how comprehensive and general, or how narrow and limited, that subject shall be."). A bill "may include every matter germane, referable, auxiliary, incidental, or subsidiary to, and not inconsistent with, or foreign to, the general subject or object of the act." *State v. Reves*, 233 Kan. 972, 978 (1983). Even "matters which apparently constitute distinct and separate subjects are not so where they are not incongruous and diverse to each other." *Id.*

The title of SB 244 expresses its subject as the "identification of biological sex." Plaintiffs do not appear to contest that the driver's license and birth certificate provisions of SB 244 relate to this subject. That subject also encompasses § 1 of the bill, which addresses "multiple-occupancy private spaces" in public buildings. The bill requires that these spaces be "designate[d]" "for use only by individuals of one sex." SB 244, § 1(b)(1). It thus relates to the identity of individuals who use these spaces. And it requires that the identification of which individuals are entitled to use which sex-specific facilities must be based on biological sex, not gender identity. The bill addresses a single subject: the principle that who is "male" and who is

"female"—whether on government documents or in public facilities—should be determined by biological sex. Its provisions are not so discordant as to constitute multiple subjects, particularly given the liberal construction required by the text of Article 2, § 16.

The Kansas Supreme Court has held that "to violate the single subject rule, a bill must have two dissimilar subjects that have no legitimate connection with each other." *Kansas One-Call System, Inc. v. State*, 294 Kan. 220, 228 (2012). And so, even though the Kansas Open Records Act (KORA) and Kansas Open Meetings Act (KOMA) might not naturally come to mind when one hears the word "utilities," a bill "concerning utilities" did not violate the single subject rule because it included a provision making the One-Call notification center established under the Kansas Underground Utility Damage Prevention Act (KUUDPA) subject to KORA and KOMA. The Court explained there was a "legitimate connection because KORA and KOMA are related to KUUDPA, which is related to utilities in general." *Id.* Likewise, both the driver's license and birth certificate provisions and the "multiple-occupancy private spaces" provisions have a legitimate connection to the identification of biological sex.

Plaintiffs attack the legislative process that led to enactment of SB 244. But Article 2, § 16, does not impose a code of legislative procedure. Neither does it prevent all legislative compromises. Instead, its purpose is to curtail only the most pernicious form of logrolling where completely unrelated subjects are cobbled together in a single bill. Because "the line between forbidden 'log-rolling' and mere

'horse-trading' [is] a fine one," courts must be circumspect in their "ability—or even [ ] constitutional power—to police it in the manner which" Plaintiffs ask. *Gregory v. Shurtleff*, 2013 UT 18, 299 P.3d 1098, 1116 (Utah 2013). The provisions of SB 244 all relate to the single subject expressed in its title, and that satisfies Article 2, § 16.

CONCLUSION

Plaintiffs fail to state a claim for which relief can be granted. The Court should dismiss their claims with prejudice.

July 17, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 17, 2026, a true and correct copy of the above and foregoing was served on counsel for each party through the Court's electronic filing system, which will send a "Notice of Electronic Filing" to each party's registered attorney.

/s/ James Rodriguez
James Rodriguez