



TRO “is not intended to be a final remedy” and it “would not be appropriate if it completely resolved the object of the lawsuit prior to trial.” *See Garetson Bros. v. Am. Warrior, Inc.*, 51 Kan. App. 2d 370, 391, 347 P.3d 687 (2015); *see also Schalansky*, 2003 WL 21713922, at \*18 (recognizing that it “should not usurp the trial function of the lawsuit”). “[I]t is to be used sparingly.” *See Harper*, 65 Kan. App. 2d at 687.

To obtain a TRO, Plaintiffs “must establish”: (1) “a substantial likelihood” that they will prevail on the merits; (2) “a reasonable probability” that, absent an injunction, they will be irreparably injured; (3) there is no “adequate legal remedy” available; (4) “the threat of injury to the plaintiff[s] outweighs whatever harm the injunction may cause the opposing party”; and (5) “the injunction will not be against the public interest.” *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 791-92, 549 P.3d 363 (2024).<sup>1</sup> If Plaintiffs fail to satisfy any one of these requirements, then they are not entitled to relief. *See Steffes v. City of Lawrence*, 284 Kan. 380, 395, 160 P.3d 843 (2007).

**II. Plaintiffs bring a facial constitutional challenge, so they must establish that no set of circumstances exist under which SB 244 could be constitutionally applied.**

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.’ On the other hand, an as applied challenge focuses on the statute’s

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<sup>1</sup> The requirements for a TRO are the same as the requirements for a temporary injunction. *See Schalansky*, 2003 WL 21713922, at \*18. In accordance with this Court’s March 3, 2026, Scheduling Conference, this brief addresses only Plaintiffs’ TRO request.

constitutionality as applied to a particular factual scenario.” *Hodes & Nauser, MDs, P.A. v. Kobach*, 318 Kan. 940, 971, 551 P.3d 37 (2024) (Wilson, J., concurring).

Here, the Petition raises only a facial challenge. Plaintiffs do not argue that SB 244 is unconstitutional as uniquely applied to their circumstances. Rather, they argue that the entire statute is unconstitutional and should be enjoined. Because this relief sought would “reach beyond the particular circumstances of these plaintiffs,” they must satisfy the standards for a facial challenge. *See John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010).

“A facial challenge to the constitutionality of legislation is ‘the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.’” *State v. Jones*, 313 Kan. 917, 492 P.3d 433 (2021) (quoting *United State v. Salerno*, 481 U.S. 739, 745 (1987)). Even if Plaintiffs could demonstrate that SB 244 “might operate unconstitutionally under some conceivable set of circumstances” that would be “insufficient to render it wholly invalid, since [courts] have not recognized an ‘overbreadth’ doctrine outside the limited context of the First Amendment.” *Id.* This Court must uphold SB 244 when “the law is constitutional in at least some of its applications.” *United States v. Rahimi*, 602 U.S. 680, 701 n.2; *see also id.* at 708-09 (Gorsuch, J., concurring). In the case at bar, there are innumerable instances in which the law would operate constitutionally—even if one were to assume *arguendo* that Plaintiffs’ novel constitutional theories were correct.

### **III. Plaintiffs have not demonstrated a likelihood of success on the merits.**

Plaintiffs cannot overcome the first hurdle to obtaining a temporary restraining order—showing a likelihood of success on the merits. Plaintiffs raise a variety of novel and unfounded state constitutional claims that have never before been recognized by Kansas courts.

At the outset, it must be noted that Plaintiffs are asking the Court to do something truly extraordinary in Kansas constitutional jurisprudence—to invent not only new substantive constitutional rights that are found nowhere in the Kansas Bill of Rights, but also to invent positive rights. The Kansas Bill of Rights and the United States Constitution’s Bill of Rights contain only negative rights, which are 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, among others. Positive rights, in contrast, are the opposite. They 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, and it is not found in the Kansas Bill of Rights. It is the right to demand that the Legislature “make suitable provision for finance” of the public schools in Article 6, § 6 of the Kansas Constitution. *See State ex rel. Morrison v. Sebelius*, 285 Kan. at 894 (citing *Montoy v. State*, 278 Kan. 769, 771 (2005)). Plaintiffs ask this Court to invent two new positive rights in the Kansas Bill of Rights—the right of an individual to compel the government to put desired information on government documents, and

the right to configure government buildings and bathroom access according to the individual's preferences and demands. These rights are described 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. Such jurisprudential gymnastics should not be attempted in a TRO proceeding.

This Court should reject Plaintiffs' request to invent new constitutional rights on an emergency basis without first receiving thorough briefing and argument and giving the matter due consideration.

**A. SB 244 does not deny due process.**

In Kansas, “[a]ll persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.” Kan. Const. Bill of Rights § 18. This constitutional provision provides a procedural due process right. *See In re J.D.C.*, 284 Kan. 155, 166, 159 P.3d 974 (2007). “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, 49 P.3d 1274 (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.*

### **i. Liberty and property interests**

Plaintiffs have not identified 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. Bank v. Kesler*, 289 Kan. 528, 544, 216 P.3d 158 (2009).

*First*, in trying to establish a protected interest, Plaintiffs distort case law on driver’s licenses and government employment. Plaintiffs concede that “a person is not entitled to a driver’s license,” but then omit important context when they make their argument—that due process is required only in in “driver’s license *suspension* proceedings.” *Creecy v. Kansas Dep’t of Revenue*, 310 Kan. 454, 463, 447 P.3d 959 (2019) (emphasis added). “There is no dispute that a driver’s license is some type of interest which is entitled to procedural due process protections *before revocation or suspension*.” *Id.* (emphasis added). Plaintiffs do not have a protected interest in any particular license; what they have an interest in is their ability to lawfully operate a motor vehicle. *See State v. Mitchell*, 115 N.H. 720, 721, 349 A.2d 862 (1975) (“It is the right to drive, not the license, that comes under the protection of due process.”).

Plaintiffs are conflating driver’s license replacement with driver’s license suspension. Plaintiffs have not lost their ability to lawfully drive. They have no more interest in their invalid licenses than they would in an expired license. In neither situation would the ability to drive have been revoked as a punitive measure. When a license expires, the holder must replace it with a new one despite having done nothing to “lose” the license. The license holder does not possess a property interest in the expired license protected by procedural due process.

Similarly, Plaintiffs have not established a property interest in their non-compliant licenses that can be quickly and easily replaced with a compliant license.

Additionally, Plaintiffs briefly assert 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 cite 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, 855 P.2d 896 (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 establishes that Plaintiffs do *not* have any property interest in using their desired restroom.

*Second*, Plaintiffs assert that they “have cognizable liberty interests in accessing driver’s licenses and government spaces on terms that do not infringe on their fundamental constitutional rights to personal autonomy, privacy, and free speech.” Pl. Br. at 14. Plaintiffs do not expound on this argument, and have one unrelated “supporting” case cite, where the Court of Appeals rejected a due process claim by an aggrieved prisoner. *See Chelf v. State*, 46 Kan. App. 2d 522, 538-39, 263 P.3d 852 (2011). Plaintiffs lack a cogent argument. *See State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020) (points raised incidentally in a brief and not argued therein deemed waived or abandoned). Plaintiffs are (apparently) trying to manufacture a liberty interest based on their other arguments. So, for the reasons those arguments fail, this one does as well.

*Finally*, Plaintiffs assert they “have a liberty and property interest in avoiding civil and criminal penalties.” Pl. Br. at 15. They provide no coherent argument as to how SB 244 has or will impose civil and criminal penalties on them without due process of law. *See Meggerson*, 312 Kan. at 246. To be sure, SB 244 imposes penalties for violations—as do most laws. And as with other laws, penalties under SB 244 are not imposed without procedural protections. Under Plaintiffs’ logic, any law that imposes any sort of penalty would violate a person’s procedural due process rights—even before it is enforced against anyone. That reasoning is neither workable nor tethered to the Kansas Constitution. Due process protections would kick in if Plaintiffs violated SB 244, and there is no indication at this point that Plaintiffs would be denied those protections.

Plaintiffs have not established any liberty or property interest protected by Section 18 of the Kansas Bill of Rights.

**ii. Notice and reasonable opportunity to comply**

Plaintiffs’ arguments about the lack of notice and reasonable opportunity for compliance also fail. As an initial matter, to the extent that Plaintiffs had any protected property interest at stake (which they did not), SB 244 could wipe it away without further process. SB 244, naturally, was legislative action that applied to a wide class of individuals. “[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, 419 P.3d 1149 (2018); *see also Xcaliber*

*Int'l Ltd. LLC v. Atty. 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’ arguments fail on their own merits, too. Regarding the driver’s license requirement, Plaintiffs assert that it is impossible to comply. But compliance is straightforward and laid out in the statute: Plaintiffs go to a driver’s license office, turn in their old license, and immediately receive a temporary license with the assurance that the final license will arrive later in the mail.

Regarding the bathroom requirement, Plaintiffs' argument boils down to an assertion that SB 244 allows for punishment without procedural due process. Remarkably, Plaintiffs seem to be assuming that due process violations will run rampant should they violate the law and be subject to its penalties. In other words, they are assuming bad faith on the part of any and all government employees who would be involved in the process. There is no indication that Plaintiffs, assuming they violated the law (which would be their choice), would be deprived of due process. Moreover, courts must adhere to a presumption of regularity in all conduct by government employees and officials. "[T]he presumption of regularity of official conduct prevails until overthrown by proof." *Hendrickson v. Sheetz*, 112 Kan. 296 (1922). "[A] presumption of regularity attaches to the actions of Government agencies..." *U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10, (2001) (citing *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14–15 (1926)).

Plaintiffs cite no authority that requires the Legislature to set out step-by-step the process for adjudicating a violation. Myriad criminal and civil statutes make conduct sanctionable without setting out the entire procedure from start to finish. These statutes are not facially unconstitutional. Plaintiffs' argument ignores the various constitutional and statutory protections that necessarily attend any government adjudication of individual interests. The Legislature need not specify every applicable protection. If Plaintiffs actually violated SB 244, were not given a notice of the violation, and then had a penalty imposed upon them without any

procedural protections, then there would be a due process violation. But that has not happened and there is no indication that it will happen.

SB 244 itself 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. 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). All of the normal procedural protections of Kansas courts would of course apply.

In sum, Plaintiffs' argument ignores the express procedural protections found in SB 244, ignores the presumption of regularity, and rests on rank speculation about possible future violations of due process should they violate the law. Accordingly, Plaintiffs have failed to establish any procedural due process violation on the face of SB 244. Importantly, because this is a facial challenge, Plaintiffs do

not come close to meeting the high burden of establishing that there is no conceivable circumstance under which the statute would operate constitutionally.

**B. SB 244 does not infringe on any right to personal autonomy.**

SB 244 does not violate Plaintiffs' fundamental right to personal autonomy. Section 1 of the Kansas Bill of Rights protects fundamental rights, that are either rights expressly enumerated in the constitution or natural rights rooted in Kansas history and tradition. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 644 (2019). But there is no enumerated right, nor any natural right, which is infringed by denying an individual access to opposite-sex facilities or by requiring an accurate sex designation on a driver's license or birth certificate.

In *Hodes*, the Supreme Court recognized a fundamental natural right to personal autonomy implicit in the words "liberty, and the pursuit of happiness" in Section 1 of the Bill of Rights. *Id.* at 643-44. But that right is limited to a woman's decision to terminate a pregnancy. *See id.* at 646. The court held that the fundamental right "to decide whether to continue a pregnancy" is rooted in the "natural right of personal autonomy . . . [which] 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. The best understanding of "personal autonomy," therefore, is that it refers to especially important aspects of *bodily* autonomy, not to every aspect of how "people present themselves to the world." Pl. Br. at 21. *Hodes'* limited recognition of a fundamental right to personal autonomy is

restricted to the control of one’s body—not to the control of state documents such as driver’s licenses and birth certificates.

Nor would such an extension be workable. As the Supreme Court observed in *Hodes*, “strict scrutiny . . . applies when a fundamental right is implicated.” *Hodes*, 309 Kan. at 663. And under strict scrutiny, “once a plaintiff proves an infringement [of a fundamental right]—regardless of degree—the government’s action is presumed unconstitutional.” *Id.* at 669. Plaintiffs’ theory would make not just SB 244, but every state law that applies in any way to restrict anyone’s personal autonomy, presumptively unconstitutional.

That would be an absurd result, and the Supreme Court squarely rejected it in *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995 (2024) (*Hodes II*). The *Hodes II* majority was explicit that *Hodes* “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 the *Hodes* line of cases would throw open the courthouse doors to novel constitutional claims, like Plaintiffs’ here. *Id.* at 1063 (Stegall, J., dissenting) (predicting that the regulation of “tattoos and piercings,” “the use of car seat belts,” “the use of helmets while riding motorcycles and motorized bicycles,” “required student vaccinations,” “assisted suicide,” and “public nudity” would “now [be] subject to the most rigorous and exacting standard of constitutionality”). But the majority countered that the dissent’s expansive interpretation of *Hodes*—like Plaintiffs’ argument here—was “based on a faulty underlying premise” that *Hodes* protects “all activities related,

however tangentially, to personal autonomy” *Id.* at 1012. The majority expressly disclaimed that *Hodes* had an “unlimited scope,” and instead ruled that the right of personal autonomy divined by the Court in *Hodes I* concerned the “intimate, personal, and profound act of deciding to have an abortion.” *Id.* at 1013; *id.* at 1012 (clarifying that the Court’s holding in *Hodes* was limited to “deeply personal reproductive health decisions”—namely, abortion). It must be reiterated, the Kansas Supreme Court majority in *Hodes II* expressly limited the right of personal autonomy to abortion.

Even if the Kansas Supreme Court had not cabined this constitutional right to abortion, Plaintiffs’ constitutional claim would still fail. To allege a violation of the right to personal autonomy, “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.” *Id.* at 1013. Plaintiffs have not done that. “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,” Plaintiffs’ constitutional claim cannot stand. *Id.*

Finally, it must be noted that Plaintiffs are attempting to convert the negative right recognized in *Hodes I* into a positive right to compel the government to change government issued documents and change the operation of government buildings to meet their desires. Such a conversion of a negative right into a positive right has never happened in Kansas constitutional history. This Court should not

endorse such a breathtaking constitutional theory, and it certainly should not do so in the context of a TRO proceeding.

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

Plaintiffs also argue that SB 244 infringes on an alleged right to informational privacy, but such a right has never been recognized under Section 1 of the Kansas Constitution, which is the only basis for this claim. Plaintiffs' asserted privacy right claim attempts to invent an imaginary 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. The one case that they do mention in a "see" citation 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." *Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 920, 128 P.3d 364, 377 (2006), cited in Pl. Br. at 21.

Instead, Plaintiffs rely on inapplicable federal caselaw and argue 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. 309 Kan. at 624-27. And Plaintiffs offer no 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 have not shown that SB 244 infringes on any federal constitutional right to informational privacy. As an initial matter, 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 Constitution. Plaintiffs' arguments 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). This analysis requires "a 'careful description' of the asserted fundamental liberty interest," *id.* at 721, not broad, generalized characterizations.

Plaintiffs have not demonstrated 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. 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<sup>2</sup> or requiring individuals to use multiple-occupancy private spaces corresponding to their biological sex. Furthermore, the cases Plaintiffs cite were all decided before the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (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 males and females. The issue therefore is not whether a distinction (and any corresponding disclosure) between male and female 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.

**D. SB 244 does not violate equal protection.**

SB 244 does not deprive Plaintiffs of equal protection of the law. Equal protection requires that the law treat similarly situated people alike. *State v. Little*,

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<sup>2</sup> 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.

58 Kan. 278, 279 (2020). The first step in analyzing whether there is an equal protection violation is determining the “nature of the statutory classifications and examine whether these classifications result in disparate treatment of arguably indistinguishable classes of individuals.” *Villa v. Health Pol’y Auth.*, 296 Kan. 315, 324 (2013). “If there is no classification or disparate treatment, there is no equal protection violation.” *Id.*

SB 244 does not impose any unique requirements on transgender people; it does not even use the word “transgender.” Nothing in the law’s requirements depends in any way on whether an individual is transgender. Accordingly, there is no differential treatment on which to predicate an equal protection violation.

With respect to the facilities requirements, SB 244 merely enforces existing limitations on multiple-occupancy single sex spaces. Under the law, all biological women, whether transgender or not, must use the facilities designated for women. And all biological men, whether they are transgender or not, must use the facilities designated for men. When facilities are not designated for use by individuals of only one sex, anyone can use them. There is no sex-based classification.

Nor does SB 244 create a classification for driver’s licenses. It simply requires licenses to display accurate information about the licensee’s sex. Under the law, every driver’s license issued to an individual—regardless of whether that individual is transgender—will indicate the individual’s biological sex, and it will not include any information about the individual’s gender identity. Transgender individuals will have licenses that are no different from anyone else’s.

Plaintiffs’ arguments that SB 244’s requirements implicate equal protection have been rejected, twice, by the U.S. Supreme Court. In *United States v. Skrametti*, 605 U.S. 495 (2025), the court rejected the argument that banning the use of certain medical procedures for treating transgender children classified individuals based on sex. *See id.* at 511-12 (“[P]laintiffs suggest that SB1 classifies on the basis of sex because its prohibitions reference sex . . . [and] because application of the law turns on sex. Neither argument is persuasive.”). And in *Trump v. Orr*, 146 S. Ct. 44 (2025) the Supreme Court reviewed a challenge to the practice of listing biological sex at birth, rather than gender identity, on U.S. passports. The court again found there was no equal protection violation: “Displaying passport holders’ sex at birth no more offends equal protection principles than displaying their country of birth—in both cases, the Government is merely attesting to a historical fact without subjecting anyone to differential treatment.” *Id.* at 46. The same may be said of birth certificates and driver’s licenses that refer to biological sex at birth. This Supreme Court precedent establishes that a law does not classify on the basis of sex simply because it refers to sex, or because transgender people might be affected by it.

Kansas courts must treat the state’s equal-protection guarantee as coextensive with that in the United States Constitution. *Rivera v. Schwab*, 315 Kan. 877, 894 (2022). SB 244’s facilities requirements do not classify on the basis of sex, consistent with *Skrametti*, because they do not “prohibit conduct for one sex that it permits for the other.” *Skrametti*, 605 U.S. at 514-15. And the driver’s license requirements follow *Orr* by attesting to the fact of one’s biological sex without

subjecting anyone to differential treatment. *Orr*, 146 S. Ct. at 46. Plaintiffs’ equal protection claims are thus foreclosed by federal precedent and should be rejected.

Plaintiffs’ brief ignores both of these recent Supreme Court precedents and instead attempts to invoke *Bostock v. Clayton County*, 590 U.S. 644 (2020) to argue that SB 244 applies a facial sex-based classification. But *Bostock* is wholly inapposite. There, the court held that terminating a transgender employee for being transgender violated Title VII’s prohibition on adverse employment action “on the basis of sex” because the male transgender employee was punished for conduct—presenting as female—which would have been acceptable if the employee were female. *See id.* at 659-60. Unlike the employers in *Bostock*, however, SB 244 does not punish transgender people for being transgender. It merely requires that men and women use facilities according to their biological sex and that their driver’s licenses accurately reflect their biological sex. The individual’s sex plays no role in the application of these requirements. Further, *Bostock* has not been applied outside of Title VII. *See Skrametti*, 605 U.S. at 520 (“We have not yet considered whether *Bostock*’s reasoning reaches beyond the Title VII context, and we need not do so here.”). And *Bostock* expressly did not extend to “bathrooms, locker rooms, or anything else of the kind,” even within Title VII. *Bostock*, 590 U.S. at 681. The Court should therefore follow recent and directly on-point federal caselaw and reject Plaintiffs’ equal protection claim.

**E. SB does not violate Plaintiffs’ free speech rights.**

Plaintiffs argue that SB 244’s driver’s license requirements constitute compelled speech in violation of Section 11 of the Kansas Bill of Rights. This argument fails for the simple reason that driver’s licenses are the State’s speech, not Plaintiffs’. 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 Division, Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), the U.S. Supreme Court found that Texas-issued license plates were government speech. Even though the public could submit their own 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. Similarly, Kansas driver’s licenses are government-created IDs which “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. And 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.

Further, nothing in SB 244 compels speech. Plaintiffs allege SB 244 requires them to present their sex as their gender. Pl. Br. at 28. But Plaintiffs do not express themselves through driver’s licenses at all. And “sex” and “gender” have the same definition under the law (SB 244 § 6(a)(1)), so the licenses will reflect the law, not force licensees to adopt any ideological viewpoint. If Plaintiffs have their own personal understanding of the term “gender” that they wish to communicate to others, nothing in SB 244 prevents them from doing so.

Plaintiffs also claim SB 244 may force them to reveal to others that they are transgender. That claim is baseless. To the extent another person may guess an individual is transgender by comparing the driver’s license information to the individual’s social presentation, the other person is making an inference based on the government’s speech, not the licensee’s.<sup>3</sup> No licensee will be forced to change their speech or expression in any way. In short, driver’s licenses are government speech and do not compel any speech by Plaintiffs. There is no violation of Plaintiffs’ free speech rights.

**F. SB 244 has a rational basis and was not motivated by animus.**

Because SB 244 does not violate any recognized fundamental constitutional right and does not discriminate on the basis of a suspect classification, SB 244 must be reviewed under a rational basis standard. Plaintiffs urge heightened review, but

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<sup>3</sup> Under Plaintiffs’ purported facts, it is not clear how any unwanted disclosure of one’s transgender status could actually occur, absent an express designation on the license that an individual is “transgender”—after all, Plaintiffs allege “[i]t is not possible to tell whether someone is transgender by looking at them.” Pl. TRO at 20 (citing Turpin Decl. ¶ 39; Scheim Decl. ¶ 30; Doe Decl. ¶ 32; Moe Decl. ¶ 16.”).

that is appropriate only for infringements of fundamental rights and suspect classifications. As discussed above, there is no fundamental right to use opposite-sex facilities or to maintain inaccurate sex information on a driver's license. So there is no reason for heightened review on that account. *See Hodes*, 309 Kan. at 663. And even if the Court were to find that SB 244 classifies individuals on the basis of transgender status (which it does not) rational basis review would be appropriate because transgender status is not a suspect class. *See Skrametti*, 605 U.S. at 517 (declining to recognize transgender status as a suspect class); *id.* at 549-58 (Barrett, J., concurring) (explaining why transgender individuals lack the immutable traits, historical discrimination, or political powerlessness required to qualify as a suspect class). As Justice Barrett explained in her *Skrametti* concurrence, “transgender status is not marked by the same sort of obvious, immutable, or distinguishing characteristics as race or sex,” as it is not “ascertainable at the moment of birth.” *Id.* at 551 (cleaned up) (Barrett, J., concurring). “Nor is the transgender population a ‘discrete group’” that would warrant heightened protection. *Id.* The practical problems of holding that transgender status is a suspect classification would, moreover, entangle the courts in knotty questions of scientific and medical debate that are not amenable to judicial resolution. *Id.* at 552. Moreover, Plaintiffs have not argued that transgender status constitutes a suspect class, so the Court need not consider the question at this stage of the litigation.

Laws are subject to rational basis review absent an infringement of a fundamental right or a suspect classification. *See Downtown Bar & Grill, LLC v. State*, 294 Kan. 188, 194 (2012); *see also Blue v. McBride*, 252 Kan. 894, 915 (1993) (“Courts do not substitute their social and economic beliefs for the judgment of the legislative bodies and are not concerned with the wisdom, need, or appropriateness of legislation.”). Under rational basis review, a law is unconstitutional only when it “rests on grounds wholly irrelevant to the achievement of the State’s objective.” *Chiles v. State*, 254 Kan. 888, 895 (1994). A law will be upheld if *any conceivable* rational basis supports it. *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993).<sup>4</sup>

SB 244 easily satisfies the rational basis standard. The law’s requirements simply ratify longstanding arrangements, and its various enforcement mechanisms are a rational means to ensure compliance. 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. The establishment of single-sex facilities is not, as Plaintiffs apparently believe, an aesthetic sorting exercise, intended to ensure similarity of affect among the facilities’ users for the benefit of their mental health. On the contrary, sex-segregated facilities reflect real and longstanding concerns for safety and privacy in intimate spaces. *See, e.g., Roe v.*

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<sup>4</sup> *See also Christopher v. State ex rel. Kansas Juvenile Justice Auth.*, 36 Kan.App.2d 697, 709 (Kan. App. 2006) (“[A] State ... has no obligation to produce evidence to sustain the rationality of a statutory classification... A legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data”) (cleaned up).

*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. 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). And 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 (D. Kan. 2024). And 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.* An injunction issued by this Court as requested by Plaintiffs

(compelling public buildings, including schools, to open all bathrooms to persons of either biological sex) would contradict Title IX's directive that schools must be permitted to separate such facilities by biological sex.

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.<sup>5</sup>

The interests advanced by Kansas law are real, not hypothetical. For example, a 12-year-old New Mexico girl was raped by a transgender classmate in the girls' restroom at school. Briana Oser, *Young Girl Is Raped in School Bathroom by Transgender Peer*, WASH. EXAMINER (June 20, 2023).<sup>6</sup> A 2022 report from a Loudoun County, Virginia, grand jury found that a "gender fluid" male sexually assaulted a female student in a school bathroom in October 2021. Caroline Downey, *'They Failed at Every Juncture': Loudoun County Mishandled Bathroom Sex Assault, Grand Jury Finds*, NRO ONLINE (Dec. 6, 2022).<sup>7</sup> Virginia school policy at the time required schools to allow transgender students to use restrooms opposite to

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<sup>5</sup> 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.").

<sup>6</sup> Available at <https://www.washingtonexaminer.com/opinion/1974562/young-girl-is-raped-in-school-bathroom-by-transgender-peer/>.

<sup>7</sup> Available at <https://www.nationalreview.com/news/they-failed-at-every-juncture-loudoun-county-mishandled-bathroom-sex-assault-grand-jury-finds/>.

their biological sex. *Id.* And, at a Boise, Idaho, high school, a female student encountered a transgender student (a biological male) masturbating, with his feet pointed toward her, in the adjacent girls' restroom stall. Declaration of A.C., *Sexuality & Gender All. v. Critchfield*, No. 1:23-cv-00315-DCN, ECF No. 90-1, at ¶¶ 6-7 (D. Idaho July 21, 2025). These examples show that opposite-sex access to restrooms poses real dangers to women and girls.

“[I]n assessing risk, a government need not wait for the flood before building the levee.” *Ramirez v. Collier*, 142 S. Ct. 1264, 1288 n.2 (2022) (Kavanaugh, J., concurring). Indeed, a “harm need not have occurred before a legislature can act.” *Roe v. Critchfield*, 137 F.4th 912, 925 (9th Cir. 2025). And “[r]eliance on the experiences of other jurisdictions is sufficient to satisfy the [government’s] minimal burden at the legislative stage.” *Fantasyland Video, Inc. v. Cnty. of San Diego*, 505 F.3d 996, 1003 (9th Cir. 2007) (citing *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 50–52 (1986)).

SB 244’s driver’s license requirements are rational as well. Licenses must designate the sex of each licensee in order to correctly identify the individual in a variety of situations, including interactions with law enforcement, first responders/paramedics private commercial transactions, and applications for public benefits. Because licenses are used in identification, it makes sense that they should contain objective, accurate information. Since an individual’s gender identity may “evolve over time,” (Turpin decl. ¶ 26), recording gender identity is a less reliable means of identification than recording biological sex, which does not evolve

and can never be changed. The Legislature rationally chose to require a single, objective, consistent standard for identification.

SB 244 ensures that driver's licenses accurately reflect the holder's biological sex. It is well accepted that governments have a legitimate interest in maintaining accurate records. *See, e.g., Barrett v. Virginia*, 689 F.2d 498, 503 (4th Cir. 1982) (“[T]he mere fact that correctional authorities maintain a prisoner's records in the name he used when convicted implicates no constitutional right. How prison officials choose to organize their records is quintessentially an administrative matter in which the courts should not intervene.”); *Gilbert v. Fox*, No. 16-CV-00354-GPG, 2016 WL 931287, at \*4 (D. Colo. Mar. 11, 2016) (recognizing that “an inmate cannot compel a prison to reorganize its filing system to reflect [his] new name” and collecting cases). Accordingly, courts rightly defer to policymakers on recordkeeping decisions. *See, e.g., Anonymous v. Weiner*, 270 N.Y.S.2d 319, 323 (Sup. Ct. 1966) (recognizing that courts cannot displace the “body charged by law with the authority and responsibility of maintaining the records of births”).

And SB 244 also helps government entities comply with Title IX and other federal laws and directives that turn on biological sex. *See generally Kansas v. U.S. Dep't of Educ.*, 739 F. Supp. 3d 902 (D. Kan. 2024). A driver's license that accurately reflects biological sex is the *least intrusive* tool to ensure that government entities do not inadvertently run afoul of federal law.

No court has found that accurate identification requirements fail the rational basis test. That includes the Court of Appeals in *State ex rel. Kobach v. Harper*, 65

Kan. App. 2d 680 (2025). The court did not hold it was irrational for the Legislature to require accurate sex-identification on licenses. *See id.* at 700-01. Moreover, the court erred by failing to correctly account for the evidence presented in the district court. The State had presented testimony from law enforcement officers concerning empirical evidence of criminals changing gender in order to evade arrest.

Finally, consistent with a long-standing playbook, Plaintiffs' wildly allege that SB 244 is somehow motivated by animus, and they do so entirely without merit. To start, courts look for animus only when a law otherwise lacks a rational basis. In *Romer v. Evans*, 517 U.S. 620 (1996), the Supreme Court struck down a Colorado law which banned homosexuals from the protection of any anti-discrimination law after finding that it served no rational purpose *except* animus. *See id.* at 632. In other words, animus does not invalidate a rational basis; it just cannot serve as a rational basis. *See id.* at 633 ("By requiring that the classification [has a rational basis], we ensure that classifications are not drawn for the purpose of disadvantaging the group burden by the law."). Since SB 244 has a rational basis, animus is legally irrelevant.

In any case, there is no indication that animus played any part in the passage of SB 244. Plaintiffs cite no evidence of it other than the operation of the law. But SB 244 is sufficiently explained by its text, which does not classify or target transgender people at all, and does not require animus as an explanation.<sup>8</sup>

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<sup>8</sup> *See Redd v. Kansas Truck Ctr.*, 291 Kan. 176, 199 (2010) ("The legislature is presumed to have expressed its intent through the language of the statutory scheme.").

While Plaintiffs may not like the identification requirements, it does not follow that every identification requirement they dislike is motivated by animus. For example, driver's licenses also list an individual's birthday and a "true description" (i.e. height and weight) (*see* K.S.A. 8-243)—there are surely some who would prefer to conceal that information on their license. These requirements rationally serve an identification purpose and are not motivated by animus. SB 244's requirements are no different.

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

Plaintiffs' single-subject challenge also lacks merit. All elements of SB 244 relate to the same subject as expressed in the title of the bill—"identification of biological sex." This subject concerns how the government classifies and identifies individuals, whether it be on state-issued documents or 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, 387 P.3d 795 (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, 666 P.2d 1190 (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.

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.

#### **IV. Plaintiffs fail to meet their burden on the other temporary restraining order requirements.**

Plaintiffs have not shown a likelihood of success, and therefore they are not entitled to relief. This Court need go no further in denying their motion for a TRO. Additionally, their failure on the other requirements also dooms their request. *See Steffes*, 284 Kan. at 395.

##### **A. Plaintiffs have not demonstrated irreparable harm.**

Plaintiffs must establish “a reasonable probability” that, absent an injunction, they will be irreparably injured. *League of Women Voters*, 318 Kan. 777, 791-92, 549 P.3d 363 (2024). The “[m]ere apprehension or a possibility of wrong and injury ordinarily is not enough.” *Clawson v. Garrison*, 3 Kan. App. 2d 188, 195-96, 592 P.2d 117 (1979). “[T]he harm may not be speculative or a mere possibility.”

*Rural Water Dist. No. 3, Douglas Cnty. v. Rural Water Dist. No. 8, Shawnee Cnty.*, No. 128,762, --- Kan. App. 2d ----, 2026 WL 119983, at \*7 (Jan. 16, 2026).

Plaintiffs' first argument on irreparable harm is intertwined with their merits arguments. Because they have not been deprived of any constitutional right, as conveyed in other sections of this brief, this argument fails. And as the U.S. Supreme Court has emphasized, temporary injunctive relief "does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *See Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (per curiam). Plaintiffs' argument is little more than an attempt to merge two of the TRO requirements.

Plaintiffs' asserted material harms are speculative and self-inflicted. Plaintiffs can readily comply with the driver's license requirement; there is a driver's license office in Lawrence<sup>9</sup> to which Plaintiffs can travel using free public transit.<sup>10</sup> Lawrence Transit Route 6 goes to the driver's license office.<sup>11</sup> And, of course, Plaintiffs can also get to the office via a rideshare service or through a ride from a friend, relative, or co-worker. Other Kansans can likewise rely on alternative methods of transportation to reach a driver's license office and obtain a new, compliant license. The Department of Revenue has represented to the State that it is prioritizing affected individuals, and public reporting backs up the ease with which it is to obtain a new valid license.<sup>12</sup> And if Plaintiffs ultimately prevail, then they can always get a new license that reflects their gender identity. But at this

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<sup>9</sup> <https://www.ksrevenue.gov/dovoffice.html?countyidparm=152&locationtype=DL>

<sup>10</sup> <https://lawrencetransit.org/fares/>.

<sup>11</sup> *See* <https://lawrencetransit.org/routes/>.

<sup>12</sup> <https://bsky.app/profile/did:plc:ejihld4sywvqvqe67cdkn4jq/post/3mfucyhno7s2z>.

time, they have not shown any potential or actual irreparable harm given the ease of obtaining a new license.

This has been demonstrated by the fact that the majority of affected individuals have already obtained their corrected driver's licenses. The Kansas Department of Revenue issued letters to 275 individuals whose driver's licenses had to be surrendered and replaced. As of March 4, 2026, fully 136 individuals had already complied, surrendering their old licenses and receiving (temporary) new licenses. Moreover, there is no realistic probability that any relevant individual would be penalized even if he did drive to the driver's license office, because the Department of Revenue has not yet invalidated all of the 275 relevant licenses on the database that any law enforcement officer would utilize in assessing a driver's license. Consequently, any asserted harm is entirely speculative.

Similarly, there is no irreparable harm when it comes to Plaintiffs' inability to use their preferred bathroom in public buildings. Significantly, Plaintiffs recognize that single-use restrooms are an option in their daily lives. *See Doe Decl.* ¶ 33 (stating “[t]here is a gender-neutral restroom located in the building where I am most frequently for work”); *cf. Moe Decl.* ¶ 25 (“There are *not many* single-occupancy restrooms in these buildings.” (emphasis added)). While it may be inconvenient for Plaintiffs to use these restrooms because they have to use a restroom that is not the one that is closest to their location in the relevant building, “[p]ersonal inconvenience is not the irreparable harm that warrants . . . injunctive relief.” *Loc. 553, Transp. Workers Union of Am., AFL-CIO v. E. Air Lines, Inc.*, 695

F.2d 668, 677 (2d Cir. 1982). If necessary, Plaintiffs always can use the restroom in a public building that aligns with their biological sex. Plaintiffs' arguments against this course of action amount to speculation that someone will always be lying in wait, hoping to harass Plaintiffs. There is no credible indication that third parties will engage in such conduct, and it does not constitute irreparable harm.

Nor does it constitute irreparable harm that Plaintiffs could, if they chose to violate the law, face sanctions. The “[e]xpense and inconvenience of an administrative hearing, without more, does not constitute irreparable harm.”

*Williams Gas Pipelines Cent., Inc. v. State Corp. Comm'n of State of Kansas*, 27 Kan. App. 2d 573, 580, 7 P.3d 311 (2000); *see also Thorp v. D.C.*, 317 F. Supp. 3d 74, 88 (D.D.C. 2018) (“As the Supreme Court has explained, “[T]he expense and disruption of defending [oneself]’ is not an irreparable harm.” (quoting *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (alterations in original)).

Plaintiffs have not established any meaningful possibility of irreparable harm. They may rectify any perceived harms by obtaining a new license and using available bathrooms. Plaintiffs seek an equitable remedy from this Court while ignoring the means through which they may avoid the dangers of not having a valid driver’s license and not being able to use a restroom in a public building at all. Yet

courts of equity seldom, if ever, reach forth to relieve persons from the consequences of their own acts or their own negligence, when, by the exercise of the slightest diligence, such persons could easily furnish their own relief. Courts of equity require that persons shall themselves exercise reasonable diligence in the protection of their rights, and that they shall not depend slothfully upon the action of courts of equity.

*Noble v. Butler*, 25 Kan. 645, 651 (1881). Plaintiffs have not established a reasonable probability of irreparable harm sufficient to obtain a TRO.

**B. The balancing of the equities and the public interest favor the State.**

Plaintiffs' argument on the balancing of the equities and the public interest is a reiteration of the supposed, speculative parade of horrors that may befall them. *See* Pl. Br. at 36-37. But as previously explained, Plaintiffs' allegations of constitutional violations and irreparable harm fall flat.

With respect to the public interest, SB 244 itself represents the public interest as determined by the public's duly-elected representatives. Plaintiffs give no recognition to the fact that SB 244 became law by overwhelming margins in both houses of the Legislature. SB 244 was the lawful outcome of the democratic process.

With respect to the balancing of equities, Plaintiffs fail to account for the numerous injuries suffered by the State and its citizens. When the government "is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotation marks omitted); *see also Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam) ("When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws.").

The enjoining of SB 244 would result in other injuries to the State as well. As noted above, law enforcement officers rely on accurate and unchanging sex markers on driver's licenses in making arrests, identifying wanted individuals, and

confining detainees safely. With respect to the restroom provisions of SB 244, the balancing of the equities tips even more steeply in favor of the State. Plaintiffs assert the emotional stress or that might befall a fraction of one percent of the population when using a restroom that they would rather not use. But on the other side of the ledger are the fear and anxiety suffered by more than 99 percent of the population when they must share a restroom with a person of the opposite biological sex. It is not even close. The balancing of the equities weighs strongly in favor of the State, and the public interest has already been declared by the Legislature. Plaintiffs fail to meet their burden with respect to these factors as well.

### CONCLUSION

Because Plaintiffs have not demonstrated a likelihood of success on the merits of their invented and unusual constitutional claims and have failed to show irreparable injury or that the balancing of the equities weighs in their favor, this Court should deny their request for the extraordinary remedy of a temporary restraining order.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 5, 2026, a true and correct copy of the above and foregoing will be 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/ Dwight R. Carswell*  
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