

IN THE SEVENTH JUDICIAL DISTRICT
DOUGLAS COUNTY DISTRICT COURT
CIVIL DEPARTMENT

DANIEL DOE and MATTHEW MOE,

Plaintiffs,

v.

STATE OF KANSAS, *ex rel* KRIS
KOBACH, Attorney General; KANSAS
DEPARTMENT OF REVENUE, KANSAS
DIVISION OF VEHICLES; DEANN
WILLIAMS, Director of Vehicles,
Department of Revenue, in her official
capacity; MARK BURGHART, Secretary of
Kansas Department of Revenue, in his official
capacity; KANSAS DEPARTMENT OF
ADMINISTRATION; and ADAM PROFFIT,
Secretary of Department of Administration, in
his official capacity,

Defendants.

Case No. DG-2026-CV-000112
Div. No. 7

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER**

INTRODUCTION

Plaintiffs urgently need a temporary restraining order because of the irreparable harm from SB 244. Nothing in the Attorney General’s (“AG’s”) response undermines that conclusion.

First, the AG does not even argue that SB 244 could survive any form of constitutional review beyond the rational-basis test, but SB 244 burdens Plaintiffs’ constitutional rights in numerous ways that require a more searching form of review than that. The only evidence in the record also demonstrates why SB 244 is not even rational. **Second**, the AG’s response on the merits ignores or misconstrues numerous arguments and case law cited by Plaintiffs. The AG is simply incorrect, for example, to suggest that Plaintiffs’ claims rest on novel positive-rights theories, or would require the government “to put desired information on government documents,” or to “configure government buildings and bathroom access according to the individual’s preferences and demands.” Resp. 4–5. Plaintiffs are seeking an injunction preventing enforcement of an unconstitutional law, and that straightforward relief is unquestionably available and would not require breaking new ground. **Third**, the Plaintiffs submitted their own declarations, along with those of two experts, to establish irreparable and constitutional harms and the public interest. The AG presented *no evidence* to rebut this factual showing. The Court could easily rule, without prejudice to any party’s later rights, an injunction is appropriate on this record.¹

ARGUMENT

I. The AG’s focus on the standard for facial constitutional challenges is misplaced.

The AG argues that Plaintiffs’ facial challenge requires Plaintiffs to demonstrate that “no set of circumstances exist” under which SB 244 would be valid, Resp. 2–3, by reference to *State*

¹ In light of the schedule required by the urgency of this case, Plaintiffs focus on a subset of the Attorney General’s arguments. Attention to those arguments does not concede the correctness of others, and they intend to address these issues in more detail at the temporary-injunction stage.

v. Jones, 313 Kan. 917 (2021), which in turn relied on *United States v. Salerno*, 481 U.S. 739, 745 (1987). But the “proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015); *see also State v. Ryce*, 303 Kan. 899, 915 (2016) (“*Patel* emphasizes that the scope of circumstances we examine is determined and limited by the application of the statute—we do not consider the entire universe of possible scenarios, we must instead look to the circumstances actually affected by the challenged statute.”). Members of the Kansas Supreme Court have continued to cite this principle even post-*Dobbs*. *See, e.g., Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 970 (2024) (“*Hodes II*”) (Wilson, J., concurring).

II. Plaintiffs are likely to succeed on the merits of their claims.

A. The Act violates due process rights.

SB 244 violates due process by invalidating transgender people’s driver’s licenses and barring them from restrooms that align with their gender identity without providing meaningful notice and an opportunity to be heard or to comply. The AG contends that Plaintiffs have not demonstrated they have any liberty or property interest at stake, and that, in any event, no additional notice or opportunity to comply are required. Each of his arguments is mistaken.

First, the AG’s contention (at 6) that “Plaintiffs have not lost their ability to lawfully drive”—and therefore have no protected property interest at stake—is belied by the statute. SB 244 provides that covered Kansans’ licenses are “invalid,” with no grace period. SB 244 § 4 (g)(1)–(2).² And the AG does not dispute it is unlawful in Kansas to operate a motor vehicle without a

² The Attorney General likens SB 244’s effect on Plaintiffs’ licenses to license expiration. This comparison only highlights the fact that, even in mere license expiration, Kansas drivers are entitled to extensive procedural due process, grace periods, and exemptions. *See* K.S.A. 8-247 (no license may expire in the same year it is issued; license holders are entitled to a 30-day notice; 45-day grace period for 21-year-old license holders, and licenses that expired during COVID-19).

valid license. *See* K.S.A. 8-235.

Second, the threat of criminal and civil sanctions implicates Plaintiffs' property and liberty interests as demonstrated by numerous cases to which the AG does not respond. *See* TRO/TI Br. 14–15. Although the AG says that such penalties would not be assessed without process, that is irrelevant to whether the penalties implicate a protected interest in the first instance. They unquestionably do.

Third, the AG is wrong to suggest that SB 244's legislative nature somehow exempts the statute and its procedures (or lack thereof) from compliance with due process. Resp. 8–9. Bedrock law says it does not. *See, e.g., Fuentes v. Shevin*, 407 U.S. 67 (1972) (seminal procedural due process case challenging prejudgment replevin statutes).

Fourth, nothing about Plaintiffs' argument requires the Court to find that government employees will act in bad faith. Even if government employees do nothing at all, SB 244 has invalidated transgender Kansans' licenses immediately and barred them from accessing restrooms in accordance with their gender identity. That some transgender Kansans have now—more than a week after the law took effect—been able to obtain temporary replacement licenses, *see* Resp. at 34, does not establish that they could have done so as soon as the law took effect, or that all others have now had adequate time to do so. Similarly, appropriate procedural safeguards for enforcement of the Restroom Ban are not just necessary if bad actors are involved. Rather, they reduce the risk of error even by people acting in good faith, commensurate with the very real liberty and property interests at stake when the government enters the business of policing people's bathroom use, on pain of substantial civil and criminal penalties.

B. The Act infringes on personal autonomy.

SB 244 infringes on Plaintiffs' Section 1 right to personal autonomy. *See* TRO/TI Br. 20–21. The AG's arguments in response are unavailing.

First, *Hodes I* is not limited to the context of abortion. It clearly held that the “inalienable natural right of personal autonomy . . . is the heart of human dignity” and “encompasses our ability to control our own bodies, to assert bodily integrity, and to exercise self-determination.” *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 671 (2019) (“*Hodes I*”). *Hodes II*, decided not two years ago, has since confirmed the vitality of *Hodes I*. See 318 Kan. 995. The AG cherry-picks quotes from *Hodes II* to suggest otherwise. See Resp. 13–14. But those quotes must be read in context: they responded to the dissent’s suggestion in *Hodes II* that under *Hodes I* personal autonomy claims could be used to challenge “the slightest infringement on access to goods and services that may marginally be related to personal autonomy.” 318 Kan. at 1012.

As the affidavits in this case demonstrate, the impact of SB 244 on transgender Kansans is anything but slight. By forcing a person to carry a license with a marker inconsistent with their gender identity, or forcing a person to use a single-sex restroom that does not match one’s physical appearance, SB 244 dictates how transgender people present themselves to the world and makes them simultaneously less safe and less free. The forcible outing of transgender people causes serious psychological harm and puts them at further risk of harassment, discrimination, and even violence from others. Scheim Decl. ¶¶ 16, 23–25, 28, 36–38; Moe Decl. ¶¶ 18, 21–30.

Moreover, Plaintiffs have demonstrated a clear relationship between SB 244 and the historic right to personal autonomy. The right to determine how and to what extent to share private information about one’s body has a long historical pedigree. See *Kunz v. Allen*, 102 Kan. 883, 884 (1918) (explaining that the “right of privacy has its foundations in the instincts of nature” and is “therefore derived from natural law” (cleaned up)). The right to decide how to present oneself—including in circumstances that increase the risk of bodily harm—directly impacts transgender Kansans’ natural rights of personhood and self-determination. See *Hodes I*, 309 Kan. at 660

(emphasizing that personal autonomy “right allows Kansans to make their own decisions regarding their bodies, *their health*, their family formation, and their family life” (emphasis added)).

Second, the AG’s contention (at 14) that Plaintiffs are seeking a “positive right to compel the government to change government issued documents and change the operation of government buildings to meet their desires” is not true. Plaintiffs are seeking a declaration of SB 244’s unconstitutionality and injunctive relief preventing its enforcement. The AG’s suggestion that such “relief has never happened in Kansas constitutional history” is flat wrong. *Id.*

C. The Act violates the right to informational privacy.

SB 244 violates Plaintiffs’ right of informational privacy by forcing them to disclose sensitive, personal information about their transgender status, at the risk of physical harm, and by inviting public entities, courts, and even private individuals to ask invasive questions about their genitalia at birth and reproductive capacity. TRO/TI Br. 23–24.

The AG first claims this privacy right does not exist by attempting to explain away Kansas and federal case law. Resp. 15–16. But the AG misreads *Alpha Medical Clinic v. Anderson*, which affirmed that there is a federal constitutional right to “the privacy of certain information” and to “confidential health care,” including about abortion. 280 Kan. 903, 919 (2006). Although the Kansas Supreme Court there declined to identify the outer bounds of a state constitutional right because doing so was not necessary in light of dispositive federal law, the Court clarified the Kansas Constitution at a minimum echoes federal standards. *Id.* at 920. And while it is true that Section 1 should not automatically be read in lockstep with federal constitutional law, inherent or natural rights provisions in state constitutions generally provide *more* protection, not less. *Cf.* Anthony B. Sanders, *Social Contracts: The State Convention Drafting History of the Lockean Natural Rights Guarantees*, 93 UMKC L. Rev. 641, 661–679 (2025) (canvassing rights protected under such clauses). Section 1 is no exception. *See Hodes I*, 309 Kan. at 626. In addition, the AG’s

attempt to dismiss cases on which Plaintiffs rely is unavailing. A concurrence, even at the U.S. Supreme Court, does not trump actual decisions by federal courts and the Kansas Supreme Court. *See* Resp. 16; *Alpha Med. Clinic*, 280 Kan. at 919–20 (collecting federal cases).

The AG further argues that any right to informational privacy would not apply to Plaintiffs because information about biological sex is “basic information.” Resp. 17. But information about a transgender person’s reproductive capacity at birth is no less intimate, or politically charged, than information about health care—for instance, whether one had an abortion. The AG concedes as much when he characterizes Plaintiffs’ lived experienced as “transgender ideology.” Resp. 17.

D. The Act violates the constitutional guarantee of equality.

SB 244 violates the constitutional guarantee of equality by classifying people according to reproductive organs—a facial sex-based classification—and targeting transgender people through its operation. TRO/TI Br. 25–26. The AG argues SB 244 does not classify by sex or target transgender people because the private space provisions enforce existing limitations and everyone’s licenses will display their biological sex at birth. Resp. 18–19. *State v. Limon*, however, rejects this kind of reasoning: SB 244 imposes a “discriminatory classification” even if there is no “per se classification” of transgender people because it places greater burdens on transgender people’s conduct. 280 Kan. 275, 284–86 (2005). Moreover, the decision in *United States v. Skrmetti*, 605 U.S. 495 (2025) does not bind this court’s decision here because *Skrmetti* dealt only with the Fourteenth Amendment of the U.S. Constitution and not Section 1 or Section 2 of the Kansas Bill of Rights, which provides separate, adequate, and greater rights than the U.S. Constitution. *Farley v. Engelken*, 241 Kan. 663, 670–71 (1987).

E. The Act unconstitutionally compels speech.

SB 244 compels speech by forcing Plaintiffs to convey the State’s ideological message about sex and gender and to disclose that they are transgender when they must necessarily show

their driver's licenses to strangers. TRO/TI Br. 26–29. The AG's response misconstrues precedent and makes conclusory arguments at odds with free speech principles.

First, the AG argues that driver's licenses constitute government speech. Resp. 21. But even if that were correct, *contra* TRO/TI Br. at 26–29, it does not follow that SB 244 is constitutional. As the U.S. Supreme Court recognized in *Walker v. Texas Division, Sons of Confederate Veterans*—a case on which the AG heavily relies—even license plates that qualify as government speech can “implicate the free speech rights of private persons,” for example, when an individual is forced to serve as a courier for the State's message. 576 U.S. 200, 219 (2015) (reaffirming *Wooley v. Maynard*, 430 U.S. 705 (1977), *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557 (1995), and *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943)); TRO/TI Br. 26–27, 30. Were it otherwise, for example, the State could require that individuals carry driver's licenses that identify their political party, or whether they have donated to law enforcement causes, all without scrutiny under Kansas's free-speech guarantee. That cannot possibly be the law.

Second, the AG argues that “Plaintiffs do not express themselves through driver's licenses” because “licenses will reflect the law.” Resp. 22. But the State cannot circumvent Plaintiffs' challenge by claiming its message reflects a state statute, especially not one that Plaintiffs argue is unconstitutional. If the State adopted a law requiring licenses of political opponents to carry the statement “I do not support the Governor,” or even just the license holder's political affiliation, the requirement's statutory form surely could not insulate it from review.

F. The Act cannot survive any standard that applies.

The AG notably does not suggest that SB 244 could survive any standard of scrutiny beyond rational-basis review. But as Plaintiffs have shown, each of their individual rights claims requires more rigorous review than the rational-basis test, which applies, for example, to everyday

economic legislation. *See, e.g., Limon*, 280 Kan. at 284. Accordingly, the Plaintiffs are likely to succeed on their claims and a TRO should issue.

In any event, whatever the bounds of legislative power when rational-basis review applies, SB 244 exceeds those, too. There are no legislative findings here that might attempt to supply a reasonable basis for the law, and Plaintiffs' evidence demonstrates that SB 244, in fact, reduces public safety, even assuming that the AG's misleading anecdotes from other states are evidence here. This Court also need not resolve any disputes over Title IX or federal law to conclude that maintaining the status quo through a temporary restraining order here is appropriate and permissible. In addition, the AG's suggestion (at 28) that the law is intended to ensure accurate and consistent recordkeeping cannot possibly suffice to justify it. SB 244, in fact, requires hundreds of Kansans to change a marker on their driver's license, and it forces them to include a statement regarding their sex at birth that makes them harder, not easier, to identify. *See State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 696, 726 (2025) ("evidence was overwhelming that there was no harm" to the State under the status quo, including for misidentification).

G. The Act violates the Kansas Constitution's single-subject requirement.

The AG agrees that SB 244's provisions must all relate to "identification of biological sex" to pass muster under Article 2, § 16. Resp. 30. As Plaintiffs have explained, "identification of biological sex" plausibly relates only to the provisions of SB 244 concerning identification documents—content that was present from the bill's inception. TRO/TI Br. 33–35. The provisions concerning restrooms and other private spaces were added later, and cannot conceivably fit under the umbrella of "identification of biological sex." *Id.* at 34–35.

The AG's argument as to the provisions' fit is circuitous. He claims that the private space provisions relate to "identification of biological sex" because they designate spaces for use by one sex, which in turn "relates to the identity of individuals who use these spaces," and therefore

“requires that the identification of which individuals are entitled to use which sex-specific facilities must be based on biological sex, not gender identity.” Resp. 31. But this haphazard word association cannot establish constitutionality. If it could, then SB 244 could plausibly contain all manner of provisions that make distinctions based on biological sex—from those criminalizing female genital mutilation, *e.g.*, K.S.A. 21-5431, to those requiring hunters to prove a male pheasant’s sex, *e.g.*, Kan. Admin. Regs. § 115-3-1(g). That would be absurd.

In defending the asserted connection between SB 244’s provisions, the AG apparently recognizes its tenuousness, repeatedly invoking Section 16’s liberal construction. Resp. 30, 32. But that principle did not, for example, stop the Kansas Supreme Court from striking down a statute that combined rules of criminal procedure with provisions creating law enforcement training center, all under the heading “crimes.” *Thiessen*, 228 Kan. at 143–44. If the Court there had applied the AG’s logic, it could have upheld the law: after all, the law enforcement *training* center relates to *training* on *criminal* investigations, which requires knowledge of *criminal procedure*, all of which relates to *crimes*. That is not what the Court held, and rightly so.

Further, the AG does little to assuage constitutional concerns about SB 244’s legislative history. The Court need not “impose a code of legislative procedure,” Resp. 32, to recognize—as the Kansas Supreme Court did long ago—that legislative history can provide relevant evidence that a law is inconsistent with Section 16’s anti-logrolling purpose. *E.g.*, *Thiessen*, 228 Kan. at 141–42. And the AG does not dispute or even attempt to downplay the many relevant facts about SB 244’s past on which Plaintiffs rely. *See* TRO/TI Br. 34–35.

III. The remaining equitable factors tip sharply in favor of a temporary restraining order.

In addition to showing they are likely to prevail on the merits, Plaintiffs have demonstrated that they are already suffering irreparable harm, and that the public interest and balance of equities support an injunction. The AG’s response does not rebut that showing.

First, the AG simply ignores the nature of the harms that Plaintiffs have demonstrated by affidavit, stating dismissively that Plaintiffs “may rectify any perceived harms by obtaining a new license [showing sex assigned at birth] and using available bathrooms [consistent with sex assigned at birth].” Resp. 35. Yet doing so would intrude substantially on Plaintiffs’ privacy and autonomy in ways that cannot be undone after judgment, outing them as transgender. Doe Decl. ¶¶ 16–17, 20–21, 41–42; Moe Decl. ¶¶ 15–19, 25. And although the AG argues that harassment and violence toward transgender individuals is speculative, Plaintiffs submitted affidavits, and those of experts, showing the opposite. *Id.*; Scheim Decl. ¶¶ 22–24, 30, 36–39; Turpin Decl. ¶¶ 47–49, 58.

Second, the public interest and equities support injunctive relief. The AG suggests “99 percent of the population [experiences fear and anxiety] when they must share a restroom with a person of the opposite biological sex.” Resp. 37. That assertion is unsupported and makes no sense. There is no reason to believe that women will feel at ease using the restroom alongside men like Daniel and Matthew who identify as, live as, and are perceived by others as men.

Similarly, although the AG claims that the License Restriction benefits law enforcement officers who rely “on accurate and unchanging sex markers on driver’s licenses in making arrests, identifying wanted individuals, and confining detainees safely,” the AG made—and the Kansas Court of Appeals rejected—precisely this argument in *Harper*. There, despite a full-blown evidentiary hearing, the AG could not identify “a single incident in which a person who had the sex designation on their physical driver’s license changed evaded arrest, posed a danger to a law enforcement officer, or was not housed appropriately in jail.” 65 Kan. App. 2d at 698. Nothing has changed, including the State’s baseless argument.

CONCLUSION

For the foregoing reasons, and those set forth in Plaintiffs’ motion for a temporary restraining order, Plaintiffs respectfully request a temporary injunction.

Respectfully submitted, this 6th day of March, 2026.

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