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CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: DG-2026-CV-000112
PII COMPLIANT

IN THE SEVENTH JUDICIAL DISTRICT
DOUGLAS COUNTY DISTRICT COURT
CIVIL DEPARTMENT

DANIEL DOE, MATTHEW MOE, KYLE KOE, NICHOLAS NOE, CAMERON BROYLES, and DAKOTA WEST,

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 PROFFITT, Secretary of Department of Administration, in his official capacity,

Defendants.

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

PLAINTIFFS' OPPOSITION TO DEFENDANT STATE OF KANSAS'S MOTION TO DISMISS

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INTRODUCTION

The Kansas Supreme Court has repeatedly recognized that the Kansas Constitution enshrines personal autonomy as a fundamental right for all Kansans. *See Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 680 (2019) (*Hodes I*); *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1006 (2024) (*Hodes II*). In the face of that well-established precedent, the Attorney General asks this Court to dismiss, at the pleadings stage, multiple claims bearing on Kansans' most basic freedoms. That is both inconsistent with Kansas's liberal notice pleading standards and this Court's interest in more, not less, factual discovery into Plaintiffs' claims. *See* March 10, 2026 Memorandum Decision at 4–6. The AG's assertion that no set of facts could be marshalled to support Plaintiffs' claims is wrong, as evidenced by the robust factual record before this Court in the simultaneous briefing on Plaintiffs' Renewed Motion for Temporary Injunction.

The Amended Petition provides both legal authority for Plaintiffs' six constitutional claims and alleges facts which, accepted as true, demonstrate violations of the Kansas Constitution. A pleading requires only a "short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for the relief sought." K.S.A. § 60-208(a)(1), (2). "No technical form is required," and "[p]leadings must be construed so as to do justice." K.S.A. § 60-208(d), (e). Granting a motion to dismiss "is the exception, not the rule," *Minjarez-Almeida v. Kansas Bd. of Regents*, 63 Kan. App. 2d 225, 232 (2023), and "seldom warranted." *Families Against Corporate Takeover v. Mitchell*, 268 Kan. 803, 809 (2000).

The Motion to Dismiss filed by Defendant State of Kansas ex rel. Kris Kobach must be denied in its entirety, and certainly to the extent that it requests dismissal with prejudice, which is disfavored as "a drastic and final action…akin to entering default judgment in its effects to the litigants and to the lawsuit." *Boydston v. Bd. of Regents for State of Kan.*, 242 Kan. 94, 101 (1987).

RELEVANT FACTUAL BACKGROUND[1]

SB 244 was enacted over Governor Laura Kelly's veto and after a series of procedural irregularities which eliminated the opportunity for public comment and debate over SB 244's harshest provisions. Am. Pet. ¶ 167–184. As set forth in the Amended Petition and judicially noticeable from government records, those irregularities included fast-tracking the original bill (HB 2426) that would become the License Restriction; gutting an unrelated bail bonds bill (SB 244) and replacing the content with the text of HB 2426 to bypass full Senate debate and public comment; and then adding the criminal Restroom Ban to the revamped SB 244. Am. Pet. ¶ 173–179 & Exs. 4–5.

The title and text of SB 244 reveal the procedural irregularities that led to its enactment. SB 244's "concerning" clause describes SB 244 as an act "concerning the identification of biological sex." Am. Pet. Ex. 1. As relevant to the Amended Petition, SB 244 contains two subjects: (1) identifying a person's "biological sex" on government identification documents, Am. Pet. ¶ 181–182, SB 244 § 4(g)(1); and (2) designating private spaces in public buildings for use by a single sex. Am. Pet. ¶ 183, SB 244 § 1(b)(1).

Adding to the procedural irregularity, the catalyst for SB 244 was the AG's unsuccessful effort to use SB 180 to restrict transgender individuals from updating their driver's licenses under the Kansas Department of Revenue's prior gender reclassification policies. Am. Pet. ¶ 167–172. The AG's affirmative lawsuit under SB 180 deprived transgender Kansans of the ability to change their licenses based on an improperly granted temporary injunction. *See State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 726 (2025), *review denied* (Sept. 29, 2025). ("Because of the district

[1] Because the court must accept all well-pled factual allegations in the petition as true on a motion to dismiss, *Cohen v. Battaglia*, 296 Kan. 542, 546 (2013), the relevant facts come from Plaintiffs' Amended Petition ("Am. Pet."), filed April 3, 2026, or "undisputed facts gleaned through judicial notice." *Matter of Spangler*, 318 Kan. 697, 700–01 (2024).

court's abuse of discretion the KDOR has been unable to issue reclassifications of gender designations on Kansas driver's licenses for two years while this litigation languished."). And even after the Kansas Court of Appeals reversed and remanded, and the Kansas Supreme Court denied review, the AG filed a motion that "clearly invited the district court to sidestep, even if temporarily, the mandate of the [Kansas Court of Appeals]" by requesting that the trial court extend the temporary injunction that the KCOA vacated. *See* Order on Motion for Sanctions, *State of Kansas v. David Harper*, Case No. SN-2023-CV-422 (Jan. 16, 2026), at page 3.[2]

Plaintiffs are five transgender men and one intersex woman whose daily lives are profoundly disrupted by SB 244's restrictions on their driver's licenses and restroom use in government buildings. Am. Pet. ¶ 12–35, 82–166. Plaintiffs are forced to carry licenses that reveal their transgender or intersex status and have been unable to participate fully in social and economic life in Kansas because they cannot use restrooms in government buildings, including where they work, pursue post-secondary education, take their children to school, or in the county courthouse where they are litigating this very case. *Id.* SB 244 forces Plaintiffs to adopt the state's views about sex and gender and structure their daily lives based on the state's views about the proper conduct of men and women, on pain of civil and criminal penalties. Am. Pet. ¶ 5–6 & Ex. 1.

LEGAL STANDARD

A motion to dismiss for failure to state a claim upon which relief can be granted under K.S.A. § 60-212(b)(6) challenges the legal sufficiency of the petition, not the merits of the case. *Minjarez-Almeida v. Kansas Bd. of Regents*, 63 Kan. App. 2d 225, 232 (2023). "[R]elief under this section is the exception, not the rule." *Id.* Kansas follows a liberal notice pleading standard, so a

[2] The procedural history of *Kansas v. Harper* as reflected in court orders "whose veracity is easy to confirm" is appropriate for judicial notice. *Rodina v. Castaneda*, 60 Kan. App. 2d 384, 387 (2021).

petition need only provide fair notice of the nature of the claim and the grounds on which it rests. *See id.* at 233. A plaintiff is not required to set forth every element of a cause of action or plead detailed facts or legal theories; general allegations are sufficient to survive dismissal so long as the claim is facially plausible. *See id.* In reviewing such a motion, Kansas courts must accept all well-pled factual allegations as true, draw all reasonable inferences in favor of the plaintiff, and view the allegations in the light most favorable to the non-moving party. *Cohen v. Battaglia*, 296 Kan. 542, 546 (2013) (finding that dismissal is appropriate only when it appears the plaintiff can prove no set of facts that would entitle him to relief).

The court's role at this stage is not to weigh evidence or assess the likelihood of success on the merits, but only to determine whether the petition alleges a legally cognizable claim. *Minjarez-Almeida*, 63 Kan. App. 2d at 232. "Factual disputes cannot be resolved or decided on a motion to dismiss for failure to state a claim." *Rector v. Tatham*, 287 Kan. 230, 232 (2008). At the motion to dismiss stage, the court's duty is to "determine whether those pleaded facts and inferences state a claim, not only on the theory which may be espoused by the plaintiffs, but on *any possible theory* we can divine." *Noel v. Pizza Hut, Inc.*, 15 Kan. App. 2d 225, 231, *rev. denied*, 248 Kan. 996 (1991) (emphasis in original). "Judicial skepticism must be exercised when the motion is made before the completion of discovery" because "the petition is not intended to govern the entire course of the case," and "the facts have not yet been discovered and legal theories may be in flux." *Rector*, 287 Kan. at 232–33.

ARGUMENT

The AG's motion to dismiss with prejudice must be denied. As explained below, Plaintiffs have adequately alleged facial and as-applied challenges to SB 244's Restroom Ban and License Restriction (Section I) because they plead the existence of Plaintiffs' rights to due process, personal autonomy, informational privacy, freedom from compelled speech, and equal protection (Sections

II–VI) and that the infringement of those rights cannot survive the applicable level of judicial scrutiny (Section VII). Plaintiffs have also adequately alleged that SB 244 violates Article II, Section 16 of the Kansas Constitution based on both the law's text and the circumstances of its enactment (Section VIII).

I. Plaintiffs Adequately Allege Facial and As-Applied Challenges.

Plaintiffs' Amended Petition adequately alleges that SB 244 is unconstitutional both on its face and as applied for purposes of surviving a motion to dismiss. The AG argues that Plaintiffs cannot satisfy the standard for a facial challenge and that Plaintiffs have failed to articulate a sufficiently narrow as-applied claim. But the AG is wrong on both counts. As discussed below, Plaintiffs have adequately alleged that SB 244 is facially unconstitutional because every application of the statute is a constitutional violation, even if that constitutional violation does not always lead to specific types of harm. And Plaintiffs have stated valid as-applied claims because the scope of their as-applied challenge can be refined over the course of discovery. Dismissal on the pleadings is improper.

A. The AG Mischaracterizes Plaintiffs' Facial Challenge.

Plaintiffs have alleged that SB 244's Restroom Ban and License Restriction are facially unconstitutional in all their applications. Every application of the statute violates the constitutional rights of transgender and intersex Kansans to procedural due process, personal autonomy, informational privacy, equal protection, and freedom from compelled speech. And because the entirety of the statute was adopted in violation of the single-subject rule, the statute is unconstitutional in all its applications.

To argue that Plaintiffs cannot meet the standard for a facial challenge, the AG conflates (a) the existence of a constitutional violation with (b) particular harms that flow from the violation, which may or may not be present in individual cases. Plaintiffs have alleged that enforcement of

SB 244 has led and will continue to lead to serious harm such as potential violence, harassment, and further acts of discrimination. The AG argues that to prevail on a facial challenge, Plaintiffs would have to show that such harms exist in *every* case. MTD Br. 11. But that is not true because the existence of a constitutional violation and the existence of particular harm are two different things. Every application of the Restroom Ban and License Restriction violates the constitutional rights of transgender and intersex Kansans, but the range of potential harms may still vary. Plaintiffs do not need to plead or prove that "every employer" would fire a transgender employee, or "every acquaintance" would react poorly to learning someone's transgender status, or that "every restroom visit is fraught with the potential for violence or embarrassment." MTD Br. 11. To survive a motion to dismiss, Plaintiffs need only to adequately plead the existence of a constitutional right that is infringed by SB 244.

Hodes I and *Hodes II* illustrate the distinction between the existence of a constitutional violation and the existence of a particular type of harm. In *Hodes I* and *Hodes II*, the Kansas Supreme Court upheld injunctions finding a statute's restrictions on abortion to be facially invalid. In the course of holding that restricting abortion implicated women's fundamental right to autonomy, the Court explained that "[t]he list of ways the government's restriction on abortion can have an impact on a woman's ability to control her own body and the course of her life could continue at length." *Hodes I*, 309 Kan. at 647. For example, "[p]regnancy often brings discomfort and pain and, for some, can bring serious illness and even death." *Id.* at 646–47. (discussing various health risks). But that did not mean that the fundamental right to autonomy was violated *only* when women experienced those particular harms, or that plaintiffs had to establish that those harms would occur in *every* instance when a person was denied an abortion. Rather, the unconstitutional

infringement on personal autonomy violation occurs when there is an infringement on "the right to decide." *Id.* at 650.

The same is true here. Just as violations of the right to personal autonomy with respect to abortion in *Hodes I* and *Hodes II* can in some cases lead to injury and death, the violations of Plaintiffs' constitutional rights in this case can—and often do—lead to serious emotional, physical, and economic harms. Am. Pet. ¶ 61–81; *see also, e.g.*, Pls.' Renewed Temporary Injunction Motion Br. 7–10 (restrooms), 11–14 (licenses); *see further* M. Gessen, "What's Happening in Kansas Should Alarm Us All", *N.Y. Times*, available at https://www.nytimes.com/2026/08/13/opinion/kansas-anti-trans-laws-drivers license.html?unlocked_article_code=1.5FA.gyoH.gBS6roSoBac4&smid=nytcore-ios-share (Aug. 13, 2026) (collecting examples of other Kansans harmed by SB 244). But, just as in *Hodes I* and *Hodes II*, the presence of those additional harms is not necessary to establish a constitutional violation. Forcing transgender and intersex Kansans to disclose sensitive, private information violates their right to informational privacy regardless of how particular people react to that disclosure. But at the motion to dismiss stage, Plaintiffs do not need to prove that, and do not need to plead it, either. Compelling transgender and intersex Kansans to transmit a governmental message with which they disagree violates their freedom of speech regardless of whether the speech prompts others to react violently or with hostility. And treating transgender and intersex Kansans differently from their cisgender peers violates their right to equal protection even when they are not assaulted as a result.

Because Plaintiffs have alleged that every application of the Restroom Ban and License Restriction violates the constitutional rights of transgender and intersex Kansans, and that the Restroom Ban and License Restriction were adopted in violation of the single-subject

constitutional guarantee, Plaintiffs have stated valid claims that SB 244's Restroom Ban and License Restriction are facially invalid.

B. Kansas Pleading Standards Allow Plaintiffs to Refine the Scope of Their Challenge Through Discovery Until the Final Pretrial Order.

In addition to their facial challenge to SB 244, Plaintiffs also bring as-applied claims. Am. Pet. ¶ 208, 216, 227, 235. The AG argues that the scope of Plaintiffs' as-applied challenge is not narrow enough, MTD Br. 10, but, under Kansas's liberal pleading standards, disagreement about the precise articulation of an as-applied challenge is not a basis for dismissal at the pleading stage. Rather, Plaintiffs may continue to refine the precise scope of their challenge through discovery until a final pretrial order is entered.

Under notice pleading, the petition is not intended to govern the entire course of the case. Rather, the pretrial order is the ultimate determinant as to the legal issues and theories on which the case will be decided. *Unrah v. Purina Mills, LLC*, 289 Kan. 1185, 1191 (2009) (citing *Halley v. Barnabe*, 271 Kan. 652, 656–57 (2001)). At the pleading stage of the case, Plaintiffs "need only put forth enough 'facts and inferences' to 'state a claim on any possible theory.'" *Mattice v. City of Stafford*, 494 P.3d 887, at *6 (Kan. Ct. App. 2021) (unpublished) (quoting *Families Against Corp. Takeover v. Mitchell*, 268 Kan. 803, 809 (2000)). "The spirit of our present rules of civil procedure permits a pleader to shift the theory of his case as the facts develop so long as he has fairly informed his opponent of the transaction or the aggregate of the operative facts involved in the litigation." *Oller v. Kincheloe's, Inc.*, 235 Kan. 440, 447 (1984). "At this early stage of litigation, before discovery and a pretrial order, the parties' theories may change." *Mattice*, 494 P.3d 887, at *6.

Because Plaintiffs have adequately pled sufficient facts and inferences to state a claim to relief on their constitutional claims, both under facial and as-applied theories, the AG's Motion to

Dismiss should be denied. Am. Pet. ¶ 196–241. Regardless of Plaintiffs' ultimate success on their theory that SB 244 is facially unconstitutional, at this procedural juncture the AG's Motion to Dismiss must be denied because Plaintiffs could prevail at trial on an as-applied theory and receive relief on the merits tailored to them. It is premature and improper to dismiss an entire set of constitutional *claims* based on the alleged infirmities of a single *theory* of liability at the motion to dismiss stage, especially since Plaintiffs' theories may permissibly change between now and trial. *Mattice*, 494 P.3d 887, at *6.

II. Plaintiffs Adequately Allege that SB 244's Restroom Ban Violates the Kansas Constitution's Due Process Guarantee.

Plaintiffs have adequately alleged that SB 244's Restroom Ban violates due process by subjecting them to civil fines and criminal penalties without notice and an opportunity to be heard. Moreover, Plaintiffs do not have to violate SB 244 to have standing or for their claims to be ripe. Accordingly, the AG's Motion should be denied.

A. Due Process Under the Kansas Constitution Requires Notice and an Opportunity to Be Heard Before the Imposition of Civil Fines or Criminal Penalties.

Under Section 18 of the Kansas Constitution, "[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 provision, which is reinforced by Section 1's guarantee of "life, liberty, and the pursuit of happiness," has long been interpreted to afford Kansans a procedural due process right that is independent of a corresponding right conferred by the U.S. Constitution. *See, e.g.*, *State v. Wilkinson*, 269 Kan. 603, 608–09 (2000); *Murphy v. Nelson*, 260 Kan. 589, 597 (1996). The most "basic elements" of due process are "notice and an opportunity to be heard at a meaningful time and in a meaningful manner," *Wilkinson*, 269 Kan. at 608, before the deprivation of a protected liberty or property interest.

The AG does not dispute the existence of this due process right. Rather, the AG contends that due process does not apply to SB 244's Restroom Ban because Plaintiffs have no freestanding "right to use their preferred restroom." MTD Br. 16. But for purposes of their procedural due process claim, the relevant liberty and property interest is their interest in avoiding civil and criminal penalties. "A fine of any amount is sufficient to implicate due process concerns," *Reed v. McKune*, 77 P.3d 1289, 2003 WL 22387838, at *1 (Kan. Ct. App. 2003), and Plaintiffs also have a due process interest in avoiding criminal penalties. *See Matter of Marriage of Clark & Daniels*, 393 P.3d 1062, 2017 WL 1426454, at *4–*5 (Kan. Ct. App. 2017) (due process interest in contempt proceedings involving jail time).

The AG does not acknowledge or contest either of these interests. Regardless of whether transgender and intersex Kansans have an underlying constitutional right to use facilities consistent with their gender identity, they have a due process right to notice and an opportunity to be heard before they can be fined or imprisoned for allegedly doing so. Plaintiffs adequately allege that SB 244 fails to provide those minimal due process requirements.

B. Plaintiffs Adequately Allege that the Restroom Ban Subjects Transgender and Intersex Kansans to Adjudications Without Adequate Due Process.

Plaintiffs have adequately alleged that the Restroom Ban violates Plaintiffs' right to "notice and an opportunity to be heard at a meaningful time and in a meaningful manner," *Wilkinson*, 269 Kan. at 608, by subjecting them to findings that they have violated the Ban—a predicate offense for later civil and criminal penalties—without establishing even the most rudimentary safeguards to govern the investigations used to reach those findings, and without an established appeal process to contest the findings.

Specifically, SB 244 states that an entity investigating a complaint that an individual has violated the Restroom Ban may find a violation without providing prior notice to the individual

who is the subject of the complaint, and without offering that individual any opportunity to defend themselves. SB 244, § 1(g)(1). Individuals under investigation for violating the Restroom Ban are not entitled to hear the substance of the complaint against them or the identity of the complainant and therefore have no way—either before a finding of a violation or after—to test the complaint's allegations. *See* SB 244, § 1(g)(1)(A).

This opaque scheme for *individuals* stands in stark contrast to the transparent process whereby *government entities* may be held liable under SB 244 for violations on their property. In those circumstances, government entities subject to a complaint are entitled to notice from the complainant "describing the violation," are given an opportunity to cure it before the AG can investigate and may provide a statement to the AG regarding their attempts to comply with the Act. *Id.* § 1(e)(1)(A), (f)(2). *Cf. Powerback Rehab., LLC v. Kan. Dep't of Lab.*, 321 Kan. 236, 250 (2025) (upholding as consistent with due process a detailed statutory scheme applicable to resolving employee complaints regarding COVID-19 vaccine mandates and religious exemptions). SB 244 provides these necessary due process protections to governmental entities facing only fines while denying the same due process to individual Kansans facing fines and criminal convictions.

In addition, although SB 244 states that a person found to have violated the Restroom Ban should be told of "the procedure to administratively appeal th[at] finding," SB 244, § 1(g)(1)(C), it sets out no process whatsoever for those administrative appeals to follow. It does not set out how to file an administrative appeal, does not require that an impartial decisionmaker preside over that appeal, or say whether there is a corresponding right to seek judicial review. It is also unclear whether the pendency of an appeal will forestall imposition of civil and criminal penalties for second or subsequent violations, since those penalties can be imposed whenever a person has been "found to have violated" the Restroom Ban before. SB 244, § 1(g)(2). The Kansas Department of

Administration's implementing regulation for SB 244 also does not erect procedural safeguards. Instead, that policy largely repeats the statutory language and states that "[g]uidance on how to submit a complaint and the investigation process will be forthcoming."[3] Am. Pet. ¶ 46.

For all of these reasons, the Restroom Ban is devoid of the most basic elements necessary to satisfy procedural due process. The uncertainty surrounding the Ban also leads to concerns of arbitrary and discriminatory enforcement, given that authorities may differ in enforcement approaches. *See State v. Stubbs*, 320 Kan. 568, 579 (2025) (statutes are unconstitutional when they grant authorities "too much discretion" in enforcement); *Planned Parenthood Mar Monte, Inc. v. State*, 590 P.3d 481, 489–92 (Nev. 2026) (concluding that state law lacking specific procedures for enforcement did not provide notice and was subject to discriminatory enforcement).

The AG claims that this Court should assume that, notwithstanding the lack of due process protections in SB 244 itself, government employees will go above and beyond to provide due process to those who allegedly violate the law because of "a presumption of regularity in official conduct." MTD Br. 18. This argument is misplaced. The presumption of regularity requires courts to presume that the officials acted in conformity with the specific procedures or requirements laid out by law. It is typically used to defend against ex post challenges of official action. For example, in *Powell v. Turner*, the court applied the presumption of regularity to presume that the Kansas governor's extradition warrant was "valid and properly issued under the uniform extradition act." 167 Kan. 524, 524, 528–29 (1949); *see Rossman v. Christenson*, 117 Kan. 41, 230 P. 72, 73 (1924) (presumption of regularity of official acts does not apply when official does not conform with

[3] Kansas Department of Administration, Policy on Designation of "Multiple-Occupancy Private Spaces," (Feb. 19, 2026), available at https://admin.ks.gov/media/cms/DOA_Policy_for_State_Agencies_on_Implementation_of_SB244_scan_17aa6dcc710c8.pdf.

statutory procedures). Here, the problem is that the statute *itself* does not provide adequate procedures to protect due process: even assuming government officials wanted to follow SB 244 precisely, there is no process to follow. Plaintiffs' allegations regarding the absence of such process, coupled with the potential for civil fines and criminal penalties post-adjudication, adequately pleads a claim for a due process violation.

C. Plaintiffs' Procedural Due Process Claims Are Justiciable.

The AG's attempt to dismiss Plaintiffs' due process claims based on standing and ripeness should be rejected. Plaintiffs have standing to raise their procedural due process claims, and those claims are ripe, because Plaintiffs have adequately pled the threat of an injury should they continue the prior conduct that SB 244 now forbids.

Start with standing. In Kansas, standing requires "both a cognizable injury and a causal connection between the injury and the challenged conduct." *State v. Stubbs*, 320 Kan. 568, 570 (2025) (cleaned up). The AG's argument that Plaintiffs have not suffered a cognizable procedural due process injury "is based on misapplication of the standing test, which recognizes an injury in fact for purposes of standing when a party personally suffers not just an actual injury, but also a threatened injury because of the challenged conduct." *Hodes II*, 318 Kan. at 1003–04. Plaintiffs need not violate SB 244 to challenge it. *Id.* (collecting cases).

For example, in *Hodes II*, abortion providers challenged a state law requiring mifepristone to be administered in person if used to induce an abortion. *Id.* at 1021. The State argued that the providers failed to show a cognizable injury resulting from this law because they were not violating the law and thus would not be subject to its penalties. The Supreme Court of Kansas rejected this argument, holding that the providers "met their burden to show they have standing" by alleging that, absent the threat of enforcement and penalties under the statute, they would not comply with the in-person requirement. *Id.* at 1003–04. The same is true here. Plaintiffs have alleged that, absent

the threat of enforcement and penalties under SB 244, they used and would continue to use the restrooms that reflect their gender identity. Am. Pet. ¶ 93–97, 105–08, 120–24, 133–36, 146–49, 162–66. As such, they have "met their burden to show they have standing." *Hodes II*, 318 Kan. at 1003–04.

Additionally, Plaintiffs have standing because they have alleged actual harms arising from the Restroom Ban's due process violations. As detailed in the Amended Petition, Plaintiffs now have to take up to 20 minutes to find a single-user restroom available to them at work, school, or in other government buildings. Am. Pet. ¶ 94, 107, 120, 124. The Ban has led to unwanted attention from others, ¶ 94, or caused them to be late to class and to miss instructional time, ¶ 133, or even avoid public spaces altogether. *Id.* ¶ 95. Plaintiffs are forced either to comply with SB 244 and use restrooms that expose them to a heightened risk of harassment, physical violence, and severe emotional distress while simultaneously forcing them to disclose sensitive, intimate information, or to violate SB 244 and risk fines and criminal charges. *Id.* ¶ 97, 149. These actual harms further establish a concrete injury and standing to pursue Plaintiffs' procedural due process claims.

The AG also claims that Plaintiff Dakota West, an intersex woman, lacks standing to bring her procedural due process claim because Plaintiffs did not allege that she requested and was denied an accommodation under K.S.A. § 77-207. This is incorrect: the undefined "accommodation" does not defeat Dakota's standing. Although K.S.A. § 77-207(a)(6)–(7) 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," the AG does not explain how any intersex person can request an accommodation throughout the State of Kansas from SB 244's Restroom Ban. MTD Br. 14. Is Dakota expected to apply for an accommodation each time she

enters a public building? With whom does she apply, and what information must she provide? Far from curing the procedural due process violations inherent in the statute, the statute's vague references to an "accommodation" only compound its infirmity.

Indeed, the potential for an accommodation is almost certainly illusory. The AG has not conceded, via the facts as pled in the Amended Petition, that Dakota qualifies for an accommodation, nor does he claim that the State would in fact grant an accommodation that allowed Dakota to use women's restrooms on the same terms as non-transgender, non-intersex women, as she did prior to SB 244. Nor has the AG conceded in any context (as far as the pleadings are concerned) that such an accommodation would include exempting Dakota from the restrictions and penalties that prevent her from using the women's restroom in government buildings. Instead, he asks this Court to dismiss Dakota's claim because she has not applied for an accommodation that may not even exist.

For the same reasons already explained, Plaintiffs' claims are also ripe. *See Kansas Nat'l Educ. Ass'n v. State*, 305 Kan. 739, 748, (2017) (claims are ripe when "challenged legislation has become effective" and plaintiffs have "alleged standing sufficient to survive" a motion to dismiss).

Plaintiffs have adequately pled the legal sufficiency of their procedural due process claims, as well as standing and ripeness.

III. Plaintiffs Adequately Allege that SB 244's Restroom Ban and License Restriction Violate Their Fundamental Right to Personal Autonomy Under the Kansas Constitution.

Plaintiffs have adequately alleged that SB 244's Restroom Ban and License Restriction unconstitutionally infringe Plaintiffs' rights to personal autonomy.

Section 1 of the Kansas Bill of Rights protects a fundamental "right of personal autonomy," which "includes the ability to control one's own body, to assert bodily integrity, and to exercise self-determination." *Hodes I*, 309 Kan. at 646. The ability to exercise self-determination includes

an individual's autonomy "to define and express their identity." *Obergefell v. Hodges*, 576 U.S. 644, 651–52 (2015), by living and participating in society consistently with an individual's identity as a man or a woman. Plaintiffs have pled that SB 244 infringes on their constitutional rights by making it difficult, if not impossible, for them to participate in economic and social life unless they use licenses that negate their gender identity and contradict who they are and how they live their lives as men and women. Am. Pet. ¶ 82–85, 185–195.

The AG argues that the right to personal autonomy does not include the right to live in accordance with one's own gender identity without governmental interference. According to the AG, the right of personal autonomy recognized in *Hodes I* was narrow and limited exclusively to a "bodily autonomy" right for "individuals to control their own bodies, to make health care decisions, and to make decisions about whether to bear or beget a child." MTD Br. 20. But *Hodes I* repeatedly and emphatically articulated the right to personal autonomy in broader terms: The right to personal autonomy "*includes*"—but is not limited to—"the ability to control one's own body, to assert bodily integrity, *and to exercise self-determination*." *Hodes I*, 309 Kan. at 614 (emphases added); *accord id.* at 646, 660, 671, 680 (using the same formulation). *Hodes I* also emphasized the long history of state supreme courts applying Lockean Natural Rights Guarantees "to an enormous variety of topics, suggesting an understanding during this time that the Lockean Natural Rights Guarantees protected a vast range of unenumerated rights." *Id.* at 632 (internal quotation marks and citations omitted). Nothing in *Hodes I* supports the AG's attempt to circumscribe the fundamental right to personal autonomy to exclude transgender and intersex Kansans' autonomy to define and express their gender identity. Plaintiffs allege that a person's gender identity is "their deeply felt, internal sense of belonging to a particular gender" and "an essential part of their identity." Am. Pet. ¶ 48, 50. Moreover, "[j]ust as cisgender people cannot

(and are not expected to) 'turn off' their gender identities like a switch, so too are transgender people unable to 'turn off' their gender identities." Am. Pet. ¶ 53. For purposes of a motion to dismiss, those allegations must be accepted as true. And those allegations are more than sufficient to establish that a person's ability to act consistently with their gender identity has profound and unique attributes, bringing it within the scope of the personal autonomy right recognized in *Hodes I* and *Hodes II*.

The AG argues that his narrow reading of *Hodes I* is supported by the subsequent decision in *Hodes II*. MTD Br. 21. But he misreads that decision too. In response to a series of hypotheticals by the dissent, the majority in *Hodes II* rejected the notion that "all activities related, however tangentially, to personal autonomy are protected under section 1." *Hodes II*, 318 Kan. at 1012. But the majority did *not* respond to those hypotheticals by saying that Section 1 limits the right to bodily autonomy just to abortion. Instead, the majority made clear that Section 1 protects expressions that are "fraught with specific physical, psychological, and economic implications of a uniquely personal nature" and stated that "each asserted right must be carefully examined and evaluated independently in the context of its own unique implications." *Id.* at 1013. Thus, in future cases, "if a litigant argues that the state has infringed the right to personal autonomy, a court will identify the interest at stake, analyze whether, like abortion, that interest has profound and unique attributes that bring it within section 1's meaning of personal autonomy." *Id.* at 1035 (Rosen, J., concurring). Plaintiffs' claims easily meet that test. As pled in the Amended Petition, gender identity is a core part of selfhood with "profound and unique attributes" that bring it within Section 1's meaning of personal autonomy. Am. Pet. ¶ 48–54, 58.

The AG also attempts to deflect Plaintiffs' claims by asserting that Section 1 protects only "negative rights" and mischaracterizing Plaintiffs' claims as asserting a "positive right to compel

the government to change its documents or grant unlimited access to public spaces." MTD Br. 22. To the contrary, Plaintiffs here seek to vindicate their right to be left alone: they all seek to go about their daily lives in accordance with their identities as men and women without unconstitutional governmental burdens on their rights to autonomy and self-determination. Absent SB 244, Plaintiffs would be free to drive using their valid licenses; under SB 244, Plaintiffs may do so only if they carry and display a driver's license that is both inconsistent with their gender identity and which conspicuously identifies them as transgender or intersex. Am. Pet. ¶ 82, 85, 88–92, 101–04, 113–19, 127–31, 141–45, 158–61. Absent SB 244, Plaintiffs would be free to use existing public restrooms on the same terms as other men and women; under SB 244, Plaintiffs are barred from —and subject to criminal liability for—using the restrooms that match their gender identity. Am. Pet. ¶ 83, 84, 93–97, 105–08, 120–24, 133–36, 146–49, 162–66. In fact, Plaintiffs plead that compliance with SB 244 exposes them to increased harassment, discrimination, and danger, inviting conflict into every visit to the restroom. Am. Pet. ¶ 96–97, 106–108, 122, 124, 136, 149, 164.

SB 244 is a governmental restriction that actively interferes with Plaintiffs' liberty and personal autonomy. Under *Hodes I* and *Hodes II*, that infringement is unconstitutional unless the government can justify it under strict scrutiny. "Strict scrutiny requires the State to prove (a) the existence of a compelling government interest, (b) its actions further that compelling interest, and (c) its actions do so in a way that is narrowly tailored." *Hodes II*, 318 Kan. at 1015. As discussed in Section VII, the AG cannot meet that demanding standard on a motion to dismiss before discovery, and none of the AG's proffered justifications for SB 244 would satisfy even rational basis review.

IV. Plaintiffs Adequately Allege that SB 244 Violates Their Individual Right to Informational Privacy Under the Kansas Constitution.

Plaintiffs have adequately alleged that SB 244's Restroom Ban and License Restriction violate their fundamental right to informational privacy protected by Section 1 of the Kansas Bill of Rights by requiring transgender and intersex Kansans to involuntarily disclose their transgender or intersex status every time they show their driver's license or use a restroom in a government building. Article I, Section 1 of the Kansas Constitution protects Kansans' fundamental right to informational privacy. The Kansas Supreme Court has long recognized a federal right of informational privacy, and the state constitutional provisions, at minimum, "echo federal standards." *Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 920–22 (2006). But state constitutions' inherent or natural rights provisions generally provide more protection than the federal document, and that is the case in Kansas. *See Hodes I*, 309 Kan. at 621–22 (applying strict scrutiny to law infringing on Section 1 personal autonomy right); Anthony B. Sanders, *Social Contracts: The State Convention Drafting History of the Lockean Natural Rights Guarantees*, 93 UMKC L. Rev. 641, 661–79 (2025) (canvassing rights protected under such clauses).

Article I, Section 1 offers independent and broader protection for a fundamental right to informational privacy. *See, e.g.*, *Jegley v. Picado*, 80 S.W.3d 332, 347–50 (Ark. 2002) (holding that state constitution protected "a fundamental right to privacy" flowing from the state's inalienable rights of "life and liberty" and "pursuing . . . happiness"); *Powell v. State*, 510 S.E.2d 18, 21 (Ga. 1998) (recognizing a right to privacy stemming from the state constitution's due process guarantee). This understanding of Section 1 is consistent with *Hodes I*, which referred to "the right to be let alone" as "the most comprehensive of rights and the right most valued by civilized men." *Hodes I*, 309 Kan. at 642 (quoting *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)). That is reinforced by Kansas history: for well over a century, the

tort of invasion of privacy has protected Kansans from intrusion upon their "private affairs or concerns" and from publicity of "matters concerning [their] private" lives. *Dotson v. McLaughlin*, 216 Kan. 201, 206–08 (1975).

Plaintiffs have adequately pled a violation of this right. Plaintiffs generally keep their transgender or intersex status private in their daily interactions and have taken deliberate steps to avoid involuntary disclosure. *See, e.g.*, Am. Pet. ¶ 87, 103–05, 116–119, 124, 126, 132, 140, 142, 149, 161, 164, 188. SB 244 forces Plaintiffs to disclose private, personal information about being transgender or intersex whenever they present a license for identification or need to use a restroom in government buildings. *See id.* The factual allegations that but-for SB 244, Plaintiffs' transgender and intersex status would remain private in these daily interactions, and that SB 244 forcibly discloses private information about that status, are sufficient at this stage to survive a motion to dismiss. And the AG's position—that the fact of Plaintiffs' transgender or intersex status is not private information—is squarely at odds with these allegations. In ruling on a motion to dismiss, Kansas courts "accept the facts alleged by the plaintiff[s] as true, along with any inferences that can be reasonably drawn" from said allegations. *Berry v. Nat'l Med. Servs.*, 292 Kan. 917, 918 (2011).

The AG's attempts to liken transgender status to height, weight, age, and other basic information on driver's licenses are unpersuasive, and unavailing in the motion to dismiss posture. Unlike information about a person's height or eye color, transgender and intersex status cannot be discerned from how a person presents to the public, or even physically. Am. Pet. ¶ 78, 79, 85, 96, 106, 122, 126, 142, 164. And although weight can be a sensitive topic, it is not measured or defined by the state and any inconsistency between public perception and the number on the license does not invite similar levels of inquiry or hostility; it is not like transgender or intersex status, which

is enormously intimate and inextricable from core identity. Multiple courts have found transgender status to be "intimate personal information entitled to protection under the right to privacy." *See In re M.T.*, 106 Cal. App. 5th 322, 341 (2024) (collecting cases); *see also Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018) (policy mandating sex-assigned-at-birth remain on birth certificate forces plaintiffs "to disclose their transgender status in violation of their constitutional right to informational privacy" because it leads to "forced disclosure of a transgender person's most private information"); *Matter of T.I.C.-C.*, 470 N.J. Super. 596, 610 n.6 (App. Div. 2022) (collecting cases). Because Plaintiffs have alleged that their transgender or intersex status is something they keep private, and that SB 244 forces them to disclose it on a regular basis, *see* Am. Pet. ¶ 87, 103–05, 116–119, 124, 126, 132, 142, 149, 161, 164, 188, they have stated a claim for a violation of informational privacy.

Because the Restroom Ban and License Restriction infringe on the fundamental right to informational autonomy, they are subject to strict scrutiny, which "requires the State to prove (1) the existence of a compelling government interest, (2) its actions further that compelling interest, and (3) its actions do so in a way that is narrowly tailored." *Hodes II*, 318 Kan. at 1015. As discussed in Section VII, the AG cannot meet that demanding standard on a motion to dismiss before discovery, and none of the AG's proffered justifications for SB 244 would satisfy even rational basis review.

V. Plaintiffs Adequately Allege that SB 244 Infringes on Plaintiffs' Right to Freedom from Compelled Speech Under the Kansas Constitution.

Plaintiffs have adequately alleged that the Kansas Constitution protects them from being forced to convey the government's ideas, and that License Restriction compels them, against their will, to convey government orthodoxy about sex and gender.

Section 11 of the Kansas Bill of Rights protects Kansans' right to "freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights." Kan. Const. Bill of Rights, § 11. *See also* Pls.' Renewed Temporary Injunction Motion Br. 28–29. These protections are, at a minimum, "coextensive with the First Amendment," *League of Women Voters of Kan. v. Schwab*, 318 Kan. 777, 787 (2024), and similarly worded provisions in other constitutions have been interpreted to provide even broader protections from compelled speech than the federal standard. *See Gerawan Farming, Inc. v. Lyons*, 12 P.3d 720, 750–52 (Cal. 2000).

SB 244 infringes Plaintiffs' speech rights by forcing them to carry and display driver's licenses negating their gender identity and conveying the message that their status as men and women is determined by their birth-assigned sex. In *Wooley v. Maynard*, the U.S. Supreme Court held that New Hampshire compelled speech in violation of the First Amendment by requiring drivers to display the motto "Live Free or Die" on their license plates because that state measure "forces an individual, as part of his daily life . . . to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable." 430 U.S. 705, 715 (1977) (internal quotation marks omitted). *Wooley*'s reasoning with respect to license plates also applies to compelled speech on driver's licenses. *See Nelson v. Landry*, 714 F. Supp. 3d 790, 809 (M.D. La. 2024) (requiring drivers to carry licenses saying "sex offender" violates the First Amendment); *State v. Hill*, 341 So.3d 539, 549 (La. 2020) (same); *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1326 (M.D. Ala. 2019). In both instances—whether it is through a license plate or a driver's license—"[w]hen the government forces certain citizens to advertise an expressive message as a prerequisite for those citizens to participate in society, the government has compelled speech from that citizen." *McGuire v. Marshall*, 741 F. Supp. 3d 1112, 1199 (M.D. Ala. 2024).

The AG's contrary arguments all miss the mark. The AG argues that, under *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), driver's licenses are analogous to specialty license plates, which constitute government speech, not a forum of individual expression. MTD Br. 36. But—as *Walker* explicitly warns—the fact that designs were "government speech d[id] not mean that the designs d[id] not also implicate the free speech rights of private persons" because "the First Amendment stringently limits a State's authority to compel a private party to express a view with which the private party disagrees." *Walker*, 576 U.S. at 219 (citing *Wooley*, 430 U.S. at 715). "[G]overnment speech, if foisted upon an unwilling private party, still implicates compelled-speech concerns." *Cressman v. Thompson*, 798 F.3d 938, 961 (10th Cir. 2015) (applying *Wooley* to Oklahoma license plates); *accord Doe 1*, 367 F. Supp. 3d at 1325 ("[T]he fact that a license is government speech does not mean it is immune from the compelled speech analysis.").

The AG also argues that SB 244 does not compel speech because it does not require transgender and intersex Kansans "to consent to the proposition, that the biological sex recorded on a license is the same as their gender identity" and because "[n]othing in SB 244 prevents Plaintiffs from expressing their own understanding of those terms." MTD Br. 37. But that makes no difference to the compelled-speech analysis. In *Wooley*, New Hampshire drivers who were forced to display license plates saying "Live Free or Die" were free to "place on their bumper a conspicuous bumper sticker explaining in no uncertain terms that they do not profess the motto 'Live Free or Die' and that they violently disagree with the connotations of that motto." 430 U.S. at 722 (Rehnquist, J., dissenting); *see Cressman*, 798 F.3d at 962 (highlighting Justice Rehnquist's dissent in *Wooley*). Being required to display the slogan still violated the First Amendment: the constitutional violation of compelled speech is not cured by permission to voice disagreement.

Nor does it matter that the AG describes the mandated display of information as an "objective verifiable fact." MTD Br. 1. That is a "hotly contested view of sex and gender" that has prompted vigorous disagreement, not an anodyne statement of fact. *Mahmoud v. Taylor*, 606 U.S. 522, 553 (2025); *see* Am. Pet. ¶ 48–50 (alleging that the government's ideological views about sex and gender are wrong). Indeed, the AG's position is squarely contrary to the pleadings, which must be taken as true. *Cohen v. Battaglia*, 296 Kan. at 546.

Kansas driver's licenses do not merely identify a person's sex assigned at birth. The driver's license purports to identify a person's "sex," which compels the individual to convey a statement about what their "sex" currently is. Plaintiffs believe their identity as men or women is determined by their gender identity and expression as part of their daily life. By contrast, the State's ideological view, as clearly stated in SB 244, is that gender identity does not exist, and that gender is the same as sex. *See* SB 244, § 5 (amending K.S.A. 2025 Supp. 65-28,137 to remove the definition of "gender"); SB 244, § 6 (adding "gender" to the definition of "sex" such that an "individual's 'sex' *or 'gender'* means such individual's biological sex, either male or female, at birth"). The License Restriction forces the Plaintiffs to act as a "mobile billboard" for that ideological message even though it contravenes the core of their own identity as the men and women they know themselves to be. *Wooley*, 430 U.S. at 715.

The Kansas government is free to express its own views about sex and gender, but if Kansas wishes to force individuals to carry and display that message, it must satisfy strict scrutiny. To pass strict scrutiny, the government must show that SB 244's compelled speech is narrowly tailored to serve a compelling governmental interest. As discussed in Section VII, the AG cannot meet that demanding standard on a motion to dismiss before discovery, and none of the AG's proffered justifications for SB 244 would satisfy even rational basis review.

VI. Plaintiffs Adequately Allege that SB 244 Violates the Kansas Constitution's Equal Protection Guarantee.

Plaintiffs have adequately alleged that the Kansas Constitution contains an equal protection guarantee that applies to both sex and transgender status, that SB 244 classifies people based on their sex and transgender status, and that those classifications are not substantially related to an important governmental interest.

A. The Kansas Constitution Contains an Equal Protection Guarantee That Applies to Both Sex and Transgender Status.

Section 2 of the Kansas Bill of Rights provides: "All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit." This equal protection guarantee is reinforced by Section 1's guarantee of "equal and inalienable natural rights."

Section 2 of the Kansas Bill of Rights should be interpreted to provide even broader protections than the Fourteenth Amendment to the U.S. Constitution. It is true that the Kansas Supreme Court held in *Rivera v. Schwab* that the Kansas Constitution's equal protection guarantee is coextensive with the Fourteenth Amendment in the context of political gerrymandering claims. 315 Kan. 877, 893 (2022). But the Kansas Supreme Court has not had an opportunity to decide whether those protections are coextensive with respect to discrimination based on sex and transgender status, nor has it held that Kansas courts must "lockstep" with federal courts in applying any given equal protection standard to particular factual scenarios. Any such lock-stepping would be inconsistent with the text, structure, and history of Section 2, and the obligation of the Kansas judiciary to interpret and apply the constitution that Kansans adopted. *See State v. Albano*, 313 Kan. 638, 644–45 (2021); *State v. Lawson*, 296 Kan. 1084, 1090–92 (2013).

Classifications based on sex trigger heightened equal protection scrutiny under both the Fourteenth Amendment and the Kansas Constitution. *See Stephenson v. Sugar Creek Packing*, 250

Kan. 768, 775–77 (1992) (heightened scrutiny for gender-based classifications); *In re K.M.H.*, 285 Kan. 53, 73–75 (2007) (heightened scrutiny for sex-based differences even when biological differences exist). To pass heightened equal protection scrutiny, a sex classification must be substantially related to serving an important governmental interest. *See Craig v. Boren*, 429 U.S. 190, 197 (1976).

Classifications based on transgender status are subject to the same heightened scrutiny as sex classifications because discrimination based on transgender status is itself a form of sex discrimination. When a transgender man is treated differently from a cisgender man, that differential treatment is based on the fact that the two men had different sexes assigned at birth: the transgender man's sex assigned at birth was female, and the cisgender man's sex assigned at birth was male. The discrimination between the two men thus inherently entails discrimination based on their sex assigned at birth. *See Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 660 (2020) (explaining that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex").

In addition, transgender status is also a "quasi-suspect" classification that requires heightened equal protection scrutiny in its own right. *See Kalarchik v. State*, 427 Mont. 333, 348 (2026); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 611–13 (4th Cir. 2020); *Roe v. Critchfield*, 137 F.4th 912, 922-23 (9th Cir. 2025). This Court should likewise hold that classifications based on transgender status require heightened scrutiny under Section 2 of the Kansas Bill of Rights.

The AG wrongly asserts that the Supreme Court recently held that "transgender status is not a suspect class requiring heightened equal-protection scrutiny." MTD Br. 28. But the source for that quote is Justice Thomas's solo *concurring* opinion, not the majority. *West Virginia* v. *B.P.J.*,

No. 24–38, 146 S. Ct. 2356, 2382 (2026) (Thomas, J. concurring). By contrast, the *majority* opinion stated that the Court "need not definitively resolve whether rational basis review or intermediate scrutiny applies to transgender classifications" because the majority concluded that the law in *B.P.J.* survived either standard. *See id.* at 2379. Thus, even if Section 2 mirrored federal law in all respects, Kansas courts would be free to independently hold that transgender status triggers heightened scrutiny.

Because Section 2 of the Kansas Bill of Rights should be interpreted to provide broader protection than the Fourteenth Amendment in this context, discrimination based on transgender status should require heightened scrutiny under the Kansas Bill of Rights regardless of how federal courts ultimately decide the issue under the Fourteenth Amendment.

B. SB 244's Driver's License Restriction Classifies Based on Sex and Transgender Status.

Plaintiffs have adequately alleged that the License Restriction classifies based on sex and transgender status. First, by requiring that Kansans carry and display driver's licenses marked with their sex assigned at birth, SB 244 quite literally imposes on Kansans a classification based on sex. Only the sex designation is governed by SB 244. In so doing, the law artificially constrains sex to a binary that excludes only transgender and intersex Kansans. The AG asserts that no sex classification exists because all Kansans, whether male or female, must carry a driver's license with their sex assigned at birth. But forcing Kansans to live under a state-mandated sex classification, like a "state-mandated racial label," is "inconsistent with the dignity of individuals in our society." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797 (2007) (Kennedy, J., concurring in part). "It is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree." *Flowers v. Mississippi*, 588 U.S. 284, 300 (2019).

The License Restriction also facially classifies based on transgender status. The law "does not use the word 'transgender,'" MTD Br. 29, but "a State may not circumvent the Equal Protection Clause by writing in abstract terms." *United States v. Skrmetti*, 605 U.S. 495, 514 (2025); *see State v. Limon*, 280 Kan. 275, 284–86 (2005) (holding that a law lacking a "per se classification of homosexuals, bisexuals, or heterosexuals" nevertheless imposed a "discriminatory classification" against such individuals for purposes of equal protection). Here, transgender and non-transgender Kansans are both similarly situated in their need for identity documents that match their gender identity and presentation, but under SB 244 only non-transgender Kansans can obtain such licenses. *See Kalarchik*, 427 Mont. at 349.

In arguing to the contrary, the AG cites the U.S. Supreme Court's emergency docket ruling in *Trump v. Orr*, 146 S. Ct. 44, 46 (2025), for the proposition that listing a person's sex assigned at birth on a passport "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." MTD Br. 28–29. But the U.S. Supreme Court's interim orders on the emergency docket "are not conclusive as to the merits" of a federal legal issue, *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025), much less a question of state law not implicated in any way in the *Orr* case.

Moreover, there are critical differences between passports and driver's licenses. The only information on a U.S. passport is a person's date of birth, place of birth, and sex. In that context, the U.S. Supreme Court said that identifying someone's sex assigned at birth is analogous to identifying the historical fact of their place of birth. But driver's licenses do not list historical information about the circumstances of a person's birth; they identify current reality. Driver's licenses list a person's current residence, their current height and weight, and other current

identifying information. In that distinct context, the function of a driver's license is to identify the holder's current sex. Requiring transgender and intersex Kansans to carry driver's licenses identifying them based on their sex assigned at birth subjects them to differential treatment by depriving them of driver's licenses that match their current identity. Non-transgender Kansans have driver's licenses reflecting their current gender identity; transgender and some intersex Kansans do not. *Cf. Bostock*, 590 U.S. at 669 (explaining that a transgender person is someone "with one sex identified at birth and another today").

C. SB 244's Restroom Ban Classifies Based on Sex and Transgender Status.

Plaintiffs adequately allege that SB 244's Restroom Ban also triggers heightened equal protection scrutiny because it discriminates based on sex and transgender status. First, the Restroom Ban obviously classifies based on sex because it requires people to use particular restrooms based on their sex assigned at birth. Far from undermining Plaintiffs' claims, *B.P.J.* confirms that laws separating spaces by birth-assigned sex are sex-based classifications which—under federal law, and thus at minimum under Kansas law—trigger intermediate scrutiny. *B.P.J.*, 146 S. Ct. at 2374; *accord Critchfield*, 137 F.4th at 922. The Restroom Ban also classifies based on transgender status by prohibiting transgender Kansans (but not cisgender Kansans) from using restrooms consistent with the gender with which they identify and present in daily life. Because SB 244 "bars only transgender [Kansans] from using facilities that align with their gender identity" it "discriminates on the basis of transgender status as well as on the basis of sex." *Critchfield*, 137 F.4th at 923.

The AG argues that SB 244's Restroom Ban does not classify based on transgender status by citing to dicta in *B.P.J.*, in which the U.S. Supreme Court reasoned that laws excluding transgender girls from participating on sports teams consistent with their gender identity did not facially classify based on transgender status. MTD Br. 28. But the Kansas Supreme Court has not

followed the same approach when interpreting the equal protection guarantees of the Kansas Constitution. Instead, in *Limon*, the Kansas Supreme Court held that a law punishing sexual activity between members of the same sex facially discriminated based on sexual orientation. Even though the law did not contain "per se classification of homosexuals, bisexuals, or heterosexuals," the Kansas Supreme Court concluded that it nevertheless imposed a "discriminatory classification" against such individuals for purposes of equal protection. *Limon*, 280 Kan. at 284–86.[4]

But even if *B.P.J.*'s federal dicta were binding here on a matter of state constitutional law, such that the Restroom Ban did not facially classify based on transgender status, Plaintiffs have adequately alleged that SB 244 was enacted with a discriminatory purpose. *See* Am. Pet. ¶ 7, 226. A statute has a discriminatory purpose when "a particular course of action [was chosen] at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Plaintiffs need not plausibly allege the discrimination "was the sole, or even the primary, motivation." *Navajo Nation v. N.M.*, 975 F.2d 741, 743 (10th Cir. 1992). A discriminatory purpose can be shown through the "totality of the relevant facts" including "disproportionate impact," "historical background of the decision," the "specific sequence of events leading up to the challenged decision," "[d]epartures from the normal procedural sequence," and "the legislative or administrative history." *Washington v. Davis*, 426 U.S. 229, 242 (1976); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

As pled in the Amended Petition and in judicially noticeable facts, SB 244 was passed in the wake of SB 180, the AG's unsuccessful attempt to use SB 180 to create a license restriction,

[4] The Kansas Supreme Court's subsequent ruling in *Rivera v. Schwab*, which held that Kansas's equal protection guarantee was coextensive with the Fourteenth Amendment in the context of political gerrymandering, did not purport to overrule *Limon* or abrogate its reasoning.

and the legislative irregularities that led to a logrolled SB 244 being enacted over Governor Kelly's veto and without meaningful public debate or comment. *See* Am. Pet. ¶ 167–184. At this procedural juncture, Plaintiffs' allegations regarding the disparate impact of SB 244, the legal and legislative background of SB 244's enactment, and the departures from ordinary legislative procedures, all sufficiently plead discriminatory purpose.

VII. Plaintiffs Adequately Allege that SB 244 Does Not Survive Strict Scrutiny, Heightened Scrutiny, Or Even Rational Basis Review.

Because Plaintiffs allege that SB 244 violates their fundamental individual rights, *see supra* Sections II–VI, the State bears the burden of demonstrating that the law can survive strict or intermediate scrutiny. Those are both demanding burdens of proof, which rest entirely on the state. *See Hodes I*, 309 Kan. at 669; *Hodes II*, 318 Kan. at 1005. The AG cannot carry that demanding burden based only on the pleadings and without any supporting evidence: the facts here are limited to the Amended Petition, in which Plaintiffs plead the absence of factual justification for the law and the existence of evidence of its unconstitutionality. Am. Pet. ¶ 61–81, 185–195. Thus, as a threshold matter, because strict or heightened scrutiny applies to Plaintiffs' constitutional claims, and Plaintiffs have plausibly alleged an infringement of their constitutional rights, the AG's Motion to Dismiss must be denied.

In addition, even if SB 244 were subject to rational basis review, Plaintiffs have still plausibly alleged that SB 244 fails that deferential standard. The AG argues that the Restroom Ban serves governmental interests in protecting women's privacy and safety when "in states of undress." MTD Br. 30. But Plaintiffs have pled—and at this stage, the Court must credit their allegation—that "[t]here is no scientific evidence that restricting transgender people's restroom use promotes public safety" and "permitting transgender people to use restrooms consistent with their gender identity is not associated with increases in criminal incidents in restrooms." Am. Pet.

¶ 67–68. Moreover, there is no rational relationship between the state's asserted privacy/safety interests and the exclusion of transgender and intersex people from public restrooms. Am. Pet. ¶ 7, 78, 79, 188–193, 226. Rather, "[c]ommon sense tells us that the communal restroom is a place where individuals act in a discreet manner to protect their privacy and those who have true privacy concerns are able to utilize a stall." *Critchfield*, 137 F.4th at 924–26. Moreover, if the goal of SB 244 is to protect women from the "embarrassment" of sharing restrooms with men (MTD Br. 31), then it makes no sense to force transgender men like the Plaintiffs in this case—whose outward appearance and gender expression are no different from cisgender men—to use the women's restroom. *See Grimm*, 972 F.3d at 623 (Wynn, J., concurring) (explaining that such a policy "would, on balance, harm . . . privacy interests more than it helped them"). Confined to the facts of the Amended Petition, the AG cannot argue otherwise.

The AG also implies that excluding transgender people from restrooms consistent with their gender identity is somehow mandated by Title IX, which prohibits sex discrimination in schools. MTD Br. 32–33. That is wrong. "[J]ust because Title IX authorizes sex-segregated facilities does not mean that they are required, let alone that they must be segregated based only on biological sex and cannot accommodate gender identity." *Parents for Priv. v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020). In any event, the Plaintiffs in this case are all adults and their legal challenge relates to restrooms in government buildings.

Plaintiffs have also adequately pled that the AG's asserted governmental interests for the License Restriction fail rational basis review. Am. Pet. ¶ 7, 187–193, 226. The AG argues that "the State has a legitimate interest in ensuring that licenses contain objective, accurate, and unchangeable information." MTD Br. 33–34. But almost all the information on a driver's license

is changeable, including a person's name, address, and current physical description. There is no rational basis for singling out "sex" for a new "unchangeable" requirement.

Nor is there any rational connection between the License Restriction and the asserted interest in providing law enforcement and health care workers with "accurate" information. At the time Kansas enacted SB 244, an evidentiary hearing had already established that law enforcement in Kansas does not primarily rely on sex markers on driver's licenses to determine a person's sex assigned at birth or current anatomy. *See State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 697–701 (2025), *review denied* (Sept. 29, 2025). In light of that previous litigation, it is irrational to speculate that the License Restriction would serve those same law enforcement interests. To the contrary, as Plaintiffs have expressly pled, SB 244's License Restriction makes driver's licenses *less* accurate and *more* confusing by forcing Plaintiffs to incorrectly identify themselves in a way that contradicts how they are known in their communities, socially and legally, as men (in the case of transgender Plaintiffs) and women (for Dakota West). Am. Pet. ¶ 87, 100, 112, 126, 140–142, 146, 154, 158, 162.

VIII. Plaintiffs Adequately Allege that SB 244 Violates the Single-Subject and Clear-Title Provisions of the Kansas Constitution.

Article II, Section 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. The subject of each bill shall be expressed in its title." Plaintiffs have alleged that SB 244 violates both the single-subject provision and the clear-title provision. Am. Pet. ¶ 2, 236–41.

As a threshold matter, the AG makes no separate argument as to Plaintiffs' clear-title allegation, which requires independent analysis. *See, e.g.*, Pls.' Renewed Temporary Motion Br. 32. The district court should therefore deny the motion to dismiss this portion of Plaintiffs' Article

II, Section 16 claim, as the AG has waived or abandoned any such argument. *See State v. Bailey*, 313 Kan. 895, 897 (2021).

Additionally, Plaintiffs have adequately alleged that SB 244 violates both the single-subject and clear-title provisions. In considering a challenge under Section 16, Kansas courts determine whether a statute's provisions are sufficiently related to one another and to the bill's "umbrella" category, as stated in the title's "concerning" clause. *See, e.g.*, *Kansas One-Call Sys., Inc. v. State*, 294 Kan. 220, 226–28 (2012). But "[w]here an act contains two separate and independent subjects, having no connection with each other, and the title to the act is broad enough to cover both," the act is generally "unconstitutional and void." *State ex rel. Stephan v. Thiessen*, 228 Kan. 136, 143 (1980) (quoting *State v. Barrett*, 27 Kan. 213, 218–20 (1882)). Otherwise, the single-subject rule would be "utterly without force." *State v. Sholl*, 58 Kan. 507, 507 (1897).

Kansas precedent illuminates Section 16's sweep. The Legislature can, by a single act, create a complete code of criminal procedure, but it cannot "lawfully . . . unite[]" provisions on criminal procedure with provisions on a law enforcement training center "under the broad title 'crimes.'" *Thiessen*, 228 Kan. at 143. A broad title like "[a]n act relating to motor vehicles" cannot be used to cover both "the licensing of operators and chauffeurs of motor vehicles" and "defining the liability of certain persons for negligence" in the operation of motor vehicles. *Cashin v. State Highway Comm'n*, 22 P.2d 939, 938–40 (Kan. 1933).

In this case, Plaintiffs have alleged that SB 244 "contains at least two different subjects that cannot be united by a common title or purpose." Am. Pet. ¶ 180. They are "(1) the identification of a person's biological sex at birth on their driver's license and birth certificate, and (2) the designation of private spaces in public buildings for use by a single sex." *Id.* ¶ 237; *see also* ¶ 181, 183. These multiple subjects appear on SB 244's face: identification documents and sex-

separated spaces in public buildings do not both relate to "one subject" clearly expressed in the title. Kan. Const. art. II, § 16. As alleged in the Amended Petition, "[t]he legislative history of SB 244 . . . reveals that the two subjects are distinct and were logrolled into a single bill." Am. Pet. ¶ 239.

To succeed on his motion to dismiss, the AG must clearly demonstrate that Plaintiffs are "not entitled to relief under *any set of facts* which could be proved in support of the claim." *Palmer v. Brown*, 242 Kan. 893, 895 (1988). The AG has not done so here. In fact, in its decision denying Plaintiffs' request for a temporary restraining order, this Court recognized that factual development was warranted on the single-subject and clear-title challenge. March 10, 2026 Memorandum Decision at 4 ("Without a more complete understanding and examination of the legislative process and history by which this Act came to exist, the Court has no means to determine this claim on such a limited basis."). That underscores the need for fact-finding and makes clear that the Plaintiffs have adequately alleged a single-subject and clear-title claim at this stage.

The AG asks this Court to decide, without fact finding, that SB 244 has a single subject: the regulation of transgender people. *See* MTD Br. 39 (articulating the single subject as "the identity of individuals who use" public restrooms); *id.* at 38 (articulating the subject as "how the government classifies and identifies individuals"). That would again require the court to ignore the actual allegations in the Amended Petition. Additionally, SB 244 cannot be justified on that ground under Kansas's Equal Protection Clause. Arguing that the License Restriction and Restroom Ban were combined in a single statute because they share the common purpose of regulating transgender people is tantamount to an admission that the law must be analyzed as a classification based on transgender status passed "'because of,' not merely 'in spite of,' its adverse effects." *Feeney*, 442 U.S. at 279. And just as bare legislative animus toward a disfavored group cannot

qualify as a legitimate state interest for equal protection analysis, *see U.S. Dep't. of Agric. v. Moreno*, 413 U.S. 528, 534 (1973), it cannot serve as a unifying "subject" that connects otherwise disparate parts of a bill. *See Limon*, 280 Kan. at 297 (holding that statute violated Kansas Constitution's equal protection clause because "moral disapproval of a group cannot be a legitimate governmental interest").

CONCLUSION

Plaintiffs' Amended Petition adequately alleges facts that, accepted as true, demonstrate claims for violations of the Kansas Bill of Rights and Kansas Constitution Article II, Section 16. Dismissal is the exception, not the rule, and under Kansas's liberal notice pleading standards, the Amended Petition provides adequate notice of Plaintiffs' claims. The AG's Motion to Dismiss should be denied in its entirety. Though no dismissal at all is warranted, at a minimum, any dismissal must be without prejudice, and Plaintiffs must be given leave to amend their petition. *See* K.S.A. § 60-215(a)(2) ("The court should freely give leave when justice so requires."). *See also Bell v. Kansas City, Kan. Hous. Auth.*, 268 Kan. 208, 221 (1999) ("The sanction of dismissal with prejudice is the most severe sanction a court can apply and its use must be tempered by the careful exercise of judicial discretion to assure that its imposition is merited."); *Boydston*, 242 Kan. at 102 (holding that the trial court abused its discretion in dismissing case with prejudice after plaintiffs changed theory of liability).

Respectfully submitted, this 14th day of August, 2026

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CERTIFICATE OF SERVICE

I certify that on August 14, 2026, the above and foregoing were electronically filed with the Clerk of the Court using the Court's Electronic Filing System, which will send notice of electronic filing to all counsel of record.

/s/ Douglas R. Dalgleish
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