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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, KANSAS

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
Division JMCCABRIA

DEFENDANT STATE OF KANSAS *EX REL.* KRIS KOBACH'S REPLY IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Plaintiffs ask this Court to invent new constitutional rights, ignore binding precedent, and overrule the Kansas Supreme Court—all to avoid the unremarkable requirements that driver's licenses reflect biological sex and that restrooms be separated by biological sex. The Court should decline.

Each of Plaintiffs' six claims fails to state a claim upon which relief can be granted. The due process claim is speculative and unripe. The personal autonomy claim uses the *Hodes* line of cases as a springboard for a sweeping new right—one that would make most state action presumptively unconstitutional—even though *Hodes* expressly disclaimed any such use. The informational privacy claim attempts to fabricate a constitutional right where none exists. The equal protection claim fares no better; binding federal precedent forecloses it. The compelled speech claim cannot escape the fact that driver's licenses are government speech and compel nothing from Plaintiffs. And the single-subject claim can be dismissed as a matter of law because SB 244's subject is expressed in its title, which is all the Constitution requires. The Court should dismiss.

ARGUMENT

I. Plaintiffs' procedural due process claims should be dismissed for lack of standing and ripeness, or alternatively on the merits.

As explained in the State's motion to dismiss, Plaintiffs' procedural due process claim—which relates only to the multiple-occupancy private space provisions of SB 244 and not the driver's license provisions—is not justiciable because that claim is based entirely on speculation that Plaintiffs might be denied due process at some point in the future were they to violate SB 244. In addition to being hypothetical, the legal theory that the claim rests on lacks footing in any case or constitutional authority.

Plaintiffs' response to the State's standing and ripeness arguments conflates their *substantive* constitutional challenges to SB 244 with their *procedural* due process claim. Plaintiffs argue that, but for SB 244, they would use restrooms designated for individuals of the opposite biological sex. But that alleged injury stems from SB 244's substantive requirement that individuals use restrooms consistent with their biological sex.

The theory behind Plaintiffs' procedural due process claim is that *if* they were to violate SB 244 (which they allege no intent to do), they *might* not receive due process in the ensuing enforcement proceedings. That alleged injury is hypothetical. Plaintiffs certainly cannot show that every person violating SB 244 will be denied due process, as required to prevail on a facial due process challenge. And Plaintiffs' fears that they might personally be denied due process are entirely conjectural, not "concrete, particularized, and actual or imminent" as required to support standing. *Gannon v. State*, 298 Kan. 1107, 1123 (2014). For the same reason, their claim remains "nebulous and contingent" and thus unripe. *Id.* at 1119. This Court cannot assess the procedural fairness of a proceeding that has not yet occurred and may never occur. *See Trump v. California*, 609 U.S. ___, No. 26A139, 2026 WL 2473573 at *3–4 (Aug. 24, 2026) (*per curiam*) (holding that standing and ripeness barred lawsuit where the claimed injury "might occur"—"[e]mphasis on might").

Dakota West's standing to bring a due process challenge is even more tenuous. Plaintiffs allege that West is intersex, but K.S.A. 77-207 provides that "an individual born with a medically verifiable diagnosis of 'disorder/differences in sex development'"—a term that Plaintiffs admit is used to describe intersex persons, *see* Am. Pet. at 10—"shall be provided legal protections and accommodations afforded under the Americans with disabilities act and applicable Kansas statutes." Plaintiffs argue that West might not receive an accommodation if West were to apply for one, but that is speculation. Because K.S.A. 77-207 specifically recognizes the availability of

accommodations for intersex persons, Dakota West suffers no actual or imminent injury as a result of SB 244. Plaintiffs therefore lack standing to challenge SB 244 as applied to intersex persons like West, and any such challenges are not ripe unless and until an accommodation is actually denied.[1] Plaintiffs also fail to respond to the point that West has relocated to Knoxville, Tennessee, is no longer a Kansas resident, and thus faces no impending, probable harm from SB 244. *See* Mot. to Dismiss at 15. All of West's claims must be dismissed on this basis.

In addition to being non-justiciable, Plaintiffs' due process claim fails on the legal merits. To begin, Plaintiffs offer no response to the State's argument that a first violation of SB 244's restroom provisions only results in a warning, and a warning alone does not deprive Plaintiffs of any property or liberty interest. "In the absence of a protected property or liberty interest, there can be no due process violation." *Landmark Nat. Bank v. Kesler*, 289 Kan. 528, 544 (2009). Plaintiffs' only asserted liberty and property interest "is their interest in avoiding civil and criminal penalties," Resp. at 10, but those penalties do not arise until a second or subsequent violation. And a civil action to impose a civil penalty for a second violation or criminal charges for a third or subsequent violation must be brought in state court, which will offer the full protections of the judicial process before any penalty is imposed.

Although no liberty or property interest is at stake, SB 244 provides due process for even the first violation, requiring that the notice shall include "the procedure to administratively appeal the finding that such individual violated this section." SB 244, § 1(g)(1)(C). Plaintiffs complain that the details of the administrative appeal are left to the individual governing body

[1] Contra Plaintiffs' arguments, information about contacting the state ADA coordinator and requesting ADA accommodations from the State of Kansas is posted on the Department of Administration website and can be found easily through an internet search. *See* Admin.Ks.gov, State of Kansas ADA Coordinator, *available at* https://admin.ks.gov/offices/personnel-services/policy--programs/state-of-kansas-ada-coordinator.

or chief administrative officer of the building, but they continue to cite no authority holding that due process procedures must be specifically laid out in statute. If adequate process is ultimately provided, there can be no due process violation. Any speculation that a particular administrative appeal might fail to comply with due process—again, assuming any process for a warning is even due—is insufficient to find SB 244 unconstitutional on its face.

II. There is no personal autonomy right that allows Plaintiffs to dictate what appears on a driver's license, or who is permitted in state-owned restrooms.

Plaintiffs' personal autonomy claim should be dismissed because no fundamental right under Section 1 of the Kansas Bill of Rights entitles Plaintiffs to dictate what appears on a Kansas driver's license or to use state-owned restrooms designated for the opposite biological sex.

In arguing to the contrary, Plaintiffs rely on an expansive interpretation of *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610 (2019) (*Hodes I*), which they claim protects individuals from government interference with any aspect of "the ability to exercise self-determination." *Id.* at 646. Their claimed right extends to any state action that "contradict[s] who they are and how they live their lives"—which could cover virtually all state actions.[2] As applied to transgender people, Plaintiffs' asserted right to personal autonomy includes both the ability to "define" gender identity and to "express" it however they want.

That interpretation is unsustainable. *Hodes I*, on its own terms, established only a right of women "to control their own bodies, to make health care decisions, and to make decisions about

[2] For example, anti-vaccine advocates believe that a school vaccine mandate "contradicts who they are and how they live their lives." Climate change activists believe that oil-and-gas pipelines "contradict who they are and how they live their lives." Those who wish to you use psychedelic drugs believe that state bans of such drugs "contradict who they are and how they live their lives." Shooting sports enthusiasts believe that bans on the possession of firearms for nearly all felons "contradict who they are and how they live their lives."

whether to bear or beget a child," *id.* at 649–50. As the Court explained in *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995 (2024) (*Hodes II*), *Hodes I* is not "unlimited in scope;" it applies only to the "profound act of deciding to have an abortion," not to "*any activity* involving one's body." *Id.* at 1013; *see also State v. Marmolejo*, 2022 WL 68583 at *12 (Ct. App. 2022) (rejecting Section 1 challenge to "all criminal statutes" on the basis that "*Hodes & Nauser* does not address criminal law; it addresses abortion.")

Plaintiffs offer no reason to expand Section 1's protections to cover restrooms and driver's licenses. While *Hodes I* "examined the inalienable natural right to personal autonomy in the specific context of abortion… [and] carefully examined and evaluated [the right] in the context of its own unique implications," Plaintiffs fail to undertake a "similar legal analysis." *Hodes II*, 318 Kan. at 1013. They merely note the existence of "Lockean Natural Rights Guarantees" and assume those guarantees encompass gender identity and expression solely because they believe it has "profound and unique attributes." Resp. at 16-17. For the rest, Plaintiffs rely on broad dicta, such as the right to "define and express their identity," mentioned in the right to marry context in *Obergefell v. Hodges*, 576 U.S. 644, 651-52 (2015). Resp. at 15-16. But *Hodes I* and *Hodes II* demand a much deeper historical analysis before recognizing Section 1 protection.

In fact, no court has ever found a constitutional right that would permit Plaintiffs to do what they claim the right to do: dictate the contents of state-issued driver's licenses and compel the state to change the rules for using state-owned restrooms. And no court has ever recognized in the Kansas Bill of Rights such positive liberties compelling the State to act. Instead, Plaintiffs' insistence that a letter on a driver's license and the ability to use any state-owned restroom are fundamental rights is "specious at best," which "trivializes and attempts to minimize the fundamental nature" of the abortion right that *Hodes I* recognized. *Hodes II*, 318 Kan. at 1013.

Because the *Hodes* cases recognize only a right to abortion—and Plaintiffs have offered no comparable natural-rights analysis showing that expressing a gender identity in state documents and in the use of state property is a fundamental right on par with that right—they have failed to state a personal autonomy claim. The Court should dismiss it.

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

Plaintiffs' informational privacy claim fares no better. Their reliance on federal caselaw is unavailing because the Kansas Supreme Court held in *Hodes I* that Section 1 of the Kansas Bill of Rights does not have the same meaning as the Due Process Clause of the federal Constitution. 309 Kan. at 624-27. And even if the caselaw did support their argument—which it does not for the reasons explained in the State's Motion to Dismiss—Plaintiffs fail to address the fact that much of it has been undercut by the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), which rejected the constitutional recognition of broad privacy rights "unmoored from history and tradition." *Id.* at 268.

Plaintiffs offer no persuasive reason for this Court to invent a brand-new constitutional right to informational privacy. Nothing in the Kansas Constitution's text or history supports the notion that driver's licenses cannot display biological sex or that restrooms cannot be separated by biological sex—arguments that were unheard of just a few years ago.

Plaintiffs claim a right to privacy in their transgender status, but nothing in SB 244 forces disclosure of that status. The statute requires that *biological sex*—not gender identity—appear on driver's licenses. Likewise, multiple-occupancy restrooms must be separated by biological sex. Any revelation of transgender status results from how Plaintiffs choose to present themselves, not from a government mandate.

Indeed, it is Plaintiffs who are arguing for disclosure of gender identity. They do not dispute that driver's licenses can list the holder as male or female or that the government can maintain separate restrooms for men and women. Their argument is that driver's licenses should display gender identity instead of sex and that gender identity should determine which bathroom a person uses. Plaintiffs therefore cannot maintain that there is a right to privacy in one's gender identity. Neither is there any basis under the Kansas Constitution for recognizing a right to privacy in one's biological sex that would prevent sex from being used for longstanding purposes such as identifying people on driver's licenses or in determining the proper restroom to use.

IV. SB 244 is government speech that compels nothing of Plaintiffs.

Plaintiffs' free-speech claim is limited to compelled speech—a purely legal question this Court can resolve on a motion to dismiss. SB 244 compels no speech. A compliant driver's license contains only the state's speech, which is not attributable to the licensee. The only information it conveys is a single letter denoting biological sex—a fact Plaintiffs acknowledge. *See* Am. Pet. ¶¶ 13-29. The license includes none of the substantive propositions Plaintiffs attach to it. Plaintiffs never engage these arguments, nor do they explain why a biological sex designation should be treated any differently under the free speech clause than any other information on a license.

A. The speech on the license is the State's, not the Plaintiffs'.

Plaintiffs do not dispute that state-issued driver's licenses are government speech. *See Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015); Resp. at 23. Yet they fail to show how the government's speech compels their own. Unlike the license plate that was found to compel speech in *Wooley v. Maynard*, 430 U.S. 705 (1977), a driver's license is not "constantly" displayed to "hundreds of people each day." *Id.* at 715. It is rarely shown publicly, and then only

to one person at a time on discrete occasions. The license is like currency, which, despite carrying "In God We Trust," does not compel speech because it is "generally carried in a purse or a pocket and need not be displayed to the public. The bearer of currency is thus not required to publicly advertise the national motto." *Id.* at 717, n. 15. As with currency, no one attributes the government's message on the license to the holder. It compels nothing.

B. A sex-designation on a driver's license only designates one's biological sex.

Even if the driver's license were "constantly displayed" like a license plate, the only speech it contains is a statement about biological sex. Yet Plaintiffs ascribe a web of meaning to the driver's license's biological sex designation that is not there. On the basis of a single letter, Plaintiffs allege that the State forces licensees to convey that their identity as men or women is determined by biological sex, rather than gender identity and expression as part of daily life; that gender identity does not exist; and that gender is the same as sex. Resp. at 24. But "F" and "M" do not say these things. Each denotes biological sex and nothing else. Plaintiffs' argument is really that *SB 244* conveys objectionable messages. *See* Resp. at 24 (citing SB 244 and arguing that SB 244 driver's licenses "force[] Plaintiffs to act as a 'mobile billboard' for *that* ideological message") (emphasis added). But Plaintiffs never argue that they are required to display the text of SB 244. They have only alleged that the license compels speech, not the text of the bill.

The sex-designation is not "printed words," it is a single letter, indicating a single fact. This distinguishes it from the state motto in *Wooley*, which contained "printed words, which the Court had no trouble finding was speech." *Cressman v. Thompson*, 798 F.3d 938, 951 (10th Cir. 2015). And in the driver's license context, where the state issues thousands of licenses that all contain a single-letter sex-designation, as well as other factual information about the licensee, no reasonable person would interpret an "F" or an "M" as conveying the messages Plaintiffs claim. *See id.* at 953 (holding that "the reproduction of the image on thousands of Oklahoma

license plates… no longer implicates concerns about self-expression."). Thus, for compelled speech analysis, sex-designation is no different from any other fact which appears on the license.

Under Plaintiffs' logic, every fact on a license would constitute compelled speech—including their own requested outcome, which would have licenses convey gender identity. Just as there is no conceivable free speech right to remove one's age, weight, height, eye color, or hair color from a license, so too for another biological feature of all humans: sex. That a person wishes their eyes were blue when, in fact, they are brown, does not state a claim for compelled speech. No court has ever held that a license's basic identifying information compels speech. The State's choice of what factual information to include on its own documents compels nothing. The Court should dismiss this claim.

V. Federal equal protection precedent forecloses Plaintiffs' claims.

In Kansas, "the equal protection guarantees found in section 2 are coextensive with the equal protection guarantees afforded under the Fourteenth Amendment." *Rivera v. Schwab*, 315 Kan. 877, 894 (2022); *see also Huffman v. Meier's Ready Mix, Inc.*, 2021 WL 219235, at *6 (Ct. App. Jan. 22, 2021) (noting the Supreme Court's "longstanding position that a person's right to equal protection is the same under the federal and state constitutions."). Plaintiffs ask this Court to abandon *Rivera*, but their only support for that is the Kansas Supreme Court's *prior* decisions in *State v. Albano*, 313 Kan. 638 (2021) and *State v. Lawson*, 296 Kan. 1084 (2013), which concern the Sixth Amendment, not the Fourteenth, and offer no reason to revisit *Rivera*. Federal precedent therefore controls. And three recent U.S. Supreme Court decisions in *United States v. Skrmetti*, 605 U.S. 495 (2025), *West Virginia v. B.P.J. by Jackson*, 146 S. Ct. 2356 (2026), and *Trump v. Orr*, 146 S. Ct. 44 (2025) together establish that SB 244 does not violate the Equal Protection Clause. Plaintiffs' Response fails to meaningfully address any of them.

First, Plaintiffs never once mention *Skrmetti*. There, the Court held that a law involving transgender medical treatment does not classify on the basis of sex merely because it references sex or its application turns on sex. *Skrmetti*, 605 U.S. at 512. Heightened scrutiny is appropriate only when the law "prohibit[s] conduct for one sex that it permits for the other." *Id.* at 514–15. SB 244's driver's license provisions do not classify on the basis of sex because they impose the same requirement on everyone: licenses for men and women alike must denote biological sex. Nothing that is permitted for men is denied for women, and *vice versa*. Plaintiffs have no response to this holding.

Plaintiffs address *B.P.J.* only to quibble about the Court's position on transgender status as a suspect class.[3] Yet Plaintiffs ignore *B.P.J.*'s actual holding: that separation on the basis of biological sex is not unconstitutional if it is based on inherent, "enduring" physiological differences between the sexes, and such distinctions do not classify on the basis of transgender status at all. *B.P.J.*, 146 S. Ct. at 2367, 2378. If sex-separated athletic teams are constitutional, sex-separated restrooms are *a fortiori*, where the same physiological differences justify separation that protects privacy, dignity, and safety in intimate spaces. *See Roe v. Crutchfield*, 137 F.4th 912, 925 (9th Cir. 2025) ("That some students in a state of partial undress may experience embarrassment, shame, and psychological injury in the presence of students of a different sex is neither novel nor implausible.") (internal quotations omitted). And because SB 244 does not bar transgender people from using restrooms or from possessing driver's licenses, no part of the law's application hinges on transgender status. In fact, SB 244 expressly eliminates the state's recognition of gender identity for purposes of restrooms and driver's licenses. *See, e.g.*, SB 244 §

[3] Plaintiffs cite no case in which the Supreme Court has treated transgender status as a suspect class. *See B.P.J.* at 2379; *id.* at 2382 (Thomas, J., concurring); *accord Skrmetti*, 605 U.S. at 517; *id.* at 549–58 (Barrett, J., concurring).

5(b)(3); *id.* § 6(a)(1). It no more classifies on the basis of transgender status than the sex-separated athletic teams upheld in *B.P.J.*, 146 S. Ct. at 2378. Plaintiffs have no answer to this argument.

Plaintiffs' response to *Orr* is speculative and unsupported by the decision's actual language. *Orr* held that recording biological sex on a government identification document "no more offends equal protection principles than displaying [the holder's] country of birth," because "the Government is merely attesting to a historical fact without subjecting anyone to differential treatment." *Orr*, 146 S. Ct. at 46. Just like the passports in *Orr*, SB 244's driver's licenses record biological sex and do not violate the Equal Protection Clause. *Id.* Plaintiffs claim *Orr*'s holding applies only to passports, but the Court did not rely on any feature unique to a passport; the passport's purpose is irrelevant to the analysis. In any event, Kansas determines the purpose of a driver's license, not Plaintiffs, and the State has determined that biological sex, not gender identity, belongs on the license. Further, while Plaintiffs claim *Orr* is not binding precedent, its reasoning is fully consistent with *Skrmetti* and *B.P.J.*

Plaintiffs' reliance on *Bostock v. Clayton County*, 590 U.S. 644 (2020) fares no better. They ignore the decisions limiting *Bostock*'s reasoning to the Title VII employment context. *See B.P.J.*, 146 S. Ct. at 2373; *Skrmetti*, 605 U.S. at 520. And, perhaps most importantly, *Bostock* itself expressly disclaimed any application to "bathrooms, locker rooms, or anything else of the kind," *Bostock*, 590 U.S. at 681. *Bostock* cannot save the equal protection claim. Plaintiffs' *Bostock* analysis also ignores the Court's holding in *B.P.J.* finding sex-based line-drawing permissible when it is justified by physiological differences between men and women. So, when they argue that SB 244 classifies on the basis of sex when it requires that a transgender man (i.e. a biological woman) use a different restroom from a biological man, Resp. at 26, they are complaining of a dynamic that the Supreme Court found was unobjectionable, post-*Bostock*.

Plaintiffs' retreat to caselaw on racial classifications is unavailing. *See* Resp. at 27. They never reconcile their unsupported claim that all sex designations are unconstitutional with the longstanding practice of providing separate facilities for men and women, the widespread designation of sex on state-issued identification documents, the existence of sex-based classifications in federal law, *see, e.g.*, 34 C.F.R. § 106.33 (providing for separate facilities at Title IX institutions), or controlling Supreme Court precedent. Nor do they explain how gender-identity classifications would fare any better than classifications based on biological sex: restrooms and driver's licenses regulated by gender identity would undoubtedly classify on the basis of transgender status, which has no supporting federal precedent. Plaintiffs cannot have it both ways—preserving legal distinctions between "men" and "women" while condemning those distinctions as unconstitutional when drawn by biological sex but not by gender identity. Neither federal equal protection precedent nor the physiological differences that justify treating males and females differently in certain contexts supports their position.

Finally, Plaintiffs have not adequately pleaded animus. SB 244 does not disfavor transgender people or signal moral disapproval of them. It classifies all individuals by biological sex for purposes of driver's licenses and state restroom use. No animus can be inferred from SB 244's text. *See Skrmetti*, 605 U.S. at 521 (rejecting animus argument where law "provides medical treatments for minors, and withholds other treatments" based on "medical determination"); *B.P.J.*, 146 S. Ct. at 2378 (holding that sex-based classification does not reflect "any hostility or disapproval of transgender persons as a class").

In sum, controlling federal precedent establishes that SB 244 does not violate the Equal Protection Clause. Plaintiffs barely engage with those cases, asking instead that this Court overrule Kansas Supreme Court precedent. The Court should decline and dismiss the equal protection claim.

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

Plaintiffs fail to plausibly allege a violation of Article 2, § 16 of the Kansas Constitution, which 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' argument that the State failed to address what they call the "clear-title" provisions of this section is incorrect. The two sentences in Article 2, § 16 are not two isolated requirements. Indeed, the Kansas Supreme Court has repeatedly referred to the *entirety* of Article 2, § 16, as the "one-subject rule." *See Kansas One-Call System, Inc. v. State*, 294 Kan. 220, 226 (2012); *Kansas National Education Association v. State*, 305 Kan 739, 752-53 (2017). The question under this provision is whether all provisions in a bill are germane to a single subject as expressed in the bill's title. *Id.* And as the State explained in its motion to dismiss, "[a]ll elements of SB 244 relate to the same subject *as expressed in the title of the bill*—'identification of biological sex.'" Mot. to Dismiss at 38 (emphasis added). The State has already refuted Plaintiffs' "clear-title" argument.

Nor is the subject expressed in the title of SB 244 so broad as to constitute multiple subjects. An act violates the single-subject rule only when it "embraces two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with or relationship to each other." *Kan. Nat'l Educ. Ass'n* , 305 Kan. at 806 (quoting *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 635, 676 (1997)). But both the driver's license and multiple-occupancy private space provisions of SB 244 are "germane to the subject expressed in the title" of SB 244—"identification of biological sex." *Id.* The unifying factor throughout SB 244 is exactly that: the state identifies individuals, whether it be on birth certificates, on driver's licenses, in government vital statistics, or with respect to access to state facilities according to biological sex. And "identification of biological sex" is no broader than, say, "education." *Id.*

Plaintiffs' reliance on older caselaw is particularly misplaced because Article 2, § 16, was amended in 1974 to remove the "clear title" requirement and add that "[t]he provisions of this section shall be liberally construed to effectuate the acts of the legislature." *See Kansas One-Call Sys.* 294 Kan. at 226. Recent Kansas Supreme Court decisions confirm that a bill's subject "can be broad and comprehensive and can even include minor subjects" as long as those minor subjects are "capable of being combined to form 'one grand and comprehensive subject.'" *Id.* at 228.

Plaintiffs are also wrong that factual development is necessary to reject their single-subject argument. This Court need only examine SB 244's text to determine whether all of its provisions relate to a single subject as expressed in the title. Legislative history is beside the point. Plaintiffs' contrary argument elevates one apparent purpose of the single-subject rule over its constitutional substance. Article 2, § 16, does not prevent legislative compromise or impose procedural standards for enacting legislation. As long as a bill's provisions relate to a single subject as expressed in the title, legislative history is irrelevant. And in any event, the Court can take judicial notice of it without fact-finding.

There also is no inconsistency between the State's single-subject rule and equal protection arguments, as Plaintiffs allege. The State is not arguing that the subject of SB 244 is animus towards transgender people. Rather, the single subject, as identified in the title, is the identification of biological sex, whether on driver's licenses or when it comes to the use of private spaces in public buildings.

VII. SB 244 has a rational basis as a matter of law.

SB 244 is subject to rational basis review. It infringes upon no fundamental right and does not classify on the basis of transgender status. Where it draws lines based on sex, federal precedent is clear: no heightened scrutiny applies. The applicable level of scrutiny—minimal

scrutiny—is a pure question of law, and Plaintiffs cannot plead their way into heightened scrutiny by alleging violations of fundamental rights.

Under rational basis review, Plaintiffs bear the burden to "negative every conceivable basis" for the challenged law. *State v. Genson*, 316 Kan. 130, 143 (2022). They have not done so. Plaintiffs claim the Court must accept every statement in the pleadings, but that applies only to pleaded facts. The Court need not accept "conclusory allegations on the legal effects of events the plaintiff has set out if these allegations do not reasonably follow from the description of what happened, or if these allegations are contradicted by the description itself." *Knight v. Neodesha, Kan., Police Dept.*, 5 Kan. App. 2d 472, 475 (1980).

A. Plaintiffs fail to negate all conceivable rational bases for SB 244's restroom requirements.

Plaintiffs allege only two facts bearing on the rational basis for SB 244's restroom requirements. They allege that "[t]here is no scientific evidence that restricting transgender people's restroom use promotes public safety." Am. Pet. ¶ 67. And they claim that "[m]ultiple studies have shown that permitting transgender people to use restrooms consistent with their gender identity is not associated with increases in criminal incidents in restrooms." Am. Pet. ¶ 68. Even if accepted as true, however, neither allegation contradicts the rationality of restricting restroom access by members of the opposite biological sex, regardless of gender identity. And the Court may accept that multiple studies exist without accepting that they settle the safety question. Neither allegation prevents the Court from recognizing that it is rational for the State to protect privacy and dignity by restricting restroom access on the basis of biological sex.

Plaintiffs' remaining arguments are not facts that must be accepted as true on a motion to dismiss. They claim that individuals do not require privacy in restrooms because stalls exist, Resp. at 32; that a woman's privacy is more threatened by a biological female with a male gender

identity than by a biological male with a female gender identity, *id*.; and that Title IX may not require sex-segregated facilities, *id*. None of these appeared in the pleading and none is correct.

Plaintiffs' privacy arguments fail on their face. Public and private restrooms are customarily designated by sex despite the presence of stalls. Plaintiffs claim a woman's privacy is more threatened by a biological female who identifies as male than by a biological male who identifies as female, but their own premise proves the point: a woman who feels unsafe because a male-appearing person is in the same restroom feels that way because *she believes the person is male*. In other words, Plaintiffs concede that women may feel uncomfortable when they even suspect they are sharing a restroom with a man. SB 244 addresses precisely that concern and Plaintiffs' admission that the concern exists establishes SB 244's rational basis. The existence of a different point of view on how to address a problem does not render the State's point of view irrational under rational basis analysis.

Plaintiffs' Title IX arguments do not address rationality at all. Even if the Ninth Circuit held that Title IX does not *require* sex-segregated facilities, *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020), such facilities are expressly permitted by Title IX, and it is rational for the State to organize its public restrooms along the lines federal law expressly anticipates. *See B.P.J.*, 146 S. Ct. at 2367 ("To ensure equal opportunity, Title IX's regulations also require schools to provide the women's and men's teams equivalent equipment, facilities, scheduling, and the like."); *id.* at 2371 ("The term 'sex' in [Title IX] cannot plausibly be interpreted to refer to anything other than biological sex."); *see also, e.g.*, *Adams v. School Board of St. Johns Cnty.*, 57 F.4th 791, 815 (11th Cir. 2022) ("Title IX's implementing regulations explicitly allow schools to provide separate toilet facilities on the basis of biological sex.") (cleaned up); *Arana v. Bd. of Regents of Univ. of Wis. Sys.*, 182 F.4th 670, 687 (7th Cir. 2026) ("If anything, Title IX unambiguously forbids biological males from competing in women's sports.") (Brennan, C.J., concurring). Plaintiffs' response—that Title IX is

irrelevant "because they are adults and their challenge relates to restrooms in government buildings," Resp. at 32—fails on its own terms: adults are covered by Title IX, schools and colleges are government buildings, several Plaintiffs work or study at the University of Kansas, and Plaintiffs' facial challenge reaches every state-owned restroom, including those in educational institutions. Title IX is plainly relevant to SB 244's rational basis.

B. Plaintiffs fail to negate all conceivable rational bases for SB 244's driver's license requirements.

Plaintiffs' pleadings and arguments both fail to negate the rational bases which justify SB 244's driver's license requirements. Plaintiffs contend that it is irrational to require *any* unchanging data point on a license because many of the data points change, but that is precisely what makes recording one more unchanging data point rational.

Plaintiffs also misread *State v. Harper*, 65 Kan. App. 2d 680 (2025), which did not hold that requiring a license to designate biological sex was irrational. *Harper* held only that the State had not shown it would be irreparably harmed if the designation were temporarily absent during preliminary injunction proceedings, a far cry from a ruling on rationality. And Plaintiffs never answer the State's argument that recording biological sex serves legitimate interests in maintaining consistent law enforcement records (used to match individuals to their criminal history records), in enforcing SB 244's facilities requirements, and in a range of medical contexts.

Because Plaintiffs have failed to "negative every conceivable basis" for SB 244, *Genson*, 316 Kan. at 143, they have not met their burden. SB 244 satisfies rational basis review.

VIII. The Court should dismiss Plaintiffs' facial claims with prejudice and should not grant Plaintiffs leave to amend their Petition.

Plaintiffs make only facial challenges, as their requested relief reaches "beyond the particular circumstances of the[] plaintiffs." *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010). They

seek facial invalidation of SB 244 and they request that *all* transgender individuals be excused from compliance with parts of SB 244, not just the named Plaintiffs. Am. Pet. p. 51-52. Thus, for this motion to dismiss, the Court should apply the standard that is applicable for facial challenges, which requires Plaintiffs to state a claim under which "no set of circumstances exist" where SB 244 is constitutional. *Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 850 (1997).

Plaintiffs do not meet this extremely high standard. SB 244 is facially valid because restrooms and driver's licenses may constitutionally be regulated by biological sex in innumerable circumstances. Plaintiffs have therefore failed to state a claim for facial relief, and dismissal with prejudice is warranted. Their constitutional claims are barred as a matter of law; no amendment can cure that defect.

Plaintiffs appear to realize this and try to hold in reserve an unspecified as-applied challenge. Resp. at 4. But their hypothetical as-applied claims lack any factual specificity, and they have not requested party-specific relief. Their purported as-applied claims are not before the Court. Plaintiffs contend that notice pleading allows them to "refine" facts through discovery while updating their legal theory, but that stretches notice pleading too far. They are wrong that the pretrial order is the "ultimate determinant" of the issues. Resp. at 8. *Unruh v. Purina Mills, LLC*, 289 Kan. 1185, 1191 (2009), which Plaintiffs cite, does not concern a motion to dismiss—its holding is that a pretrial order determines the issues *at trial*. And while a plaintiff's theory of the case may shift, he must still "fairly inform[] 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). This means that Plaintiffs have an obligation to be specific about the scope of their theoretical as-applied challenge, by alleging facts specific to SB 244's application to them. They do not make this showing. Plaintiffs cannot escape a motion to dismiss by holding in reserve an

undefined as-applied challenge that they claim will be supplemented both by additional facts in discovery and new legal theories to be revealed at a pre-trial conference.

In any event, SB 244 applies the same way to all individuals. And it is constitutional in all its applications. There are no plaintiff-specific facts that are relevant to its constitutional validity. The Court should therefore deny Plaintiffs leave to amend their pleadings a second time.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' claims with prejudice.

September 4, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 4, 2026, a true and correct copy of the above and foregoing was served on counsel for each party through the Court's electronic filing system, which will send a "Notice of Electronic Filing" to each party's registered attorney.

/s/ James Rodriguez
James Rodriguez