ELECTRONICALLY FILED
2023 Jul 07 AM 10:03
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2023-CV-000422
PII COMPLIANT

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.* **KRIS KOBACH**, Attorney General, *Petitioner*, v. **DAVID HARPER**, Director of Vehicles, Department of Revenue, in his official capacity, and **MARK BURGHART**, Secretary of Revenue, in his official capacity, *Respondents*.	)	Case No. _____

Petition Pursuant to K.S.A. Chapter 60

PETITION FOR MANDAMUS AND INJUNCTIVE RELIEF

COMES NOW the Petitioner, State of Kansas, on relation of Kris Kobach, Attorney General of the State of Kansas, and respectfully petitions this Court for a peremptory writ of mandamus under K.S.A. 60-801–03 and for injunctive relief under K.S.A. 60-901–10 ordering Respondents, David Harper and Mark Burghart, and the Department of Revenue's Division of Vehicles which is under their direction, to comply with SB 180 when issuing driver's licenses and other documents with sex designations and in maintaining the driver's license data set. In support thereof, Petitioner alleges and states the following:

INTRODUCTION

The Governor cannot pick and choose which laws she will enforce and which laws she will ignore. Yet that is what she has done with respect to SB 180, which

established our state's Women's Bill of Rights. The Legislature decisively passed, and overrode the Governor's veto of, the Women's Bill of Rights. That law expressly requires that documents such as driver's licenses reflect biological sex, i.e., sex at birth, and not a person's chosen "gender identity." But the Governor announced she will not comply with the Women's Bill of Rights and has instructed her subordinate agencies, including the Department of Revenue's Division of Vehicles, to disregard it.

In the words of John Adams, we have "a government of laws, and not of men." The Legislature makes the law, and the executive branch—including the Governor and her subordinates—must execute it, whether they like the law or not. She does not possess the power that English monarchs claimed prior to the "Glorious Revolution" of 1688, namely, the power to suspend the operation of statutes. Indeed, the Declaration of Independence was in part a reaction to this practice. *See* Declaration of Independence ¶ 4.

Thus, the Attorney General reluctantly brings this action to force the Governor's subordinates (those in the Division of Vehicles) to do what the Women's Bill of Rights clearly tells them they must do: issue driver's licenses that reflect a person's sex at birth and stop letting people select their sex designation at will. Someone must stand up for the law, even if the Governor won't.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to K.S.A. 20-301.

2. Venue is proper in this county under K.S.A. 60-602(2).

THE PARTIES

3. Petitioner, Kris Kobach, is the duly elected, qualified, and acting Attorney General for the State of Kansas.

4. The Attorney General has standing to bring this action in the name of the State of Kansas under the common law of this State.

5. The Department of Revenue is an agency of the State of Kansas, with its primary place of business in Topeka, Kansas.

6. The Division of Vehicles is a division of the Department of Revenue, also with its primary place of business in Topeka, Kansas.

7. Respondent Harper is the Director of Vehicles. His duties include supervising and directing the Division of Vehicle's activities. On information and belief, all employees and agents of the Division of Vehicles are under his authority.

8. Respondent Burghart is the Secretary of the Department of Revenue. He exercises supervisory control over the Division of Vehicles.

9. Under the Motor Vehicle Drivers' License Act, K.S.A. 8-234, *et seq.*, the Division is charged with, among other things, receiving applications for and issuing driver's licenses, instruction permits, and nondriver's identification cards.

10. The Act also charges the Division with maintaining records that include every driver's license application the Division has received and "all data

fields printed on drivers' licenses and identification cards issued by the state." K.S.A. 8-249.

OPERATIVE FACTS

A. The Women's Bill of Rights

11. During the most recent legislative session, the Legislature passed SB 180, sometimes referred to as the "Women's Bill of Rights."

12. Although the Governor vetoed the bill, the Legislature overrode that veto on April 27, 2023, making such bill a duly enacted law of the State of Kansas under Kan. Const. art. 2, § 14(a). A copy of said bill is attached to this pleading.

13. SB 180 went into effect on July 1, 2023.

14. The Women's Bill of Rights defines "[a]n individual's 'sex' [to] mean[] . . . biological sex, either male or female, at birth[.]" 2023 Kan. Sess. Laws 1230, 1230 (§ 1(a)(1)).

15. It moreover requires "any state agency, department or office or political subdivision that collects vital statistics for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic or other data [to] identify each individual who is part of the collected data set as either male or female at birth." *Id.* at 1230–31 (§ 1(c)).

B. The Division's Preexisting Policies Regarding Sex Designations

16. By statute, Kansas driver's licenses "shall bear" the licensee's "gender" among other information. K.S.A. § 8-243(a).

17. In practice, the Division has interpreted "gender" in this statute synonymously with "sex," as evidenced by the fact that the actual license documents issued by the Division identify the holder's "sex" and do not contain the word "gender."

18. Said practice is consistent with other usages of the term "gender" in Kansas statutes, where that word is clearly intended as a synonym for "sex."

19. On information and belief, instruction permits and nondriver's identification cards issued by the Division (as well as the associated records maintained by the Division) also identify the holders of such documents by "sex."

20. The Division maintains a database of information concerning all licensees. That database includes, among other things, the vital statistics of each licensee's name, date of birth, sex, height, weight, and eye color.

21. Prior to the passage of SB 180, the Division had a policy by which a person could change the previously identified sex on his or her driver's license or other document.

22. Under the same or a similar policy, a new applicant could obtain a driver's license or other document with a sex designation that did not match the person's sex at birth.

C. The Division Refuses to Comply with the Women's Bill of Rights

23. The Attorney General has by formal opinion concluded "that section 1(a) of SB 180, in conjunction with K.S.A. 8-243(a), requires KDOR to list a

licensee's 'biological sex, either male or female, at birth' on driver's licenses that it issues." Kan. Att'y Gen. Op. 2023-2, at 4, *available at* https://shorturl.at/amDIO [hereinafter "AGO 2023-2"].

24. The Attorney General has also by formal opinion concluded that section 1(c) of SB 180 requires KDOR to record licensees' sex at birth in the driver's license data set. AGO 2023-2, at 4.

25. Nonetheless, the Division is refusing to comply with SB 180.

26. Shortly before that new law went into effect, the Governor announced that she has instructed the Department of Revenue to "keep in place [its] policies regarding gender markers on . . . driver's licenses." John Hanna, *Transgender Kansas Residents Can Keep Updating Their Documents Despite a New Law, Governor Says*, Associated Press, June 29, 2023, *available at* https://apnews.com/article/kansas-law-transgender-birth-certificates-driver-licenses-d5d3631b6e624f24733d0dbdedc9c35e.

27. The Department of Revenue also added a header to the top of its webpage stating, "The enactment [*sic*] of Senate Bill 180 on July 1 will not impact the longstanding procedures for obtaining, renewing, and updating a Kansas driver's license as they pertain to gender markers." Kan. Dep't of Revenue, https://www.ksrevenue.gov/ (last visited July 6, 2023).

CAUSES OF ACTION

28. Respondents' actions plainly violate section 1(a) of SB 180. The violation of this section alone would be sufficient to warrant relief.

29. Respondents' actions also plainly violate section 1(c) of SB 180. The violation of this section alone would also be sufficient to warrant relief.

PRAYER FOR RELIEF

30. WHEREFORE, for the reasons stated herein, Petitioner seeks the following relief:

a. A Writ of Mandamus or injunctive relief directing the Division of Vehicles to (i) cease issuing driver's licenses or other documents that identify the holder thereof as a sex other than the person's sex at birth and (ii) correct the data set it maintains under K.S.A. 8-249 or any other statute or regulation so that such records identify each individual therein as either male or female at birth; and

b. Such other or further relief as the Court deems just and proper.

Respectfully Submitted, this 7th day of July, 2023.

/s/ Kris W. Kobach
Kris W. Kobach, #17280
Attorney General
Anthony J. Powell, #14981
Solicitor General
Dwight Carswell, #25111
Deputy Solicitor General
Jesse Burris, #26856

Assistant Attorney General
Memorial Building, 2nd Floor
120 SW 10th Ave.
Topeka, KS 66612-1597
Tel: (785) 296-2215
Fax: (785) 291-3767
anthony.powell@ag.ks.gov
dwight.carswell@ag.ks.gov
jesse.burris@ag.ks.gov

CHAPTER 84

SENATE BILL No. 180*

AN ACT establishing the women's bill of rights; providing a meaning of biological sex for purposes of statutory construction.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Notwithstanding any provision of state law to the contrary, with respect to the application of an individual's biological sex pursuant to any state law or rules and regulations, the following shall apply:

(1) An individual's "sex" means such individual's biological sex, either male or female, at birth;

(2) a "female" is an individual whose biological reproductive system is developed to produce ova, and a "male" is an individual whose biological reproductive system is developed to fertilize the ova of a female;

(3) the terms "woman" and "girl" refer to human females, and the terms "man" and "boy" refer to human males;

(4) the term "mother" means a parent of the female sex, and the term "father" means a parent of the male sex;

(5) with respect to biological sex, the term "equal" does not mean "same" or "identical";

(6) with respect to biological sex, separate accommodations are not inherently unequal; and

(7) 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.

(b) Laws and rules and regulations that distinguish between the sexes are subject to intermediate constitutional scrutiny. Intermediate constitutional scrutiny forbids unfair discrimination against similarly situated male and female individuals but allows the law to distinguish between the sexes where such distinctions are substantially related to important governmental objectives. Notwithstanding any provision of state law to the contrary, distinctions between the sexes with respect to athletics, prisons or other detention facilities, domestic violence shelters, rape crisis centers, locker rooms, restrooms and other areas where biology, safety or privacy are implicated that result in separate accommodations are substantially related to the important governmental objectives of protecting the health, safety and privacy of individuals in such circumstances.

(c) Any school district, or public school thereof, and any state agency, department or office or political subdivision that collects vital statistics for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic or other data shall

identify each individual who is part of the collected data set as either male or female at birth.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Governor's veto overridden.

(See Messages from the Governor)

CERTIFICATE

In accordance with K.S.A. 45-304, it is certified that **Senate Bill 180**, was not approved by the Governor on April 20, 2023; was returned by objections and approved on April 26, 2023 by two-thirds of the members elected to the Senate notwithstanding the objections of the governor; was reconsidered by the House of Representatives and was approved on April 27, 2023 by two-thirds of the members elected to the House, notwithstanding the objections, the bill did pass and shall become law.

This certificate is made this 27th day of April, 2023 by the Chief Clerk and Speaker of the House of Representatives and the President and Secretary of the Senate.

Daniel R. Hawkins
Speaker of the House of Representatives

Susan W. Kannarr
Chief Clerk of the House of Representatives

Ty Masterson
President of the Senate

Corey Carnahan
Secretary of the Senate