No. 24-127390-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS, *ex rel.* KRIS KOBACH, Attorney General,
Petitioner-Appellee,

v.

DAVID HARPER, Director of Vehicles, Department of Revenue, in his official capacity, and MARK BURGHART, Secretary of Revenue, in his official capacity,
Respondent-Appellants,

ADAM KELLOGG, et. al,
Respondent/Intervenor-Appellants.

BRIEF OF GLBTQ LEGAL ADVOCATES & DEFENDERS AND LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. AS *AMICI CURIAE* IN SUPPORT OF INTERVENOR-APPELLANTS

Appeal from the District Court of Shawnee County, Kansas
Honorable Theresa L. Watson, Judge
District Court Case No. SN-2023-CV-000422

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici curiae GLBTQ Legal Advocates & Defenders ("GLAD Law") and Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") are LGBTQ legal advocacy organizations dedicated to securing legal equality for transgender people, LGBQ people, and people living with HIV on the bedrock promise that we all come before our government as equals. *Amici* have decades of experience working in the courts, in legislative and agency policy arenas, and in our communities to empower transgender people and to support their ability to equally participate in all areas of life and society with safety and security.

SUMMARY OF ARGUMENT

Amici curiae respectfully submit this brief in support of Intervenor-Appellants to present the following to the Court:

(i) The profound harms inflicted on transgender people, including their mental health, when they are forced to bear identification that does not match their gender identity, as well as the substantial benefits to transgender people of conforming identity documents, all of which is widely recognized by the medical and scientific community;

(ii) The countless contexts that require a Kansas resident to hold and produce a driver's license, and thus the ways that Appellee's request for a preliminary injunction blocking amendments to driver's licenses of transgender people undermines their economic stability and well-being by impeding their ability to engage in a wide range of basic acts of life; and

(iii) That the overwhelming majority of U.S. states and territories enable transgender people to

[1] The application of *amici* to file this brief was granted. *Kansas v. Harper,* No. 24-127390 A (Ord. granting application (Nov. 18, 2024)). No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*'s counsel made a monetary contribution to the preparation or submission of this brief.

amend their driver's licenses, undermining Appellee's assertions that permitting such amendments would cause any harm, let alone irreparable harm as required to carry Appellee's burden for the injunctive relief requested.

All of the foregoing substantiates and underscores that Appellee's request for an injunction prohibiting transgender people from amending the gender marker on their driver's licenses inflicts deep and lasting harm in violation of Section 1 of the Kansas Constitution's Bill of Rights, which guarantees personal autonomy, informational privacy, and equal treatment under the law. The court below erred in determining that Appellee met its substantial burden of proving a likelihood of success on the merits, irreparable harm, or that the balance of harms and the public interest weigh in its favor, and the temporary injunction should have been denied.

ARGUMENT

I. APPELLEE'S REQUESTED INJUNCTION HARMS TRANSGENDER PEOPLE BY DENYING A KEY ASPECT OF THEIR ABILITY TO SOCIALLY TRANSITION, WHICH IS WIDELY SUPPORTED BY SCIENTIFIC AND MEDICAL AUTHORITIES.

Gender identity is a well-established concept in medicine that refers to a person's innate, internal sense of self as a particular gender. *See* Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AM. PYSCH. 834 (2015). Every person has a gender identity. Most people's gender identity is consistent with their birth sex. For transgender people, their gender identity differs from their birth sex.[2]

For those prevented from living consistently with their gender identity, the incongruence can result in gender dysphoria, a serious medical condition characterized by clinically significant

[2] The district court committed clear error by excluding medical expert witness testimony on gender dysphoria, even though it was explicitly required to consider the balance of harms on Appellee's request for injunctive relief. *See* Br. of Intervenor-Appellants at 41-47. The medical consensus regarding the harms of untreated gender dysphoria is described herein for this Court's benefit.

and persistent discomfort or distress caused by a misalignment between a person's experienced gender and their assigned sex at birth.[3] Gender dysphoria is recognized in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) and is diagnosed according to defined criteria.[4] Without proper treatment, people with gender dysphoria experience a range of debilitating symptoms, including anxiety, depression, other psychiatric diagnoses, and suicidality.[5] As the American Psychiatric Association describes, studies have shown that a significant risk factor for these negative health outcomes is exposure to stigma and discrimination.[6] And transgender people face precisely that stigma and discrimination when they are forced to carry identity documents that do not match their gender identities, which "outs" them as transgender and too frequently leads to the denial of services and benefits, as well as increased rates of harassment and assault.[7]

Gender dysphoria, however, is highly treatable. With treatment, transgender people can and do lead thriving, productive lives. The consensus standards of care for medical treatment for gender dysphoria are set forth in the internationally recognized World Professional Association for Transgender Health ("WPATH") Standards of Care. This care is widely recognized and supported by the medical community at large, including by (among others) the Endocrine Society,

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[3] WORLD PRO. ASS'N TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSGENDER AND GENDER DIVERSE PEOPLE (8th ed., 2022) ("WPATH Standards of Care").
[4] Am. Psych. Ass'n, *What is Gender Dysphoria,* https://perma.cc/P7L8-6FZL (last visited Dec. 4, 2024) (collecting materials).
[5] *See generally,* Nicolle K. Strand & Nora L. Jones, *Invisibility of "Gender Dysphoria*," 23 AMA J. OF ETHICS 557 (2021), https://perma.cc/ZS9U-ERU6 (last visited Dec. 4, 2024).
[6] Jonathan G. Tubman et al., *Lifetime Adversity and Risky Substance Use among Transgender Emerging Adults: Selected Interventions and Clinical Social Work Practice*, CLINICAL SOCIAL WORK J. (2024), https://perma.cc/ZC3J-38TF.
[7] Jody L. Herman & Kathryn O'Neill, GENDER MARKER CHANGES ON STATE ID DOCUMENTS; STATE-LEVEL POLICY IMPACTS (UCLA SCHOOL OF LAW WILLIAMS INSTITUTE eds., 2021), https://perma.cc/NG6H-KRNP (last visited Dec. 4, 2024).

the American Medical Association, the American Psychological Association, the American Psychiatric Association, the World Health Organization, the American Academy of Family Physicians, the American Public Health Association, and the American College of Obstetrics and Gynecology.[8] In accordance with the WPATH Standards of Care, many transgender people with gender dysphoria undergo an individualized gender transition to address the symptoms of gender dysphoria and to live life consistently with their gender identity. This is the current, medically accepted, and evidenced-based treatment for gender dysphoria. This treatment includes steps to enable a person to live, function in society, and be seen by others as the gender matching their gender identity.

A key component of this process is called "legal transition," which ensures that a person's identity documents, especially their driver's license as the most ubiquitous form of ID, reflect their accurate name and gender marker. *See* WPATH Standards of Care, *supra*, at 11; *see also* Ayden I. Scheim et al., *Gender-Concordant Identity Documents and Mental Health Among Transgender Adults in the USA: A Cross-Sectional Study*, 5 LANCET PUB. HEALTH 196, 197 (2020) ("Changing one's name and gender marker on IDs such as birth certificates, passports, and driver's licenses can be a crucial step"). Having legal identification consistent with gender identity provides enormous positive benefits to transgender people that have been extensively recognized and documented by medical experts.[9]

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[8] *See, e.g.*, Am. Med. Ass'n House of Delegates Resolution 223 (A-23), *Protecting Access to Gender Affirming Care* (2023); Am. Med. Ass'n, *GLMA 127-18-101: Transgender Healthcare* (2018); Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869 (2017); Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, *supra*.

[9] *See, e.g.*, Am. Med. Ass'n House of Delegates Resolution 223 (A-23), *Protecting Access to Gender Affirming Care* (2023), *supra*; Jack Drescher & Ellen Haller, *Am. Psych. Ass'n Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2018).

The American Medical Association, the nation's largest association of physicians, has for years maintained that transgender people should be able to amend driver's licenses to have them conform to their gender identities. *See* Am. Med. Ass'n, *Conforming Sex and Gender Designation on Government IDs and Other Documents H-65.967* (2021), https://perma.cc/3M36-C2VD (last visited Dec. 4, 2024). Transgender people who can update their gender marker and name on IDs report lower rates of "depression, anxiety, somatization, psychiatric distress, and emotionally upsetting response due to gender-based mistreatment." Arjee Restar et al., *Legal Gender Marker and Name Change is Associated with Lower Negative Emotional Response to Gender-Based Mistreatment and Improve Mental Health Outcomes Among Trans Populations*, 11 SSM-POPULATION HEALTH 6-7 (2020). Studies have found that aligning identification with a person's gender identity was associated with a 32% reduction in psychological distress and a 22-25% reduction in suicidal ideation. *See, e.g.*, Scheim, *supra* at 197; Greta R. Bauer et al., *Intervenable Factors Associated with Suicide Risk in Transgender Persons: A Respondent Driven Sampling Study in Ontario, Canada*, 15 BMC PUB. HEALTH 6 (2015) ("[H]aving one or more identity documents concordant with lived gender . . . [had] the potential to prevent 90 cases of ideation per 1,000 trans persons . . . and 230 [suicide] attempts per 1,000 with ideation."). Identification reflecting a person's gender identity thus yields critical and sometimes life-saving improvements in health and well-being and promotes the ability of transgender people to be stable, productive, and participating members of society.[10]

[10] *See generally*, Richard A. Crosby, Laura F. Salazar, & Brandon J. Hill, *Gender Affirmation and Resiliency Among Black Transgender Women With and Without HIV Infection*, 1 TRANSGENDER HEALTH 87 (2016) ("concordant identification documents are a critical step in gaining social inclusion and legal legitimacy, which may have downstream effects on transgender health—particularly among those for whom access to medical transition might be limited due to resources (e.g., low-income transwomen)"); Tiffany R. Glynn et al., *The Role of Gender Affirmation in Psychological Well-Being Among Transgender Women*, 3 PSYCH. SEXUAL ORIENTATION &

Appellee's requested injunction prohibiting transgender people from updating their driver's licenses is directly contrary to these widely endorsed principles about how to best care for, and treat, these members of the community, causing significant harm that is contrary to the public interest. The medical consensus on the psychological damage of the proposed prohibition must be considered in assessing the balance of harms and the public interest to determine whether Appellee's requested injunctive relief is appropriate. The district court's failure to consider that Appellee's requested injunction contravenes this medical consensus was clear error and should be reversed.

II. APPELLEE'S REQUESTED INJUNCTION INTERFERES WITH TRANSGENDER KANSANS' DAILY LIVES IN MYRIAD WAYS.

Nearly every adult in Kansas relies on a driver's license to function in society, and 88% of the state's driving-age population holds one.[11] Most obviously, Kansas law requires a valid license to drive, so Kansans from every corner of the state and walk of life rely on a driver's license for their predominant, and often only, means of transportation. Driving a car is necessary for most

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GENDER DIVERSITY 3 (2016) ("Access to gender affirmative types of support (i.e., medical, legal, and social gender affirmation) has been shown to offset the negative psychological effects of social oppression"); Jaclyn M. White Hughto et al., *Social and Medical Gender Affirmation Experience Are Inversely Associated with Mental Health Problems in a U.S. Non-Probability Sample of Transgender Adults*, 49 ARCHIVES SEXUAL BEHAV. 2635-47 (2020) (participants reported significantly lower suicidal thoughts and behaviors following gender affirmation process); Jaclyn M. White Hughto, Sari L. Reisner & John E. Pachankis, *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 SOC. SCI. & MED. 222-31 (2015) (finding that policies reducing stigma present the potential to improve the health of transgender people).

[11] U.S. Dep't of Trans., *Licensed Drivers by Sex and Ratio to Population – 2022*, https://perma.cc/VA6H-N5ME (last visited Nov. 27, 2024).

Kansans to earn a living,[12] get groceries, go to the doctor,[13] or visit with family and friends.[14] For those who need or want to drive, there is no way to opt out of having a driver's license, carrying it in public at all times, and needing to produce it regularly. And when that license does not match a person's gender identity, the result is the constant incongruity that can exacerbate gender dysphoria, fear of "outing," and other serious harms described above. *See supra* Section I at 2-4.

Beyond driving itself, driver's licenses are also the most ubiquitous form of identification for everyday transactions in both the private and public sectors.[15] They are used to obtain a bank account,[16] submit a concealed carry firearm application,[17] receive notarization services,[18] pick up

[12] *See, e.g.*, Topeka, KS Profile data – Census Reporter, https://perma.cc/9DCK-NHY5 (last visited Dec. 4, 2024) (Most recent U.S. Census survey data showed 88% of residents drove to work in the Topeka, Kansas metro area); Wichita, KS - Profile data - Census Reporter, https://perma.cc/EMD2-ED25 (last visited Dec. 4, 2024) (Most recent U.S. Census survey data showed that 90% of residents drove to work in the Wichita, Kansas metro area).

[13] "Kansans in rural communities often must travel great distances to meet healthcare, social and occupational needs. Transportation challenges in these communities may contribute to increases in health disparities and health inequities." Kansas Dep't of Health & Envir. et al., *Rural Community Perspectives on Transportation and Health*, https://perma.cc/4FUN-GUPG (last visited Dec. 9, 2024).

[14] *Id*.

[15] *See, e.g.*, Matt Sundeen, *License to Drive = Proof Of Identity*, STATE LEGISLATURES 21, 21 (2003).

[16] *See, e.g.*, KS State Bank, *Open an Account*, https://perma.cc/XR3Q-KDK9 (last visited Nov. 27, 2024); First Kan. Bank, *Frequently Asked Questions*, https://perma.cc/V92Z-VN62 (last visited Nov. 27, 2024).

[17] Office of Att'y Gen. Kris W. Kobach, *Kansas Application for Concealed Carry Handgun License and Qualifying Information*, https://www.ag.ks.gov/divisions/civil/licensing-inspections/concealed-carry-licensing/concealed-carry-faqs (last visited Dec. 9, 2024).

[18] K.S.A. 53-5a07; *see also* Kansas Secretary of State, *Kansas Notary Handbook*, https://perma.cc/V2RS-PY4L (last visited Dec. 4, 2024).

certain prescriptions,[19] enroll a child in public school,[20] fly,[21] see an age-restricted movie,[22] buy cigarettes,[23] purchase alcohol, or enter a bar.[24] In all these moments, too, a driver's license that does not match one's gender identity results in painful incongruity as well as forced disclosure of transgender status that places a person at increased risk of questioning, suspicion, and even violence.[25] This, in turn, creates or increases barriers to civic engagement, as well as to a litany of services, including in health care, employment and economic security, travel, housing, and other daily activities. As is clear in category after category, the harms to transgender people impacted by this injunction are innumerous and deep, which should have counseled the district court that the Appellee did not, and could not, sustain its burden of demonstrating that the balance of harms and the public interest favored disturbing the status quo while this case is litigated on the merits.[26]

Civic Engagement. Kansans must provide a form of government-issued identification to

[19] K.S.A. 65-1643.

[20] *See, e.g.*, Kansas City Public Schools, *Required Documents*, https://perma.cc/2LT4-FHEY (last visited Nov. 27, 2024).

[21] *See, e.g.*, Wichita Eisenhower Airport, *Ready Set Fly*, https://perma.cc/4N78-JZJJ (last visited Nov. 27, 2024).

[22] *See, e.g.*, AMC Cinemas, *ID Requirements*, https://perma.cc/F4JU-EHN2 (last visited Dec. 4, 2024).

[23] We Card, *State Summary – Kansas*, https://perma.cc/5D96-EYJN (last visited Nov. 27, 2024).

[24] Kansas Dep't of Revenue, Alcohol Beverage Control, *Liquor Licensee Information*, https://perma.cc/E4FY-R5LV (last visited Nov. 27, 2024).

[25] "Twenty-two percent (22%) of all respondents reported being verbally harassed, assaulted, asked to leave a location, or denied services when they have shown someone an ID with a name or gender that did not match their presentation." Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, NAT'L CTR. TRANSGENDER EQUALITY 22 (2024).

[26] Appellee's suggestion that these harms are somehow not the result of state action (Br. of Pet'r-Appellee at 33) is not well-founded, given that it is Appellee's requested injunction on the amendment of driver's licenses that, by definition and intent, "outs" people as transgender in the first place.

vote,[27] enter a federal courthouse,[28] and for jury duty—which, for most, will be a driver's license.[29] As Intervenor-Appellant Kathryn Janelle Redman testified, when she goes to vote, "I've got an ID card that has a discrepancy between how I present to the people that are looking at that ID card and what that ID card says. So that basically—one, it outs me to a stranger where I would normally want—not want to be outed." (Jan. 10, 2024, Hr'g Tr. at 277:2-25).

Health Care. It is well-documented that transgender people encounter significant discrimination in health care settings, and that the experience and fear of denial and discrimination dissuades transgender people from seeking basic healthcare. *See*, *e.g.*, Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, NAT'L CTR. TRANSGENDER EQUALITY 16 (2024) ("NCTE Survey"); Shanna K. Kattari et al., *Correlations Between Healthcare Provider Interactions and Mental Health Among Transgender and Nonbinary Adults*, 10 SSM–POPULATION HEALTH 4, 5 (2020) (finding that for study participants it was "likely that the process of having to . . . educate providers increased their experiences of depression and/or anxiety"). Medical providers generally require proof of identity like a driver's license to see a doctor,[30] and identity documents are likewise required by the Kansas Medical Assistance Program and KanCare (the state's Medicaid program).[31] The need to identify oneself as transgender just to get into a doctor's office (because it will be apparent as soon as identification is handed over) is a barrier to the health and well-being of the transgender community.

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[27] K.S.A. 25-2908.
[28] U.S. Dist. Court, Dist. Kan., *Courthouse Information*, https://perma.cc/D3K4-7Z8U (last visited Dec. 4, 2024).
[29] U.S. Dist. Ct. Dist. Kan., *Jury FAQs*, https://perma.cc/9ADH-AT6F (last visited Nov. 27, 2024).
[30] *See, e.g.*, Hunter Health, *New Patient Information*, https://perma.cc/TR37-G5HC (last visited Dec. 8, 2024).
[31] Kan. Dep't of Health and Envir., *Kansas Medical Assistance Fact Sheet: Citizenship and Identity Requirements*, https://www.kancare.ks.gov/home/showpublisheddocument/814/638475181355770000 (last visited Dec. 9, 2024).

Employment and Economic Security. Accurate identification—often multiple forms—is vital to accessing employment and promoting economic stability for transgender people and their families. Transgender people have higher unemployment and poverty rates than the U.S. population as a whole, and they face extensive discrimination in the workplace. *See* NCTE Survey, *supra*, at 141-42, 145; *see also* Ilan H. Meyer et al., *Demographic Characteristics and Health Status of Transgender Adults in Select US Regions: Behavioral Risk Factor Surveillance System, 2014*, 107 AM. J. PUB. HEALTH 582 (2017). One study showed that transgender women with conforming identification were more likely to be employed and to hold stable housing, and they reported higher monthly incomes. Brandon J. Hill et al., *Exploring Transgender Legal Name Change as a Potential Structural Intervention for Mitigating Social Determinants of Health Among Transgender Women of Color*, 15 SEXUALITY RSCH. & SOC. POL'Y 9, 9-8 (2019).

The painful experience of Intervenor-Appellant Adam Kellogg demonstrates the harm transgender people with non-matching identification face when they look for work. Before Mr. Kellogg was able to update his driver's license, he was questioned when applying for employment about the mismatch between his driver's license and his name and gender presentation.[32] This led to his involuntary "outing"—and invasive and inappropriate questioning unrelated to his qualifications—just for trying to secure a job.[33] He described the anxiety of having discordant identity documents as a"white hot anxiety" that increased his gender dysphoria.[34] When he was able to update his driver's license, by contrast, it "revolutionized the way [he] walked through the world."[35]

[32] Jan. 10, 2024, Hr'g Tr. at 236:12-237:15.
[33] *Id.*
[34] *Id.* at 232:15-21.
[35] *Id.* at 232:2-10.

While Mr. Kellogg got the job he applied for after disclosing he is transgender, this has not been the experience for many transgender people that *amici* work with, such as J., a transgender woman living in Kansas.[36] Because of Kansas's policy, J. is now unable to update her driver's license and has an ID that says "male." Recently, she called a prospective employer to follow up on an application and was informed that they would not be moving forward with her candidacy because the name and gender information on the application did not match her driver's license. This made her feel "demeaned" and consider leaving the state. Harms like these are real, contrary to the trial court's dismissive comments that there is no "actual threat" of a loss of employment from Appellee's requested injunctive relief. (*See* Opinion at 29).

Travel. Air travel is an extreme source of stress for transgender people who do not have updated driver's licenses. This was the experience of Intervenor-Appellants Kathryn Janelle Redman and Juliana Ophelia Gonzales-Wahl, who were frequently outed as transgender before their driver's licenses were updated. Both explained being singled out for public genital pat downs when flying domestically.[37] These pat downs were "demeaning" and "humiliating" and left them feeling "less than human."[38] The district court improperly characterized these genital pat downs as a "universal feature of modern travel," ignoring testimony that this humiliation ceased when they were able to update their driver's licenses.[39]

Housing. Housing is yet another arena that routinely requires multiple forms of identification, and one in which discrimination (and indeed homelessness) is an acute problem for the transgender community. In one study, 61% of transgender people had experienced

[36] Interview with J. (Dec. 5, 2024) (Notes on file with counsel for *amici curiae*).
[37] Jan. 10, 2024, Hr'g Tr. at 269:14-271:15; Jan. 11, 2024, Hr'g Tr. at 352:13-23.
[38] Jan. 10, 2024, Hr'g Tr. at 271:7-10; 275:19:23.
[39] *Id.* at 272:1-10 (explaining she has not had any genital pat downs since she had her driver's license updated).

discriminatory treatment when searching for housing. Jamie Langowski et al., *Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market*, 29 YALE J.L. & FEMINISM 322 (2018). Another study found that 23% of respondents had experienced a form of housing discrimination in just the past year. NCTE Survey, *supra*, at 176.[40] These national statistics are mirrored in the data collected in Kansas specifically—where 22% of respondents had faced some form of housing discrimination, such as eviction or denial of housing based on transgender status, and a third of all respondents reported homelessness at some point in their lives.[41] The forced disclosure of transgender status necessitated by Appellee's requested ban creates and exacerbates this discrimination and the very real harm suffered by transgender people seeking housing in Kansas.

Daily Life and Services. Daily life requires many interactions verifying identity. Denying transgender people amended identification to use in these daily interactions is not merely an inconvenience: it subjects them to discrimination, harassment, and, worse, allegations of criminal activity such as fraud. "As a result of showing an ID with a name or gender that did not match their gender presentation, 25% of people were verbally harassed, 16% were denied services or benefits, 9% were asked to leave a location or establishment, and 2% were assaulted or attacked." *See* NCTE Survey, *supra*, at 82. These disruptions cause considerable stress and undermine well-being for transgender community members. This is consistent with the testimony of Intervenor-

[40] *See, e.g.*, *Section 8 Housing Choice Vouchers Program*, Kansas City, Kansas Housing Authority, https://perma.cc/K35C-VJJX (last visited Nov. 27, 2024); Sandy E. James et al*., The Report of the 2015 U.S. Transgender Survey*, NAT'L CTR. TRANSGENDER EQUALITY 175-76 (2015); *HUD 2019 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations*, U.S. Dep't. of Housing & Urban Dev., https://perma.cc/Q9QJ-LLKM (last visited Nov. 27, 2024).

[41] *Kansas State Report*, 2015 U.S. Transgender Survey (October 2017), https://perma.cc/ABC5-N9PT (last visited Dec. 4, 2024).

Appellant Juliana Ophelia Gonzales-Wahl, who testified that after presenting a driver's license with a male gender marker at a gas station, "the clerk kind of leaned over and told me that I needed to get out of there, that I need to leave. And when somebody tells you that you need to leave in a situation like that, you don't . . . stick around." (Jan. 11, 2024, Hr'g Tr. at 351:3-8).

The daily, profound harms to Kansas's transgender community by a ban on the amendment of their driver's licenses should have been meaningfully considered by the district court, and they show that the balance of harms and the public interest strongly favor reversal of the injunctive relief issued here.

III. THE VAST MAJORITY OF U.S. STATES AND TERRITORIES PERMIT TRANSGENDER PEOPLE TO AMEND THEIR GENDER ON DRIVER'S LICENSES, AND APPELLEE FAILS TO SHOW ANY HARM SUFFERED FROM THE PRACTICE.

There are only five states in the U.S. (including Kansas) that categorically ban transgender people from amending their gender on driver's licenses. The overwhelming majority of U.S. states—as well as the District of Columbia and U.S. territories such as Puerto Rico, Guam, and the Northern Mariana Islands—permit such amendments.[42]

[42] *See* 2 AAC 90.480; Advocates for Trans Equality, *Alabama Identity Documents*, https://perma.cc/78L7-UPXU (last visited Dec. 2, 2024); Ariz. Motor Vehicle Div. Policy 3.1.1, page 5, item Q; Ark. Code Ann. § 20-18-307(d); Cal. S.B. 179 (2018); Colo. DMV Form DR 2083; Conn. DMV Form B-385 (Jan. 2020); Del. DMV Form MV2020; D.C. DMV Gender Self-Designation Form; Ga. Dept. of Driver Services, *Update/Change License Information – Physical Changes*, https://perma.cc/59B4-YJAC (last visited Nov. 26, 2024); Haw. H.B. 1165 (2019); Idaho DMV Form ITD 3533; Ill. H.B. 3534 (2019); Ind. DMV Form 55617; Iowa Administrative Code § 601.5(7); Ky. Driver Licensing Regional Offices, *Valid Proof Documents – Name or Gender Change?*, https://perma.cc/56G7-JDY9 (last visited Nov. 26, 2024); La. DMV Policy 22.01, *Gender Change / Reassignment* (Rev. 2009); Me. DMV Gender Designation Form MVL-20; Md. S.B. 196 (2019); Umass Amherst, *Changing legal name, driver's license, and birth certificate in Massachusetts*, https://perma.cc/W3LH-VA34 (last visited Nov. 26, 2024); Mich. Sec. of State Sex Designation Form; Minn. Stat. Ann. § 171.06; ACLU Mississippi, *Identity Document Resources*, https://perma.cc/7J9M-6VET (last visited Dec. 2, 2024); Mo. Dep't of Revenue, *Documents for Driver License, Nondriver ID, and Instruction Permit*, https://perma.cc/EW2A-KM87 (last visited Nov. 26, 2024); Neb. DMV, *Certification of Sex*

That these amendments are permitted nearly everywhere else in the country significantly weighs against the scant, purported crime-related "harms" asserted by Appellee in the court below. In all these other states, law enforcement and DMVs are able to function and work to maintain public safety. They did in Kansas too, for the many years that Kansas permitted transgender people to amend their driver's licenses prior to the district court's injunction. Appellee did not even attempt to show that Kansas faces some unique risk of harm that other jurisdictions do not. And from all the years that these amendments were permitted here in Kansas, Appellee could muster only a single purported example of an issue—and that lone anecdote falls apart immediately because it was unclear whether it even involved a driver's license. *See* Br. of Intervenor-Appellants at 35-38. This context only further demonstrates that Appellee did not present anything approaching the reasonable probability of irreparable harm required for injunctive relief. *See id*.

Furthermore, the insufficiency of Appellee's showing of harm is also made clear by considering that Kansas law does permit "updating" amendments of physical identifying information in driver's licenses in several ways. Kansas Dep't of Revenue, *Driver's License*

Reassignment, https://perma.cc/555J-PAR4 (last visited Nov. 26, 2024); Nev. Admin. Code. Ch. 483.070; N.H. H.B. 669 (2019, effective Jan. 1, 2020); N.J. Motor Vehicle Comm., *Decl. of Gender Designation Change Form*; N.M. Motor Vehicle Div. Form 10237; 2021 N.Y. S.B. 4402; N.C. DMV Form DL-300 (Jan. 2019); N.D. DOT Form SFN 61146; Ohio BMV Form 2369 (Sept. 2019); Or. DMV, *Changing your Gender Marker on Your Driver License*, https://perma.cc/64DX-DMQW (last visited Nov. 26, 2024); PennDOT Form DL-32; R.I. Div. of Motor Vehicles, "Gender Designation on a License or Identification Card" Form, https://perma.cc/23DY-ADHM (last visited Nov. 26, 2024); Advocates for Trans Equality, *South Carolina Identity Documents*, https://perma.cc/777V-596W (last visited Dec. 2, 2024); Advocates for Trans Equality, *South Dakota Identity Documents*, https://perma.cc/R7JD-C2JF (last visited Dec. 2, 2024); Utah Code Ann. § 26B-8-111 (last visited Nov. 26, 2024); V.T. DMV, *How do I change the gender on my license/ID?*, https://perma.cc/CG5W-7RJX (last visited Nov. 26, 2024); V.A. S.B. 246 (2020); Wash. DMV Form DLE-520-043; W.V. Form DMV-99-RO; Wis. DOT, *Replace your identification (ID) card*, https://perma.cc/EE82-KVXF (last visited Nov. 26, 2024); W.Y. DOT Gender Designation Change Request Form, https://perma.cc/UUR6-S98W (last visited Dec. 9, 2024). *See also* Movement Amendment Project, *Identity Document Laws and Policies: Gender Markers on Driver's Licenses*, https://perma.cc/EQV4-CYUT (last visited Nov. 26, 2024).

Frequently Asked Questions – Making Changes, https://perma.cc/HYA9-7D9Y (last visited Nov. 27, 2024). A person who has changed their name from the name they were given at birth can update that part of their driver's license and may "change [their] photo at any time." *Id*. There are also fields for weight, height, eye color, and address on a Kansas driver's license that may be amended over time. Kansas Dep't of Revenue, *Kansas RealID*, https://perma.cc/ZR3Y-GMW5 (last visited Nov. 27, 2024). The law permits such amendments because having up-to-date information on a driver's license, rather than being harmful, is what is useful for present-day identification—not one's height, weight, address, or name at birth.

Both points undermine Appellee's already limited claims of harm it will experience absent its requested injunction. Appellee did not meet its burden of showing a reasonable probability of irreparable harm, and certainly not harm that could justify or outweigh the significant harms inflicted on transgender community members in Kansas by the requested injunctive relief.

CONCLUSION

Medical and scientific consensus, lived experience, and the policies of nearly every jurisdiction across the United States all show that the ability to amend driver's licenses to reflect their gender identities is essential for transgender people to live safe, stable, and productive lives. The district court's injunction should be reversed, and the Department of Revenue should be permitted to resume its prior practice of permitting amendment of driver's licenses while this case is litigated on the merits.

Date: December 9, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Olawale O. Akinmoladun, certify that on this 9th day of December 2024, I caused to be electronically filed the foregoing document with the Clerk of the Court using the Court's electronic filing system. I further certify that a copy of this document was served this day on all counsel of record by electronic mail:

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