

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

JANE DOE; CHRISSY MILLER; )

Plaintiff-Petitioners, )

v. )

TENNESSEE DEPARTMENT OF )

SAFETY AND HOMELAND )

SECURITY; JEFF LONG, in his official )

capacity as the Commissioner of )

Tennessee's Department of Safety and )

Homeland Security; and MICHAEL )

HOGAN, in his official capacity as the )

Assistant Commissioner of the Driver )

Services Division for Tennessee's )

Department of Safety and Homeland )

Security, )

Defendants. )

Case No. 24-0503-III

Chancellor Myles

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DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISSOLVE  
THE TEMPORARY INJUNCTION AND IN RESPONSE TO PETITIONERS' MOTION  
TO STAY THE AGENCY DECISION

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INTRODUCTION

This Court should dissolve the temporary injunction it improvidently entered in favor of Petitioner Miller and deny Petitioner Miller's and Petitioner Doe's request to stay enforcement of the Department of Safety's declaratory order. Tennessee law defines a person's "sex" based on "anatomy and genetics existing at the time of birth." Tenn. Code Ann. § 1-3-105(c). Petitioners dislike this law—but do not challenge it here. In fact, to avoid a 3-judge panel, Petitioners purposefully abandoned their constitutional challenges to this statute. Yet they ask this Court to adopt a fluid, subjective concept of "sex" they call "lived sex" that directly conflicts with the

statute’s at-the-time-of-birth mandate. Based on *their* definition of “sex,” they seek an order requiring the Department to grant—or in Miller’s case, maintain—driver licenses with gender markers that do not match their anatomy when they were born.

As a threshold matter, this Court lacked jurisdiction to grant Miller injunctive relief in the first instance. That injunction should be dissolved. And as for any further injunctive relief in the form of a stay, Petitioners fail to meet the four *Fisher* factors necessary for such extraordinary relief.

Petitioners have never shown any likelihood of success on the merits. Their legal theory imposes obligations on the Department that do not exist in State law and then faults the Department for not adhering to those fabricated requirements. Petitioners also fail on the other factors. For one, they have not shown imminent, irreparable harm. This Court correctly found no such harm for Jane Doe and should stick to this finding. It should likewise reverse its prior finding as to Miller, who has shown no concrete injury. (Temporary Injunction Order issued June 24, 2024, ¶¶ 2-3.) Indeed, both Miller and Doe can avoid much of their alleged speculative harm by relying on passports or other documents they *already* have that reflect their asserted sex. For similar reasons, Petitioners cannot show that the balance of equities and the public interest cut in their favor. Because Petitioners satisfy none of the required elements for injunctive relief, the Court should dissolve the temporary injunction and deny the requested stay.

### **FACTUAL BACKGROUND**

Tennessee law requires driver license applications to include the applicant’s “sex” and be supported by a birth certificate or other proof of identity.<sup>1</sup> Tenn. Code Ann. §§ 55-50-321(a), -

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<sup>1</sup> The facts of this case have been extensively detailed in Defendants’ prior motion to dismiss (Mem. Of Law in Support of Def’s. Supp. Mot. to Dismiss Second Am. Compl., filed Aug. 22, 2024) and response in opposition to the preliminary injunction. (Def’s. Resp. in Opp. To Plf’s. Mot. for Temporary Inj., filed May 22, 2024.) The relevant

(c)(1)(A). The submitted birth certificate or other proof must “accurately reflects a person’s sex listed on the person’s original birth certificate.” Tenn. Code Ann. § 1-3-105(c). Issued licenses must then identify the license-holder’s “sex.” Tenn. Comp. R. & Regs. 1340-01-13-.18(2)(c).

To ensure that its policies were consistent with Tennessee’s new statutory definition of “sex,” the Department updated its policy on proof of identity (Policy No. DLP-302) to prohibit gender marker changes inconsistent with an individual’s original birth certificate, stating that “*amended* birth certificates cannot be used” for determining sex designation on driver licenses. *Id.* (emphasis added). This policy merely explained how the General Assembly’s new definition of “sex” in Tenn. Code Ann. § 1-3-105(c) would apply in the context of driver’s licenses.

Jane Doe and Chrissy Miller, Tennessee residents born male but who now identify as women, sought driver licenses with “female” sex designators from the Department in 2024 – after the current statutory definition of “sex” had been enacted. (Plf.’s Renewed Pet. for Judicial Rev. and Dec. Judgment. (“Renewed Pet.”), ¶¶ 83-85; Doe Decl., ¶ 14.) Doe’s Tennessee driver license reflects a “male” sex designation, consistent with Doe’s original birth certificate. (Renewed Pet., ¶¶ 57, 67.) Doe’s request to change the designation to “female” was denied. (*Id.* ¶ 66-68.) Miller also tried to obtain a driver license bearing a “female” sex identifier. Miller’s first attempt failed when state agents denied the request. (Miller Decl. at ¶ 31.) But the next day, Miller went to a different location and obtained a license with a female sex identifier by using an amended birth certificate from another state and misrepresenting it as the original. (Amended Complaint, Ex. C.1.) Upon discovering the error, the Department directed Miller to surrender the noncompliant license and receive a new one “free of charge.” (Renewed Pet., ¶ 88.) The Department advised

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facts and procedural history will be summarized here and those more detailed factual backgrounds are adopted by reference.

Miller that failure to comply within 30 days would result in a cancellation of the noncompliant license. (*Id.*)

### **PROCEDURAL HISTORY**

Petitioner Doe initiated this action in Chancery Court in April 2024, challenging the validity of the Department’s driver license policy (DLP-302) under the Uniform Administrative Procedures Act (“UAPA”) without first exhausting administrative remedies. (Plf’s. Verified Compl., filed Apr. 24, 2024.) Although Doe’s initial complaint included constitutional challenges, Doe amended that complaint to add Miller as a plaintiff and to abandon any constitutional challenges to avoid a 3-judge panel and “maintain . . . venue” in this Court. (Plfs.’ Amend. Compl., filed Apr. 29, 2024, n.1.) Petitioners sought a temporary injunction to bar enforcement of DLP-302. (Plfs.’ Mot. for Temp. Inj. filed May 13, 2024, 2.) The Court granted a temporary injunction for Miller, preventing the Department from suspending Miller’s driver license despite not finding Miller likely to succeed on the merits. (Order Granting in Part and Denying in Part Plfs.’ Mot. for Temp. Inj. (“Temp. Inj. Order”), entered June 24, 2024, ¶ 6 (excised)). But the Court denied relief for Doe based on a lack of irreparable harm. (*Id.* ¶¶ 3, 7, p. 2.)

A few months later, in September 2024, the Court stayed this case so Petitioners could exhaust their administrative remedies (an acknowledgment the Court lacked jurisdiction) while keeping Miller’s temporary injunction in place (an assertion of jurisdiction). (Chancellor’s Order Staying Case, ¶¶ 1, 5.) Petitioners initiated the administrative process by requesting a declaratory order that would void the Department’s policy of denying sex marker changes based on amended birth certificates. After a contested hearing, the Commissioner’s Designee rejected Petitioner’s requested relief and instead issued a declaratory order affirming DLP-302. (Renewed Pet., ¶¶ 25, 31; Exhibit A “Declaratory Order.”) The Commissioner’s Designee also denied Petitioners’

subsequent request to stay the declaratory order. (Renewed Pet., ¶ 32; Notice of Filing of Supp. Exhibit.)

Petitioners now return with a Renewed Petition for Judicial Review and Declaratory Judgment and a Motion for Stay of Agency Decision and Memorandum in Support.

### LEGAL STANDARD

Stays, like preliminary injunctions, are not automatic. Tenn. Code Ann. § 4-5-322(c). When considering a request for a stay of an agency order, courts must apply factors that directly align with the four preliminary injunction factors established in *Fisher v. Hargett*, 604 S.W.3d 381, 395 (Tenn. 2020).<sup>2</sup> *Id.* The *Fisher* factors are: “(1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on [the] defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.” *Id.* (quotation omitted); see also Tenn. R. Civ. P. 65.04(2).

A preliminary injunction is considered an “extraordinary” remedy that “should be granted only in exceptional circumstances.” *Fisher*, 604 S.W.3d at 395. For more than 150 years, Tennessee courts have recognized that “‘there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or is more dangerous in a doubtful case’ than the discretion of granting an injunction.” *Moore v. Lee*, 644 S.W.3d 59, 63-64 (Tenn. 2022) (quoting *Mabry v. Ross*, 48 Tenn. 769, 774 (1870)). This Court *must* deny a request for injunctive relief if the movant fails to make a “clear[] show[ing]” that their “rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action.” Tenn. R. Civ. P. 65.04(2).

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<sup>2</sup> Because both requests turn on consideration of the same factors, this memorandum addresses them together in the interest of judicial economy.

The movant bears the burden of establishing an entitlement to injunctive relief under the four factors. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 441 (1974); Tenn. R. Civ. P 65.04. Each factor must be considered and given its due weight by the reviewing court. *Moore*, 644 S.W.3d at 64. But if the court determines that the petitioner is unlikely to succeed on the merits, it need not address the other factors. *Newsom v. Tenn. Republican Party*, 647 S.W.3d 382, 386 (Tenn. 2022).

Petitioners' burden does not end there. Because they are also seeking a stay under the UAPA, they must *also* show that a sufficient bond can be imposed “to indemnify the other persons who might be so injured” by imposition of the stay. Tenn. Code Ann. § 4-5-322(c). This additional factor requires a court to deny a stay—even if the other factors are met—if the court cannot quantify a bond amount “sufficient to indemnify” those individuals harmed by the stay. *Id.*

## **ARGUMENT**

Petitioners' motion to stay the Department's declaratory order lacks specificity and fails to justify the requested relief. The temporary injunction prohibiting the cancellation of Petitioner Miller's driver license was issued without jurisdiction and must be dissolved. Petitioners also fail to meet each of the four *Fisher* factors for a preliminary injunction or a stay. This Court should deny the motion to stay and dissolve the injunction.

### **I. The Previously Entered Temporary Injunction is Legally and Jurisdictionally Defective and Must be Dissolved.**

The Court lacked jurisdiction to issue the temporary injunction in favor of Miller, rendering it void and subject to dissolution. Under the UAPA, Miller's failure to exhaust administrative remedies deprived this Court of jurisdiction. *Colonial Pipeline v. Morgan*, 263 S.W.3d 827, 842 (Tenn. 2008) (noting that exhaustion of administrative remedies is an “absolute prerequisite for relief” where a statute “requires exhaustion.” (citation omitted)); Tenn. Code. Ann. § 4-5-225(b)

(“A declaratory judgment shall not be rendered . . . unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue [it].”). A void order is a nullity and may be dissolved at any time. *Gillespie v. State*, 619 S.W.2d 128, 129 (Tenn. Ct. App. 1981). And a void order “cannot be cured by subsequent proceedings,” such as efforts to exhaust remedies. *Wing v. Estate of Wing*, No. M2001-01598-COA-R3CV, 2003 WL 1872647, at \*3 (Tenn. Ct. App. Apr. 14, 2003) (citing 46 Am.Jur.2d *Judgments* § 32). That’s why this Court’s temporary injunction order was void when it was entered—and remains so to this day.

Moreover, the UAPA does not authorize injunctions in this context, as judicial review is appellate in nature. This appellate posture means a court may only consider a stay of an agency decision if the petitioners first sought one from the agency or an agency cannot timely rule on a request for a stay. Tenn. Code Ann. 4-5-322(c). Neither prerequisite was met here. Petitioners did not allege that they sought—or could not timely seek—an administrative stay from the Department. Nor did the Court make any such finding. The Court’s order allowing Petitioners to exhaust remedies acknowledges this jurisdictional flaw. But that was an attempted remedy for a jurisdictional problem this Court could not fix. The Court can now set aside the void injunction that it improvidently granted without jurisdiction. The Department respectfully requests it do so.

## **II. Petitioners Are No More Likely To Succeed On The Merits Now Than They Were When The Temporary Injunction Was Entered.**

Petitioners’ claims fail because Tennessee law defines “sex” as “a person’s immutable biological sex as determined by anatomy and genetics existing at the time of birth.” Tenn. Code Ann. 1-3-105(c). That’s the law which, again, Petitioners do not challenge here. And this requires the Department to issue licenses reflecting an applicant’s biological sex as shown by their original birth certificate. *Id.*; Tenn. Code Ann. § 55-50-321(c)(1)(A). Petitioners’ arguments—that DLP-302 is a rule that must comport with UAPA rulemaking requirements, that the Department lacks

authority to deny sex designator changes, and that “sex” is ambiguous—lack merit. Petitioners tacitly acknowledge the weakness of their claims by attempting (incorrectly) to lower the standard for a stay from Tennessee’s “likelihood of success” to “serious questions on the merits.” (Mot. for Stay, filed May 12, 2025, 4). See also *Newsom v. Tenn. Republican Party*, 647 S.W.3d 382, 386 (Tenn. 2022); Tenn. Code Ann. § 4-5-322(c). And so has this Court when it declined to find that Petitioner Miller was likely to succeed back in June of 2024. (Temp. Inj. Order., ¶ 6).

**A. The Department had no obligation to undergo notice-and-comment rulemaking.**

Petitioners’ claim that DLP-302 is a rule subject to notice-and-comment rulemaking misinterprets the UAPA. *Rulemaking* procedures apply to *rules*, not policies. If an agency statement qualifies as a “policy” under the UAPA then it automatically is not a “rule.” Tenn. Code Ann. § 4-5-102(12). The dispositive inquiry then is whether DLP-302 is a “policy” under the UAPA.

DLP-302 constitutes a “policy” if it fits either of the following two definitions: it (1) “merely defines or explains the meaning of a statute or rule” **or** (2) only addresses “the internal management of state government that does not affect private rights.” Tenn. Code Ann. § 4-5-102(10) (emphasis added). The second definition controls here. DLP-302 merely “explains” how Tenn. Code Ann. § 1-3-105(c)’s definition of “sex” applies to driver’s license sex designations. And this policy faithfully implements the statutory mandate: DLP-302’s prohibition on *amended* birth certificates is just another way of saying that “original birth certificates” constitute evidence of “sex.” Tenn. Code Ann. § 1-3-105(c).

Petitioners’ argument about DLP-302 affecting “private rights” walks this Court into reversible error. Section 4-5-102(10)’s two definitions for a “policy” are written in the disjunctive—meaning that if DLP-302 merely explains the meaning of statute it matters not



whether it also affects “private rights.” It’s a policy—and not a rule—either way. That’s exactly the case here. DLP-302 merely explains how the General Assembly’s new definition of “sex” applies in the context of driver’s licenses.

Because DLP-302 is a “policy” under the UAPA, Petitioners cannot “challenge the applicability or validity of [it]” under “the declaratory judgment provisions of the UAPA.” *Mandela v. Campbell*, Appeal No. 01-A-01-9607-CH-00332, 1996 WL 730289, at \*2 (Tenn. Ct. App. Dec. 20, 1996) (citing Tenn. Code Ann. § 4-5-224). As a result, Petitioners’ rulemaking challenge fails on the merits.

**B. The Department has Authority to Deny Petitioners’ Sex Designator Changes.**

The Department has authority to deny sex designator changes that conflict with Tenn. Code Ann. 1-3-105(c). Petitioners’ claims to the contrary fail for several reasons.

*First*, Petitioners want this Court to ignore that the General Assembly defined “sex” as used in the entire “code.” Tenn. Code Ann. § 1-3-105(c). “Code” is defined to include the entire “Tennessee Code and all amendments and revisions to the code and all additions and supplements to the code.” *Id.* § 1-3-105(a)(3). That definition, therefore, certainly includes the portions of the code dealing with driver licenses and the Department’s authority, found at Tenn. Code Ann. § 55-50-101, *et seq.* The Court cannot ignore that definition; it is duty bound to “apply the plain meaning” and “simply enforce the written language” of a clear statute “without complicating the task.” *Mansell v. Bridgestone Firestone N. Am. Tire*, 417 S.W.3d 393, 400 (Tenn. 2013).

*Second*, Petitioners’ assertion that an agency must adhere to outdated rules that conflict with new statutes is as nonsensical as it sounds. (Mot. for Stay, 9.) Petitioners grasp for authority for this bold proposition and come up short. They cite cases addressing statutory interpretation, and a 100-year-old case addressing whether a new statute repeals an old statute by implication. (*Id.*; Renewed Pet., ¶ 94 (citing *Bailey v. State*, 150 Tenn. 598 (1924))). These cases are

inapplicable because it is a fundamental premise of law that agency rules do not stand on the same footing as statutes. *Sentinel Tr. Co. v. Lavender (In re Sentinel Tr. Co.)*, 206 S.W.3d 501, 519 (Tenn. Ct. App. 2005). Rules bear no weight in the face of a conflicting statute, and such a statute supersedes a conflicting agency rule. Tenn. Code Ann. 4-5-214(b) (noting that a “previously existing rule shall continue in effect until . . . superseded by law”); *id.* § 4-5-322 (allowing a court to reverse or modify an agency decision that “violat[es] . . . statutory provisions”).

*Third*, Petitioners assert that the General Assembly must explicitly direct an agency to comply with a statute before such compliance becomes necessary. (Renewed Pet., 16-17.) Not so. The General Assembly can direct agency authority via an “express grant” *or* by “necessary implication.” *McFarland*, 530 S.W.3d at 94 (citing *Tennessee Pub. Serv. Comm’n v. S. Ry. Co.*, 554 S.W.2d 612, 613 (Tenn. 1977)). Implied authority encompasses “the authority to do whatever is reasonably necessary” to effectuate an “express” legislative affirmative mandate. *McFarland*, 530 S.W.3d at 94; *see also Mayhew v. Mayhew*, 52 Tenn. App. 459, 376 S.W.2d 324, 327 (1963) (“[W]hen a power is given by statute, everything necessary to make it effectual is given by implication.”). If a legislative mandate requires the agency to “carry out an express and specifically defined objective,” there is no need for the General Assembly to “explicitly address whether or how” the agency performs this objective. *McFarland*, 530 S.W.3d at 101 (finding that Election Commission had implicit authority to resolve candidate residency challenges based on express authorization to regulate elections and print ballots listing names of qualified candidates).

Here, there is no dispute that the Department has an affirmative statutory obligation to regulate the designation of sex on driver licenses. Tenn. Code Ann. § 55-50-201 (stating that the Department must regulate the “licensing of persons to operate motor vehicles.”); *id.* § 55-50-331(b)(1) (stating that every driver license must include a “brief description” of the applicant);

Tenn. Comp. R. & Regs. 1340-01-13-.18(2) (stating that each driver license must include a “brief physical description of the applicant, including sex”). Given these statutory mandates, there is no need, as Petitioners claim, for express language stating the “Department [has] the power to determine an applicant’s sex based solely on their original birth certificate.” (Mot. to Stay at 7.) The Department already has “all express and implied powers necessary” to fulfill the legislative scheme that [it has] been entrusted to administer.” *McFarland*, 530 S.W.3d 76 at 102 (internal quotations omitted).

**C. The Plain Language of “Sex” in Tenn. Code Ann. § 1-3-105(c) Mandates the Department’s Actions.**

Petitioners’ assertion that § 1-3-105(c) is ambiguous enough to “allow[] the Department to pick and choose” an interpretation that permits Petitioners and other transgender applicants to change their sex designators contradicts the statute’s plain language. (Mot. to Stay at 10-11.) This is a bold claim to make given that Petitioners elsewhere disparage § 1-3-105(c) for “demand[ing] that a person’s lifelong sex *must* be” legally determined by “anatomy and genetics existing at the time of birth.” (Renewed Pet., 4). Because § 1-3-105(c) includes a clear statutory directive to interpret “sex” as a person’s “immutable biological sex,” Petitioners’ claim that this statute permits Petitioners’ requested relief has no merit.

Section 1-3-105(c) defines “sex” throughout the entire Tennessee Code. When interpreting a statute this Court must “ascertain and give effect to the legislative intent” without “unduly restricting” the statute’s intended scope. *State v. Curry*, 705 S.W.3d 176, 184 (Tenn. 2025) (citations omitted). It must “give[] full effect” to “every” word and honor “the obvious intention of the General Assembly.” *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, like § 1-3-105(c) is here, the Court must “apply the plain meaning without complicating the

task,” *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004), or rendering an “absurd result.” *Martin v. Powers*, 505 S.W.3d 512, 525 (Tenn. 2016).

The plain language of § 1-3-105(c) limits the legal definition of “sex” to sex as determined by “anatomy and genetics existing at the time of birth.” Tenn. Code Ann. 1-3-105(c). It simultaneously defines “sex” as “evidence of a person's biological sex,” and provides the example of such evidence includes a “government-issued identification document that *accurately* reflects a person’s sex listed on the person’s original birth certificate.” *Id.* (emphasis added) This language aligns with the legislature’s intent, which *even Petitioners agree* was to limit the legal definition of sex to biological sex. (Renewed Pet., 3-4.)<sup>3</sup> The plain language of § 1-3-105(c) and underlying legislative intent is incompatible with the Petitioners’ proposed definition of “sex” as non-biological “lived reality and identity.” (Mot. to Stay, 10.) And any attempt to “read” this option into 1-3-105(c) yields absurd results.

For instance, Petitioners claim the statutory qualifier “unless the context otherwise requires,” implies legislative intent to exempt driver licenses and other “identification documents reflecting a person’s lived reality and identity” from the purview of § 1-3-105(c). (Mot. to Stay, 9-10.) But it would be absurd for the legislature to attempt to limit the definition of “sex” to biological sex while in fact doing the exact opposite—as Petitioners suggest—by codifying the Department’s ability to define sex in ways that are not biological. (Renewed Pet., 8.) As Petitioners acknowledge, it is more likely that the Department intended § 1-3-105(c) to “define ... who qualifies as a man and who qualifies as a woman under the code of Tennessee,” (Renewed

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<sup>3</sup> Petitioners claim the definition of §1-3-105(c) is so restrictive as to codify “an ideology that despises the existence of transgender people.” (Renewed Pet., 4.) The Department does not credit this characterization of the legislature or § 1-3-105(c). The Department cites these and similar portions of Petitioners’ recent filings solely to show that Petitioners’ claims reveal that Petitioners’ believe the legislature enacted §1-3-105(c) to limit the legal definition of sex to biological sex on government documents, like driver licenses.

Pet., 3), and the qualifier “unless the context otherwise requires,” refers to statutes that do not “distinguish between male or female.” (Renewed Pet., Exhibit A “Declaratory Order.”)

Examples of such statutes abound. The General Assembly has criminalized trafficking a “commercial *sex* act,” (§ 39-13-309), possessing a “child-like *sex* doll,” (§ 39-17-910), and solicitation of a minor “to commit a *sex* offense.” Tenn. Code Ann. § 39-13-528. It has also established treatment and monitoring requirements for certain “*sex* offender[s].” Tenn. Code Ann. *Id.* § 39-13-706. In each of these contexts, defining the word “sex” as “immutable biological sex” would render absurd results, exemplifying the need for caveat “unless the context otherwise requires.” *Id.* § 1-3-105(c).

Petitioners’ claim that § 1-3-105(c) is ambiguous does not comport with logic, the plain language of the statute, or even their own allegations. As a result, it fails on the merits.

**D. The Department correctly determined Petitioners’ sex.**

The Department’s declaratory order is supported by substantial and material evidence and must be upheld under the UAPA’s deferential standard. *Taylor v. Board of Admin., City of Memphis Ret. System*, 681 S.W.3d 751, 754 (Tenn. 2023).

Miller and Doe admit that their original birth certificates list their sex as male, aligning with Tenn. Code Ann. § 1-3-105(c)’s definition of “sex” as biological sex at birth. (Miller Decl., ¶ 5; Doe Decl., ¶ 6.) The Department’s denial of their requests to change sex designators to female and its determination that Miller’s license was issued in error were straightforward applications of the statute and its authority to cancel licenses based on incorrect information. Tenn. Code Ann. § 55-50-502(b)(1) (“The department is authorized to cancel any operator’s . . . license upon determining . . . that the licensee failed to give the required or correct information in the application.”).

Judicial review of administrative decisions is “narrow and deferential.” *Starlink Logistics, Inc. v. ACC, LLC*, 494 S.W.3d 659, 670 (Tenn. 2016). When an administrative decision is supported by substantial evidence—which is “less than a preponderance . . . but more than a scintilla”—it cannot be invalidated as “arbitrary and capricious” unless the decision “amounts to a clear error in judgment.” *Taylor*, 681 S.W.3d at 754 (internal quotations omitted). A “clear error” only exists when the agency decision “is not based on any course of reasoning or exercise of judgment, or disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” *Id.* And so long as “there is room for two opinions,” a reviewing court may not reverse a decision simply because it would have chosen an opinion different than the agency’s. *Id.*; *Starlink Logistics, Inc.*, 494 S.W.3d at 670.

There is no dispute that the sex of both Miller and Doe, as listed on their original birth certificates, is male. (Renewed Pet., ¶¶ 73, 81; Doe Decl. ¶¶ 6, 15.). As a result, the straightforward conclusion is that Miller’s and Doe’s sex, as that term is defined by state law, is male. Tenn. Code Ann. § 1-3-105(c). Those details were evident in the record considered by the Department, and they provide substantial evidence supporting the Department’s declaratory order upholding the denial of Doe’s requested sex marker change and the Department’s expressed intent to cancel Miller’s incorrect license if Miller did not obtain a corrected one.

And those decisions were neither arbitrary nor capricious. To show that a decision grounded in substantial and material evidence is nonetheless “arbitrary and capricious,” Petitioners must show that the Department “disregard[ed] the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” *Taylor*, 681 S.W.3d at 754. The only “fact” Petitioners now claim the Department disregarded is their assertion that the phrase “unless the context otherwise requires” requires the Department to consider their preferred

“real-world” definition of sex. (Renewed Pet., ¶¶ 101-105; Pet. for Stay, 7.) But Petitioners gloss past the fact that interpreting the word “context” in the manner they propose would swallow the statute whole.

In sum, Petitioners do not contest that the Department’s position is correct under the applicable law; Petitioners simply disagree with the law. But that does not make the Department’s decision arbitrary or capricious. This Court cannot substitute Petitioners’ opinion about the law for the Department’s. *Starlink Logistics*, 494 S.W.3d at 670. The decision of the Department should be affirmed.

### **III. The Other Equitable Factors Favor the State.**

Petitioners’ failure to demonstrate likelihood of success on the merits undermines the temporary injunction entered by this Court on June 24, 2024, and is also fatal to Petitioners’ request for a stay of the Department’s order. *Fisher*, 604 S.W.3d at 394 (citing *Lyons v. City of Columbus*, No. 2:20-cv-3070, 2020 WL 3396319, at \*2 (S.D. Ohio June 19, 2020)). But the other relevant factors for a preliminary injunction and a stay also weigh against providing such relief.

#### **A. Petitioners have not demonstrated immediate irreparable harm.**

Petitioners failed to satisfy the high hurdle of showing irreparable harm at the time they requested injunctive relief and fail to do so now in their request for a stay. Petitioners seeking an injunction (or a stay) must show that “irreparable injury is *likely* in the absence of an injunction.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008). “A mere possibility of injury is not enough.” *Lyons*, 2020 WL 3396319, at \*2. Neither are asserted injuries that are “dependent upon a contingency which may or may not happen in the future.” *Id.*; *State ex rel. Baird v. Wilson County*, 371 S.W.2d 434, 439 (Tenn. 1963) (“The writ will not issue merely to relieve the fears or apprehensions of an applicant.”).

In both their prior request for injunctive relief and their current request for a stay, Petitioners claim they will be “forced” to carry a driver license that reflects their biological sex. (Mot. to Stay, 14.) Their own statements undermine this claim. The Department does not force either Petitioner to obtain a driver license, nor does the Department force Petitioners to show their driver licenses to anyone. Petitioners admit this reality, noting that Miller “will not get a license” that bears a male identifier. (Mot. to Stay, 17.) On top of that, both Petitioners claim to possess other identifying documents from the federal government that bear female sex identifiers. (*Id.* at 17; Doe Decl., ¶ 12; Miller Decl., ¶ 23.) Their asserted harm of being “forced” to “present[] evidence that conflicts with their lived sex” cannot be considered irreparable where they admit they control both the harm they are allegedly exposed to and the ways to avoid that harm.

Similarly unconvincing are their claims that carrying a Tennessee license that reflects their biological sex will expose them to a risk of “bodily harm and harassment.” (Mot. to Stay, 16.) This claim is nothing more than speculation. Again, Petitioners have documents with female sex markers, including passports, that they can present during many of the scenarios where they fear harassment, including purchasing alcohol or completing a job application. (*Id.* at 17; Doe Decl., ¶ 12; Miller Decl., ¶ 23.)

The only common scenario where Petitioners are “required” to show their driver license occurs if they are subject to a traffic stop—and even then, the requirement is imposed by Tennessee law, not the Department. Tenn. Code Ann. § 55-50-351. Their entire ‘risk’ theory therefore rests on an implausible and sensationalized narrative where any police officer that stops Petitioners will not only harbor extreme prejudice towards them but will also likely flout criminal laws to harass or physically assault Petitioners. And the reason this officer acts in such a rogue manner, under Petitioners’ theory, is based *solely* on the mismatch between Petitioners’ appearance and the sex



identifier on their license. But both Petitioners possessed Tennessee driver licenses bearing male identifiers that did not match their physical appearance for several collective years before filing this lawsuit. (Doe Decl., ¶ 4, 9-10; Miller Decl., ¶ 7.) Yet between the two of them, they cannot muster a single example of such bodily harm or harassment during a traffic stop. Such sensationalized possibilities are insufficient to clear the irreparable harm hurdle.

More importantly, Petitioners present no facts whatsoever related to actual or threatened physical harm. Despite their claim that they face generally recognized dangers, (Mot. to Stay at 16.), a Tennessee federal district court recently observed that “available data does not reflect that in any one year—or more to the point, that in any spans of years across a lifetime—the heinous act of anti-transgender crime is statistically at all likely to be visited upon any particular [p]laintiff (or other transgender person).” *Gore v. Lee*, No. 3:19-CV-0328, 2023 WL 4141665, at \*26 (M.D. Tenn. June 22, 2023). The only concrete example of “harm” specifically related to presentation of a driver license Doe could conjure up is a single encounter with a liquor store clerk that ended with Doe purchasing the desired liquor. (Doe Decl. ¶ 21.)

Petitioners’ assertion that Tennessee’s driver license policy forces disclosure of private medical information is likewise unavailing. (Mot. to Stay at 16.) The only medical condition mentioned in Petitioners’ declarations or the Renewed Petition is gender dysphoria. (Miller Decl. ¶ 9; Doe Decl. ¶ 9; Renewed Pet., ¶ 58.) But a driver license that reflects “biological sex” does not force Petitioners, or anyone else for that matter, to disclose that diagnosis. Nor does a driver license reflecting biological sex require anyone to “disclose . . . internal thoughts about themselves . . . whenever they present their [driver licenses].” *Gore*, 2023 WL 4141665, at \*29. Indeed, the World Professional Association for Transgender Health, the transgender advocacy organization cited throughout the Amended Complaint, confirms that “[n]ot all transgender and gender diverse

people experience gender dysphoria.” Coleman, et al., Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, S252 (Sept. 15, 2022), <https://tinyurl.com/yrджzекf>. Therefore, according to Petitioners’ cited sources, the mere disclosure of Petitioners’ transgender status does not, by itself, reveal a medical diagnosis.

Finally, Miller’s assertion that without court intervention, Miller will lose “access [to] the necessities of daily life” also fails. (Pet. for Stay, p. 17.) Although Miller is ideologically opposed to the legislature’s definition of “sex” and the Department’s responsibility to honor that definition, Miller’s ideological opposition alone is not enough to demonstrate irreparable damage. Miller is free to choose not to obtain a license with a “M” sex marker. But Miller cannot bootstrap irreparable injury by creating the harm and then blaming the Department for it.

For all these reasons, Petitioners have failed to establish that they will suffer irreparable injury absent court action—a prerequisite for a temporary injunction and for a stay. *See* Tenn. R. Civ. P. 65.04(2) (requiring a clear showing that (1) “the movant’s rights are being or will be violated . . . and (2) the movant will suffer immediate and irreparable injury, loss or damage pending final judgment”); *Hughes v. Tenn. Dep’t of Corr.*, No. M2016-02212-COA-R3-CV, 2017 Tenn. App. LEXIS 620, at \*13 (Ct. App. Sep. 18, 2017). The Court should deny the stay and dissolve the injunction accordingly.

**B. The balance of equities favors the State.**

The balance of equities weighs heavily in favor of Defendants, who face irreparable harm should the Court continue to restrain them from complying with duly enacted state laws. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers).

The two remaining factors in the temporary-injunction (and stay) analysis require the Court to “balance” the harm inflicted on Petitioners against “the injury that granting the injunction would inflict on defendant,” along with the “public interest.” *Fisher*, 604 S.W.3d at 394. The public

interest and the harm to the defendant merge because the State of Tennessee is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Both weigh against granting a temporary injunction.

The current preliminary injunction—like the stay Petitioners request—precludes a state Department from complying with state law that defines “sex.” “[A]ny time a State is enjoined by a court from effectuating [laws] enacted by representatives of its people, it suffers a form of irreparable injury.” *King*, 567 U.S. at 1303 (quotation omitted). So “unless the statute is unconstitutional,” enjoining a state from enforcing its duly enacted laws “would seriously and irreparably harm” the state. *Lichtenstein v. Hargett*, No. 3:20-CV-00736, 2021 WL 5826246, at \*48 (M.D. Tenn. Dec. 7, 2021), *aff’d*, 83 F.4th 575, 2023 WL 6475984 (6th Cir. 2023) (quotation omitted).

Petitioners do not assert that the underlying statute defining “sex” is unconstitutional. (*See generally*, Renewed Pet.) So despite Petitioners’ claims to the contrary, the injunction prohibiting the Department from following state law causes irreparable injury to the State and the people of Tennessee and is thus against the public interest. Indeed, it is “in the public interest that [courts] give effect to the will of the people by enforcing the laws they and their representatives enact.” *Lichtenstein*, 2021 WL 5826246, at \*48. (quotation omitted). This harm will only continue if the injunction is not dissolved or if a stay of the declaratory order is entered.

On the other hand, as explained above, the potential harm to Petitioners is not irreparable. Petitioners face no concrete threat of violence or harassment tied to use of a driver license bearing a marker reflecting Petitioners’ sex at birth. Miller can maintain driving privileges by obtaining a corrected license for free. Neither Doe nor Miller has established that Defendants are responsible for any stigma Petitioners may experience. And Petitioners will not have any medical information

involuntarily disclosed by a driver license bearing the sex identifier based on their biological sex at birth.

#### **IV. Petitioners Cannot Meet the Requirements for a Stay under the UAPA.**

Under the UAPA, a stay is not permissible unless the Petitioners prove that a bond can prevent harm to the parties or the public. Tenn. Code Ann. § 4-5-322 (c). The provision is not optional. It mandates that if “no bond amount is sufficient” to avoid injury, the court “shall” deny the stay. *Id.* Petitioners not only fail to meet this burden, they fail to acknowledge it.

Their silence here speaks volumes. No bond can protect the State or the public from the consequences of preventing enforcement of duly enacted law. Petitioners offer no viable legal grounds for a stay. *See supra*, Part I-III. But even setting aside their inability to show likelihood of success on the merits, enjoining the Department would prevent the State from effectuating “statutes enacted by representatives of its people,” a form of harm courts consistently recognize as irreparable. *King*, 567 U.S.at 1303; *Thompson v. DeWine*, 976 F.3d 610, 619 (6th Cir. 2020); *Moore*, 644 S.W.3d at 67. Because no bond can mitigate that harm, the UAPA requires one result: denial of the stay request. Tenn. Code Ann. § 4-5-322 (c).

#### **CONCLUSION**

This Court imposed a temporary injunction on behalf of Petitioner Miller at a time it lacked jurisdiction, rendering that order void. It should be dissolved. Petitioners remain unlikely to succeed on the merits because their claims conflict with Tenn. Code Ann. § 1-3-105(c)’s clear definition of “sex” and the Department’s statutory authority to enforce it. Petitioners face no irreparable harm, as licenses that comply with the law are available without penalty. And the equitable considerations do not weigh in their favor because the Department’s statutory duties and the public interest in consistent enforcement of state law outweigh Petitioners’ preferences.

Petitioners have not met, and cannot meet, any of the four factors required for issuance of a preliminary injunction or a stay. The Court should deny their request to stay the Department's declaratory order.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion has been filed and served upon the following by operation of the court's electronic filing system, with courtesy copies provided by email, on this the 1st day of July, 2025:

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