E-FILED
7/16/2025 4:50 PM
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

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

JANE DOE; CHRISSY MILLER;	)	
	)	
Plaintiff-Petitioners,	)	
	)	
v.	)	
	)	**Case No. 24-0503-III**
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,	)	**Chancellor Myles**
	)	
Defendants.	)	

DEFENDANTS' REPLY TO PLAINTIFF-PETITIONERS' RESPONSE TO DEFENDANTS' MOTION TO DISSOLVE THE TEMPORARY INJUNCTION

INTRODUCTION

Petitioner Miller's and Jane Doe's opposition to the Department of Safety's motion to dissolve is based on flawed legal theories and red herring arguments in lieu of case law or statutory authority. And the few cases that Petitioners cite support the Department's position, rather than Petitioners. The most egregious of Petitioners' theories are that: (1) Miller's injunctive relief was properly granted despite Petitioners' failure to exhaust administrative claims beforehand; (2) Petitioners have shown a likelihood of success on the merits; and (3) that Petitioners will suffer irreparable harm if injunctive relief is not granted. These arguments not only fail, but rest on

misstatements of law. This Court should ignore Petitioners' distraction tactics, dissolve the void injunction for Miller, and reject any further request for injunctive relief.

ARGUMENT

I. Miller's Injunctive Relief Was Not Properly Granted and is Thus Void.

First, Miller's current injunctive relief was issued without subject matter jurisdiction, and Petitioners offer no authority to the contrary. (Plf.-Petrs' Response to Defs.' Mot. to Dissolve the Temp. Inj. and Reply in Supp. of Plf.-Petrs' Mot. for Stay of Agency Decision ("Petrs.' Joint Reply"), filed July 9, 2025, pp. 3-9.)

When a statute requires exhaustion of administrative remedies, "the failure to do so will deprive the court of subject matter jurisdiction." *Chattanooga-Hamilton Cnty. Hosp. Auth. v. UnitedHealthcare Plan of the River Valley, Inc.,* 475 S.W.3d 746, 758 (Tenn. 2015). Orders entered without subject matter jurisdiction are "void" and lack "legal effect . . . [from] the beginning." *Owen v. Grinspun*, 661 S.W.3d 70, 85 (Tenn. Ct. App. 2022). The dispositive analysis here is thus very simple: at the time that Miller received injunctive relief, did a statute require Petitioners to exhaust administrative remedies? If so, did Petitioners exhaust those administrative remedies? If exhaustion was required, and Petitioners failed to exhaust—as is the case here—there was no subject matter jurisdiction when injunctive relief was awarded and any injunctive relief granted is "void." *Owen*, 661 S.W.3d 70 at 85.

Applying this analysis to the facts of this case leads to one and only outcome: void injunctive relief. Petitioners admit there *is* a statute, Tenn. Code Ann. § 4-5-225 (a)-(b), that expressly required them to exhaust administrative remedies—by "petitioning the agency for a declaratory order"—prior to challenging the "validity" of a "rule" of an agency. (*See* Petrs.' Joint Reply, p. 4.) Petitioners admit they *are* challenging what they perceive as an illegally promulgated

agency "rule," DLP-302. (Petrs.' Joint Reply, p. 3 ("the Department of Safety engaged in illegal rulemaking because DLP-302 is a rule")). And Petitioners do not dispute that they failed to petition Safety for a declaratory order "concerning the validity," Tenn. Code Ann. § 4-5-225 (a), of DLP-302 prior to securing the injunctive relief for Miller. (Petrs.' Joint Reply, pp. 3-5.) Thus, the injunctive order was granted without subject matter jurisdiction and is void.

Because Petitioners know they did not meet the statutory exhaustion requirements, they try to change the law itself, claiming the dispute *they* created over whether "DLP-302 is a rule or policy" warrants an exemption from Tenn. Code Ann. § 4-5-225. (Petrs.' Joint Reply, p. 5.) But the text of the statute itself offers no support for this argument. And the only case Petitioners' cite, *Emergency Med. Care Facilities, P.C. v. Div. of Tenncare,* 671 S.W.3d 507, 517 (Tenn. 2023), contradicts this position entirely. (Petrs.' Joint Reply, p. 5.) Petitioners are correct in claiming the issue of exhaustion "never stopped" the court from "addressing the plaintiffs' UAPA claims on the merits" there. (*Id.* at 4–5). But that's because the challengers in *Emergency Med. Care Facilities* did what Petitioners *failed* to do here: they exhausted administrative remedies by seeking a declaratory order from the agency before filing suit. (Ex. B to Petrs.' Joint Reply, p. 8; Ex. D (Pet. for Dec. Order filed in the Division of TennCare). Petitioners thus provide no authority justifying exemption from the exhaustion requirements of § 4-5-225.

Second, Petitioners are mistaken in suggesting that Defendants waived a challenge to the void injunction. (Petrs.' Joint Reply, p. 7.) "When a court lacks jurisdiction of the subject matter, it cannot be conferred either by waiver or consent, and *all of its orders* and decrees are a nullity and may be collaterally attacked." *Gillespie v. State*, 619 S.W.2d 128, 129 (Tenn. Ct. App. 1981) (emphasis added); Tenn. R. Civ. P. 12.08. Thus, the injunctive order was "void" and had "no legal effect . . . [from] the beginning." *Owen* 661 S.W.3d 70 at 85. Because a void order cannot "be

cured" by arguments introduced "after the entry of judgment," *Wing v. Est. of Wing*, No. M2001-01598-COA-R3CV, 2003 WL 1872647, at *3 (Tenn. Ct. App. Apr. 14, 2003), Petitioners' claim that they have "jurisdiction now" does nothing to "cure" the jurisdictional deficiencies that existed when this Court entered the order. (Petrs.' Joint Reply, p. 7.). Thus, this Court can and must consider the Department's subject matter jurisdiction challenge.

II. Petitioners Cannot Show a Likelihood of Success on the Merits.

Petitioners offer no support for their theory that the Department must grant sex designator changes until there is a statute explicitly directing them to do otherwise. (Petrs.' Joint Reply, pp. 14–15.) This lack of authority is unsurprising, given that it rests on the wildly impractical premise that legislatures must spell out word-for-word what every agency may or may not do in every scenario.

Rather than citing their own authority, Petitioners attempt to co-opt the Department's reliance on *McFarland v. Pemberton*, 530 S.W.3d 76, 95 (Tenn. 2017). (Petrs.' Joint Reply at 15.) This Court should not be fooled. *McFarland* stood for the premise that "[l]egislature[s] cannot possibly foresee all the practical difficulties that state agencies will encounter while carrying out their statutory functions" and thus agencies should be free to do whatever is "reasonably necessary in order" to carry out their other powers "set forth by statute." *Id*. (omitting internal citations). Petitioners acknowledge that various statutes and regulations empower and require the Department to include a "brief description" of the applicant, Tenn. Code Ann. 55-50-331(b)(1), including the applicant's "sex." Tenn. Comp. R & Regs. 1340-01-13-.18(2); Petrs.' Joint Reply, § I. There is no need for the legislature to further specify "whether or how" the agency performs this objective. *Mcfarland*, 530 S.W.3d at 101. Petitioners offer no contrary authority.

Petitioners also falter when they seek to inject ambiguity in Tenn. Code Ann. § 1-3-105 where none exists. (Petrs.' Joint Reply, p. 16-18). As exhaustively argued, the plain text of Tenn. Code Ann. § 1-3-105 is not ambiguous. (Defs.' Mem. of Law in Support of Mot. to Dissolve the Temp. Inj. And in Resp. to Petrs.' Mot. to Stay the Agency Decision, Part II.C.) And the clarity of the text notwithstanding, the undisputed *intent* of the Tenn. Code Ann. § 1-3-105 — to limit the legal definition of "sex" to "anatomy and genetics existing at the time of birth" — binds the Department. (*Id.* at p. 12.) Petitioners know this. They quote *Coleman v. State* for the Tennessee Supreme Court's caution against "adding words to a statute," but tellingly leave off the caveat in the same sentence that "every word of a statute should be given full effect *if doing so does not violate the obvious intention of the General Assembly*." (Petrs.' Joint Reply, p. 16 (citing to 341 S.W.3d 221, 241 (Tenn. 2011) (emphasis added))). Thus, even if Petitioners believe Tenn. Code Ann. § 1-3-105 is "not a model of legislative draftmanship," they cannot deny that the "intent is [still] clear." *Capitol News Co. v. Metro. Gov't of Nashville & Davidson Cnty*., 562 S.W.2d 430, 432 (Tenn. 1978). Both the Department and this Court must honor that intent. *Id*.

Third, Petitioners' insistence that DLP-302 is a "rule" subject to notice-and-comment rulemaking because it is a "statement of general applicability" and affects "private rights" is, and has always been, a red herring argument. (Petrs.' Joint Reply, p. 19.) DLP-302 constitutes a "policy," not a rule, because it "merely defines or explains the meaning of a statute or rule." Tenn. Code Ann. § 4-5-102(10). Specifically, DLP-302 "defines or explains" how Tenn. Code Ann. § 1-3-105(c)'s definition of "sex" applies to driver's license sex designations. And policies, by definition, cannot be rules. Tenn. Code Ann. § 4-5-102(12).

Thus, Petitioners' reliance on *Emergency Med. Facilities* is inapposite. There, the agency never argued that the agency action challenged in that case was an effort to "define[] or explain[]

the meaning of a statute or a rule." *Emergency Med. Facilities*, 671 S.W.3d at 511–12. Nor did the Court consider that issue. *Id.* Instead, the agency argued that its decision met the second definition of "policy" in the Uniform Administrative Procedures Act ("UAPA"), namely the "internal management" exception. *Id.* The Department has never claimed the internal management exception applied to DLP-302. (*See, e.g.*, Defs.' Reply in Supp. Of Defs.' Mot. to Dismiss Second Amend. Compl., p. 3–4.) Petitioners' consistent efforts to raise this red herring is an ineffective ploy to avoid grappling with the controlling law cited by Defendants.

III. Petitioners Cannot Show Irreparable Harm.

Miller and Doe continue to rely on conjecture and hypotheticals—rather than objective evidence—to establish irreparable harm. Their argument turns on self-inflicted harms and unsupported fears of third-party conduct. (Petrs.' Joint Reply, § II.) And they insist that possible mistreatment by third-party individuals warrants a preliminary injunction against a state entity preventing it from following state law. (*Id.*, §§ II, IV.A.) But a court cannot issue an injunction or a stay "merely to relieve the fears or apprehensions of an applicant." *State ex rel. Baird v. Wilson Cty.*, 371 S.W.2d 434, 439 (Tenn. 1963).

To begin with, the Court should strike, and at the very least not consider the "Supplemental Declaration of Chrissy Miller" and the citations to statistical studies contained in Petitioner's Joint Reply. (Petrs.' Joint Reply, Part II; Ex. A.) These materials are not part of the record on appeal, and Petitioners' attempt to supplement the record without a specific court order violates the UAPA, Local Rules, and common principles of appellate procedure.

Judicial review of a declaratory order must be "confined to the record[,]" and a Court therefore commits error if it considers external materials. Tenn. Code Ann. §§ 4-5-223(a)(1); -322(g); *Poursaied v. Tenn. Bd. of Nursing*, 643 S.W.3d 157, 170 n.16 (Tenn. Ct. App. 2021).

Local Rule 25 of this Court limits the documents the Court can consider in a review of an administrative decision to "briefs" filled by the parties and "the record" from the tribunal or agency. This Court also exercises appellate jurisdiction when presiding over a UAPA appeal, and it "is well settled that 'the appellate record provides the boundaries of an appellate court's review.'" *Duke v. Duke*, 563 S.W.3d 885, 906 (Tenn. Ct. App. 2018) (quoting *State v. Smotherman*, 201 S.W.3d 657, 660 (Tenn. 2006)). Absent a specific order supplementing the administrative record, the Court's review of the Department's Declaratory Order should be *based on* and *limited to* the record made before the Department. Thus, the statistical studies and the supplemental declaration (Ex. A) included in Petitioners' Joint Reply, and any references to the same, should be stricken and not considered by the Court.

But even if the Court could properly consider these newly presented facts, they fail to support Petitioner's claims. That is because Doe and Miller have not shown that their alleged injuries are "real, practically unavoidable, and certain," or even *caused* by the Department. *Steppach v. Thomas*, 346 S.W.3d 488, 501 (Tenn. Ct. App. 2011) (citing *State ex rel. Agee v. Chapman*, 922 S.W.2d 516, 519 (Tenn. Ct. App. 1995)); Tenn. R. Civ. P. 65.04. Instead, they (inappropriately) cite general studies, anecdotal reports, and political rhetoric to suggest that third parties—*not the Department*—might one day treat them poorly. (*Id.* § II.) But generalized stigma or discomfort is not irreparable harm. Indeed, much of the harm Miller asserts stems from what they *believe* will happen, without grounding those fears in objective facts. (*Id.* p. 10.) Irreparable harm must "be grounded on something more than conjecture, surmise, or . . . unsubstantiated fears of what the future may have in store." *Insulet Corp. v. EOFlow, Co.*, 104 F.4th 873, 883 (Fed.

Cir. 2024) (quoting *Charlesbank Equity Fund II v. Blinds To Go., Inc.*, 370 F.3d 151, 162 (1st Cir. 2004)).[1]

Even when Miller and Doe attempt to point to "actual" harms, their examples fall flat. They point to a liquor store incident in which one clerk had another complete the transaction for Doe. (Doe Decl. ¶ 21.) And now Miller (inappropriately) asserts a new interaction with a landlord in which the landlord agreed to and began showing Miller an apartment but then cursed and yelled at Miller for an unidentified reason. (Supp. Decl. of Chrissy Miller, ¶ 18.) Miller merely "suspects" this incident occurred because the landlord learned of Miller's transgender status based on "application materials." (*Id.*) Such speculative examples fall far short of the standard for injunctive relief. This Court cannot prohibit the Department from following state law just because Petitioners might have uncomfortable or awkward interactions with others in their daily life, especially when they only "suspect" those negative interactions are related to their transgender status.

And Petitioners' reliance on skewed and misleading interpretations of general statistical studies do not establish irreparable harm, either. They claim that "[t]hirty-seven percent" of transgender individuals have been "physically attack[ed]" due to their transgender identity. (Petrs.' Joint Reply, p. 9.) But the cited study includes non-violent encounters and admits that only half of respondents actually attributed the incidents to gender identity.[2] Similarly, while they cite that "26.8 percent" of respondents to another statistical study reported use of physical force

[1] Because Tennessee courts consider the same four factors for temporary injunctive relief as federal courts do, *Moore v. Lee*, 644 S.W.3d 59, 63 (Tenn. 2022), it is "proper" to look to federal district courts in interpreting them. *See Williamson County v. Twin Lawn Dev. Co.,* 498 S.W.2d 317, 320 (Tenn.1973) (finding it proper to rely on federal district courts interpretations of the Federal Rules of Civil Procedure because the Tennessee Rules of Civil Procedure were patterned after them).

[2] Gia Elise Barboza, et al., *Physical victimization, gender identity and suicide risk among transgender men and women*, Preventive Medicine Reports, Vol. 4, Aug. 3, 2016, at §§ 2.1.1; 3.1, https://www.sciencedirect.com/science/article/pii/S2211335516300882#bb0020.

by the police (Petrs.' Joint Reply, p.12), they ignore that the same study found a comparable rate—22%—of cisgender respondents reported the same thing.[3] These general, anecdotal statistical differences do not support a finding of "irreparable harm" in a court of law.

Even taking the statistical numbers at face value, they say nothing about the experience of these Petitioners or the actions of the Department of Safety. Petitioners' argument rests on the actions or attitudes of private individuals—clients, coworkers, or strangers—not the Department. Any alleged injury here is not "immediate" or caused by an "adverse party" because it is both speculative and contingent entirely on the actions of third parties. Tenn. R. Civ. P 65.04(2).

Petitioners admit that the Department offered Miller a valid driver license that complies with state law—free of charge—and that Doe currently holds one. (Renewed Pet. for Judicial Rev. and Dec. Judgment, ¶ 88; Doe Decl., ¶ 14.) The Department is not denying anyone's right to drive; it is merely enforcing statutory requirements that govern how state identification is issued. Tenn. Code Ann. 1-3-105(c). The only obstacle to Miller continuing to drive for work, medical appointments, or other necessities is Miller's refusal to accept a valid license that complies with Tennessee law. Courts cannot issue injunctions to protect parties from the consequences of their own choices. *Steppach*, 346 S.W.3d at 501 (requiring irreparable harm to be "practically unavoidable" before equitable relief is granted).

Finally, Miller's attempt to equate personal preference with legal necessity is unavailing. Miller claims a preference for showing a Tennessee driver license to individuals Miller is paid to assist, but also admits possessing a work identification and other forms of identification. (Miller Supp. Decl., ¶¶ 7–8.) That is not unavoidable harm, and preferences do not transform hypothetical

[3] Grasso, Jordan, et al., *Policing Progress: Findings from a National Survey of LGBTQ+ People's Experiences with Law Enforcement*, ACLU, New York, NY, 2024, at 26, https://www.aclu.org/publications/policingprogress-findings-from-a-national-survey-of-lgbtq-peoples-experiences-with-law-enforcement.

future conduct into an immediate irreparable injury warranting "extraordinary" relief. *Fisher v. Hargett*, 604 S.W.3d 381, 395 (Tenn. 2020).

Petitioners have failed to show they will suffer real, immediate, and unavoidable harm by the Department faithfully implementing state law. Their asserted injuries, to the extent they exist at all, are speculative, dependent on third-party actions, or self-inflicted. That is not enough to maintain the temporary injunction or justify a stay.

CONCLUSION

The injunction here cannot stand. It is void for lack of jurisdiction and unsupported by the record. Petitioners never established a likelihood of success or irreparable harm, and they still haven't. The Court should dissolve the preliminary injunction and deny the motion to stay.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

/s/ *Brian Enright*
BRIAN ENRIGHT (BPR# 041742)
Assistant Attorney General
HOLLIE R. PARRISH (BPR# 037888)
Assistant Attorney General
STEVEN J. GRIFFIN (BPR# 040708)
Senior Counsel for Strategic Litigation
Office of the Tennessee
Attorney General and Reporter
P. O. Box 20207
Nashville, TN 37202
(615) 532-7400
Brian.Enright@ag.tn.gov
Hollie.Parrish@ag.tn.gov
Steven.Griffin@ag.tn.gov

Counsel for Defendants

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 16th day of July, 2025:

Stella Yarbrough
Lucas Cameron-Vaughn
Jeff Preptit
P.O. Box 120160
Nashville, TN 37212

Maureen Truax Holland
Holland and Associates, PC
1429 Madison Avenue
Memphis, Tennessee 38104

/s/ *Brian Enright*