

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

JANE DOE; and CHRISSEY)	
MILLER,)	
)	
Plaintiffs/Petitioners,)	Case No. 24-0503-III
)	
vs.)	
)	
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/Respondents.)	

SECOND AMENDED VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF AND
PETITION FOR JUDICIAL REVIEW

Pursuant to Tenn. R. Civ. P. 15, Plaintiff Jane Doe¹ ("Ms. Doe") and Plaintiff Chrissy Miller ("Ms. Miller"), (together "Plaintiffs"), through their undersigned attorneys, bring this First Amended Verified Complaint against Defendant Tennessee

¹ Jane Doe is proceeding under a pseudonym pursuant to the Court's Order Authorizing Movant to Proceed by Pseudonym, entered April 23, 2024. By its own terms, the order "is a temporary order that will need to be revisited after all the parties have an opportunity to brief the issues raised. It will automatically expire, on a self-executing basis, on June 28, 2024 at 3:00 p.m." Plaintiffs filed a Motion to Extend Order Authorizing Movant to Proceed by Pseudonym and Brief in Support on June 11, 2024.

Department of Safety and Homeland Security; Defendant Jeff Long, in his official capacity as 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”); and state the following in support thereof:

1. Ms. Doe and Ms. Miller petition this Court for a common law writ of certiorari to review whether Defendants’ (1) exceeded its jurisdiction, (2) followed an unlawful procedure, (3) acted illegally, arbitrarily, or fraudulently, or (4) acted without material evidence to support its decision. *See* ¶¶ 99-104.

2. Ms. Doe and Ms. Miller ask this Court for a declaratory judgment that Defendants’ regulation DLP-302 is a “rule” under the Tennessee Uniform Administrative Procedures Act.

3. This action challenges the improper promulgation of an administrative rule (the “Redefinition of Sex Rule”) by Defendants. Defendants ignored the statutory mandate to follow notice-and-comment rulemaking procedures under the Tennessee Uniform Administrative Procedures Act.

4. As a result of Defendants’ enforcement of the Redefinition of Sex Rule against Ms. Doe and Ms. Miller, they have experienced harm. The Redefinition of Sex Rule puts Ms. Doe, Ms. Miller, and other transgender people like them, at risk of physical harm, abuse, harassment, social stigma, and forces public disclosure of medical status.

5. Ms. Doe and Ms. Miller therefore ask this Court to declare that the Redefinition of Sex Rule is void and unenforceable as it violates the notice and comment

provisions of the Tennessee Uniform Administrative Procedures Act. Further, Plaintiffs ask the Court to declare Defendants’ denial of Ms. Doe’s and Ms. Miller’s requests to change the sex designator on their driver licenses to be an arbitrary and capricious decision in violation of the Tennessee Uniform Administrative Procedures Act.

6. Additionally, Ms. Miller seeks a Temporary Restraining Order pursuant to Tenn. R. Civ. P. 65.03, to enjoin Defendants from requiring her to surrender her driver license and revoking her driving privileges on May 16, 2024, due to enforcement of the Redefinition of Sex Rule.

INTRODUCTION

7. The Defendants oversee the establishment and enforcement of rules and policies with respect to issuing driver licenses to Tennessee drivers and are responsible for the current regulation (the “Redefinition of Sex Rule”) that prevents transgender applicants, including Ms. Doe and Ms. Miller, from receiving licenses that accurately reflect their gender identity and sex characteristics.

8. Under Defendants’ Redefinition of Sex Rule, a sex designator on a driver license must match the sex designator on an original birth certificate, precluding transgender drivers from obtaining licenses with the correct sex designator.

9. The text of the Redefinition of Sex Rule does not define any uniform process for Defendants to determine the applicable sex for driver licenses, indicating only that “‘evidence of a person’s biological sex’ includes, but is not limited to, a government-issued identification document that accurately reflects a person’s sex listed on the person’s original birth certificate,” and provides that any conflicting information

provided by applicants is to be sent to “legal for review.” *See* Exhibit A. The effect of the Redefinition of Sex Rule is the denial of all transgender applicants’ requests to update a sex designator on driver licenses post July 1, 2023.

10. Ms. Doe has been harmed by this new rule. Ms. Doe's request to update her sex designator to female was rejected by Defendants despite her having an official passport card that accurately describes her sex as female, having female sex characteristics, and a female gender identity. As a result, Ms. Doe is forced to choose between carrying a driver license with the incorrect sex designator or not driving at all.

11. Ms. Miller has been harmed by the Redefinition of Sex Rule. Ms. Miller was granted a driver license on January 23, 2024, which correctly updated her sex designator to “female.” However, she received a letter on April 24, 2024 from Defendant Hogan that was dated April 16, 2024 and stated:

Failure to surrender your driver license issued January 23, 2024, within in [sic] thirty (30) days of this letter, will result in a cancellation of your driving privilege, until you apply for the correct driver license listing your gender as defined by Tennessee law.

See EXHIBIT C. Without this Court’s intervention, Ms. Miller will face the immediate and irreparable harm of the loss of her driving privileges due to the Redefinition of Sex Rule.

12. The Defendants violated the Tennessee Uniform Administrative Procedures Act by failing to promulgate the Redefinition of Sex Rule through the proper notice-and-comment process.

13. As such, the Redefinition of Sex Rule is void, of no effect, and unenforceable.

14. The Defendants' decision to ban any update of the sex designators for transgender people, including Ms. Doe and Ms. Miller, because they are transgender is arbitrary and capricious and violates the Tennessee Uniform Administrative Procedures Act.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. §§ 4-5-225, -322(h); Tenn. Code Ann. § 16-11-101, et seq.; as well as Tenn. Code Ann. § 1-3-121; Tenn. Code Ann. § 29-1-101; and Tenn. Code Ann. § 29-14-101, et seq., and Tenn. R. Civ. P. 65.

16. Venue is proper in this judicial district pursuant to Tenn. Code Ann. §§ 4-5-225, -322; Tenn. Code Ann. § 4-4-104; and Tenn. Code Ann. § 20-4-101(a).

PARTIES

17. Ms. Doe is a transgender woman living in Monroe County Tennessee, which she moved to approximately eight years ago from Massachusetts. She has been unable to receive a Tennessee driver license accurately listing her sex as female despite living her life as female, her passport card reflecting her sex as female, and her medical diagnosis of gender dysphoria.

18. Ms. Miller is a transgender woman living in Cocke County, Tennessee. Ms. Miller received an accurate driver license with the updated sex designator of “female” on January 23, 2024. However, based on the Redefinition of Sex Rule, Defendants sent a letter demanding Ms. Miller surrender her accurate driver license or face suspension of her driving privileges by May 16, 2024. *See* EXHIBIT C.

19. Defendant Tennessee Department of Safety and Homeland Security administers the Uniform Classified and Commercial Driver License Act and oversees every application for a driver license.

20. The Tennessee Department of Safety and Homeland Security is authorized by Tennessee law to promulgate rules necessary to administer driver licenses.

21. Defendant Jeff Long is the appointed Commissioner of the Tennessee Department of Safety and Homeland Security and oversees the Department’s three main divisions: The Tennessee Highway Patrol, the Tennessee Driver Service Division, and the Tennessee Office of Homeland Security.

22. Defendant Jeff Long is authorized to establish administrative rules and regulations concerning the licensing of persons to operate motor vehicles in Tennessee.

23. Defendant Michael Hogan is the appointed Assistant Commissioner of the Driver Services Division of the Tennessee Department of Safety and Homeland Security and is authorized as an agent of Defendant Jeff Long.

FACTUAL ALLEGATIONS

I. Defendants Issued the Redefinition of Sex Rule in Violation of the Notice and Comment Requirements Under the Tennessee Uniform Administrative Procedures Act

24. On April 21, 2023, the Tennessee General Assembly passed a bill (“SB 1440”) which defines “sex” throughout the Tennessee Code as “a person’s immutable biological sex as determined by anatomy and genetics existing at time of birth” and further indicates that “evidence of a person’s biological sex includes, **but is not limited to**, a government-issued identification document that accurately reflects a person’s sex listed on the person’s original birth certificate.” (Emphasis added).

25. SB 1440 was signed into law by Governor Bill Lee on May 17, 2023, and was published as Public Chapter No. 486.

26. SB 1440 became effective on July 1, 2023.

27. Prior to passage of SB 1440, the Legislature had never defined sex uniformly in the code in Tennessee.

28. There is no enforcement mechanism contained in SB 1440.

29. SB 1440 does not authorize or direct action by the Defendants.

30. There is no Tennessee statute requiring individuals to provide a birth certificate to change a Tennessee driver license to document a person’s sex.

31. Since 1996, *see* Exhibit A.17, and prior to the enactment of SB 1440, the Defendants, as part of Rule 1340-01-13-.12(6) (published in Tenn. Comp. R. & Regs. (2023)), allowed a change of sex designator on a Tennessee driver license if an applicant submitted “a statement from the attending physician that necessary medical procedures to accomplish the change in gender are complete.”

32. The Defendants have not updated Rule 1340-01-13-.12(6) since SB 1440 has been enacted, nor have they repealed the rule or promulgated new rules related to 1340-01-13-.12(6).

33. On July 3, 2023, the Defendants issued a document to employees titled “Guidelines to Proof of Identity” and referenced as DLP-302(E)(3) (“the Redefinition of Sex Rule”) indicating that the Defendants will no longer “accept requests for gender marker changes that are inconsistent with someone’s designated sex on their original birth certificate.” *See* EXHIBIT A.

34. The Redefinition of Sex Rule reads:²

- 3. Gender Changes:** Pursuant to Public Chapter 486 As [sic] used in this code, unless the context otherwise requires, “sex” means a person’s immutable biological sex as determined by anatomy and genetics existing at the time of birth and evidence of a person’s biological sex. As used in this subsection (c), “Evidence of a person’s biological sex” includes, but is not limited to, a government-issued identification document that accurately reflects a person’s sex listed on the person’s original birth certificate.

² The rule is under a section titled “*Gender Changes*,” and uses the terms “sex” and “gender” interchangeably. It discusses the definition of “sex” under SB 1440 but directs that the Department of Safety “does not accept requests for *gender marker* changes...” and “...any amended birth certificates cannot be used for determining the *gender*...” (emphasis added).

a. Starting July 1, 2023, the Department of Safety does not accept requests for gender marker changes that are inconsistent with someone's designated sex on their original birth certificate. This means any amended birth certificates cannot be used for determining the gender on their credential without legal being consulted.

b. Special circumstances, where the documents presented have conflicting information (a birth certificate and credential from another government agency that do not have matching information for example) or are unsure how to process someone based on the documents presented, please send to legal for review and guidance.

35. Plaintiff Jane Doe and Plaintiff Chrissy Miller ask this Court to find that the Redefinition of Sex Rule is a "rule" under the Tennessee Uniform Administrative Procedures Act ("UAPA").

36. The Defendants are primarily responsible for the creation, distribution, and enforcement of the Redefinition of Sex Rule.

37. The Redefinition of Sex Rule was never promulgated by notice-and-comment rulemaking procedures under the UAPA.

38. In fact, Defendants made no public declaration or acknowledgment concerning the adoption of the Redefinition of Sex Rule, and a copy of the regulation was only obtained through a public records request.

39. Under the Redefinition of Sex Rule, there is no uniform procedure for determining what is considered an original birth certificate, the Defendants do not allow an amended birth certificate to be used for determining the applicant's sex on Tennessee

driver licenses, and employees are instructed to send documents presenting conflicting information to the legal department for review. *See* EXHIBIT A.

40. Upon information and belief, the Defendants' legal department will reject applicants' requests to update a sex designator when documentation provided as part of the application has conflicting information.

41. A transgender applicant who wishes to update the sex designator on an existing license will present conflicting documentation if the birth certificate provided as part of their application contains their desired sex designator.

42. Upon information and belief, the Defendants' legal department assumes a birth certificate that has a sex designation that conflicts with an applicant's current driver license has been amended for the purposes of the Redefinition of Sex Rule and will reject an application for an updated sex designator on a driver license containing such a discrepancy.

43. There is no process by which an applicant can administratively appeal Defendants' decision to reject an application for an updated sex designator on a driver license. EXHIBIT B, *and see* EXHIBIT C.

44. As a result of the Redefinition of Sex Rule, there is no existing mechanism in Tennessee that will allow a transgender applicant to change the sex designator on their driver license to reflect the sex they embody and live in their day-to-day lives.

45. The Redefinition of Sex Rule, which denies all transgender applicants accurate driver licenses, and is in direct contrast with the decisions of the federal government and multiple states to allow transgender individuals to self-identify their sex

on identification documents. The self-identification policy is in line with the current medical standard for treating persons diagnosed with gender dysphoria.

46. Many states allow transgender individuals to amend their birth certificates to accurately reflect their gender identity.

47. The American Association of Motor Vehicle Administrators instructs states to accept a variety of documents to recognize gender identity including passports, birth certificates, or other identification cards from governments. American Association of Motor Vehicle Administrators, *Resource Guide on Gender Designation on Driver's Licenses and Identification Cards* (2016), <https://www.aamva.org/getmedia/e0069691-e7cf-4a21-aac7-98a9118f63bd/Resource-Guide-on-Gender-Designation-on-Driver-s-Licenses.pdf>

II. Transgender People and Gender Dysphoria

48. Gender identity refers to a person's core sense of belonging to a particular sex such as male or female. Every person has a gender identity.

49. Living in a manner consistent with one's identity is critical to the health and well-being of any person, including transgender people.

50. Although the precise origin of gender identity is unknown, a person's gender identity is a fundamental aspect of human development. There is a general medical consensus that there are significant biological roots to gender identity.

51. Gender identity cannot be altered through medical intervention or other means.

52. A person's gender identity in most cases matches the sex they were designated at birth based on the appearance of their external genitalia. The terms "sex designated at birth" or "sex assigned at birth" are more precise than the term "biological sex" because all of the physiological aspects of a person's sex are not always aligned with each other. For these reasons, the Endocrine Society, an international medical organization representing over 18,000 endocrinology researchers and clinicians, warns practitioners that the terms "biological sex" and "biological male or female" are imprecise and should be avoided.

53. Most people are designated male or female at birth respectively based on the appearance of their external genital anatomy at birth. But transgender people have a gender identity that differs from the sex they were designated at birth. For instance, a transgender man is someone who has a male gender identity but was designated as having a female sex at birth. A transgender woman is someone who has a female gender identity but was designated as having a male sex at birth.

54. Research has identified that determination of sex is far more complex than what is seen on genital exam. Instead, sex is a complex compilation of multiple factors including one's chromosomal makeup (typically XX for those designated female at birth, XY for those designated male at birth), gonadal sex (presence of ovaries or testes), fetal hormonal sex (production of sex hormones by the fetus or exogenous exposure of sex hormones to the developing fetus), pubertal hormonal sex (the change in hormonal milieu that results in the development of secondary sexual characteristics—including facial hair and deep voice for those designated male at birth, and breasts and menstrual cycles for

those designated female), hypothalamic sex (variations in brain structure and function as a result of embryonal exposure of sex hormones), and gender identity.

55. Gender dysphoria is the clinical diagnosis for the significant distress that results from the incongruity between one's gender identity and the sex one was designated at birth. It is a serious medical condition, and it is codified in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) (DSM-5 released in 2013 and DSM-5-TR released in 2022).

56. Being transgender is not itself a medical condition to be cured. But gender dysphoria is a serious medical condition that, if left untreated, can result in debilitating anxiety, severe depression, self-harm, and suicide.

57. The World Professional Association for Transgender Health ("WPATH") has issued Standards of Care for the Health of Transgender and Gender Diverse People ("WPATH Standards of Care") since 1979. The current version of the WPATH Standards of Care is version 8 ("SOC 8"), published in 2022. The WPATH Standards of Care provide guidelines for multidisciplinary care of transgender individuals and describe criteria for medical interventions to treat gender dysphoria—including hormone treatment, and when medically indicated, surgery. Every major medical organization in the United States recognizes that these treatments can be medically necessary to treat gender dysphoria.

58. The SOC 8 is based upon a rigorous and methodological evidence-based approach. Its recommendations are informed by a systematic review of evidence and an

assessment of the benefits and harms of alternative care options, as well as expert consensus. The SOC 8 incorporates recommendations on clinical practice guideline development from the National Academies of Medicine and the World Health Organization. SOC 8's recommendations were graded using a modified GRADE (Grading of Recommendations, Assessment, Development, and Evaluations) methodology considering the available evidence supporting interventions, risks and harms, and feasibility and acceptability.

59. A clinical practice guideline from the Endocrine Society (the “Endocrine Society Guideline”) provides protocols for the medically necessary treatment of gender dysphoria similar to those outlined in the WPATH Standards of Care.

60. The WPATH Standards of Care recommend that, for many transgender individuals, engaging in social transition may be very beneficial. Social transition involves altering one's presentation and social markers to be consistent with their gender identity. Typically, social transition involves some or all of the following:

- a. Change in clothing, hair, or appearance;
- b. Change of name;
- c. Change in pronouns (i.e., “she” “he” or “they”);
- d. Change in participating in gender-specific activities, events, or spaces; and
- e. Change of the sex designator on identifying documents, including driver license, passport, and birth certificate.

61. In addition to social transition, transgender individuals often seek medical or surgical intervention in healthcare settings as part of a medical transition. Medical

transition often includes the prescription of hormones so that the transgender person can develop secondary sexual characteristics of the sex with which they identify. This may mean that a transgender man (or someone who was designated as female at birth but knows themselves to be male) may grow facial hair and develop a much deeper voice as a result of testosterone treatment. Alternatively, transgender women (designated male at birth but knows themselves to be female), may develop breast tissue and a more feminine body fat distribution as a result of estrogen and progesterone that may be prescribed by a clinician.

62. Some transgender patients seek surgical transition. These surgical procedures further change the patient's anatomy to match more closely with their gender identity.

63. Under the WPATH Standards of Care, if a transgender individual has gender dysphoria, medically accepted treatment for that condition includes living their life consistently with their gender identity, including the use of identity documents to reflect their gender identity.

64. Forcing transgender individuals to use identity documents that state their assigned sex at birth rather than their gender identity is inconsistent with medical protocols and can cause anxiety and distress to the individual. For individuals with gender dysphoria, it can interfere with the treatment of, and worsen, their gender dysphoria.

65. Driver licenses are a critically important form of identification. For many people, a driver license makes it possible for them to secure a job and otherwise care for

their needs and the needs of their family. This is especially true in places like Tennessee where most people need to drive every day to go to work, school, stores, doctors' offices, or visits with friends and family, and where identification is required to vote.

66. It is estimated that 1.6 million people identify as transgender in the United States, or 1.9% of the population.³ Approximately 30,800 Tennesseans are estimated to be transgender.⁴

67. Transgender people often risk harassment, harm, and social stigma when others learn they are transgender.

68. Individuals who are transgender are more likely to suffer abuse, harassment, discrimination, and violence than the population at large. The 2022 U.S. Trans Survey conducted by the National Center for Transgender Equality—the largest survey of transgender individuals in the U.S. ever conducted (available at

https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf) found that:

- a. Approximately 44% of respondents experienced serious psychological distress in the previous 30 days;
- b. Nearly one in ten (9%) respondents reported that they were denied equal treatment or service in the last 12 months because of their gender identity or expression;

³ Herman, J.L., Flores, A.R., O'Neill, K.K. (2022). How Many Adults and Youth Identify as Transgender in the United States? The Williams Institute, UCLA School of Law (available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>).

⁴ *Id.*

- c. Nearly one-third (30%) of respondents reported that they were verbally harassed in the last 12 months because of their gender identity or expression;
- d. More than one-third (39%) of respondents reported that they were harassed online in the last 12 months because of their gender identity or expression;
- e. Three percent (3%) of respondents reported that they were physically attacked in the last 12 months because of their gender identity or expression; and
- f. 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 sex marker that did not match their presentation.
- g. Sixty-two percent (62%) of respondents reported that they were “very uncomfortable” or “somewhat uncomfortable” asking for help from police when needed because of their gender identity or expression.

69. Indeed, numerous individuals have been murdered in Tennessee because they are transgender, *see, e.g.,* Madeleine Roberts, *HRC Mourns Angel Unique, Black Trans Woman Killed in Memphis, Tenn.*, Human Rights Campaign, Nov. 2, 2020, <https://www.hrc.org/news/hrc-mourns-angel-unique-black-trans-woman-killed-in-memphis-tenn>; Jose Soto, *Remembering Danyale Thompson, Black Trans Woman Tragically Killed*, Human Rights Campaign, Nov. 22, 2021, <https://www.hrc.org/news/remembering-danyale-thompson-black-trans-woman-tragically-killed>; Meghan Olson, *A Beloved Friend and Loving Dog Mom, HRC Remembers the Life of Kitty Monroe*, Human Rights Campaign, June 30, 2022, <https://www.hrc.org/news/a-beloved-friend-and-loving-dog-mom-hrc-remembers-the->

life-of-kitty-monroe?_ga=2.122811275.1477492128.1711568041-1305210819.1709569008.

70. Transgender people are over four times more likely than cisgender⁵ people to experience violent victimization. UCLA School of Law, Williams Institute, *Transgender People Over Four Times More Likely Than Cisgender People to be Victims of Violent Crime*, March 23, 2021, <https://williamsinstitute.law.ucla.edu/press/ncvs-trans-press-release/>.

III. Jane Doe Has Experienced Harm as a Direct Result of the Redefinition of Sex Rule

71. Plaintiff Jane Doe is a thirty-three-year-old woman who has been living in Monroe County, Tennessee for approximately eight years. Ms. Doe was born in Florida and has a Florida birth certificate.

72. Ms. Doe is transgender. She was assigned male at birth but has known that she is female since the age of three. She was diagnosed with gender dysphoria in May 2022. Ms. Doe receives medical treatment for gender dysphoria through hormone therapy which causes her to have the same sex characteristics as other women.

73. Ms. Doe legally changed her name to the one currently on her license in November 2022 in the Probate Court for Monroe County, Tennessee.

74. Ms. Doe lives as a woman in her day-to-day life and is perceived by members of the community as a woman because of her female sex characteristics. As

⁵ “Cisgender” is defined by Merriam-Webster Dictionary as: of, relating to, or being a person whose gender identity corresponds with the sex the person was identified as having at birth. (Available at <https://www.merriam-webster.com/dictionary/cisgender>).

such, Ms. Doe is forced to disclose her transgender status whenever she shows a third-party her driver license, which gives her significant distress both because of the negative effects it has on her gender dysphoria and because she fears discrimination, harassment and violence based on her status as a transgender woman.

75. As a result of the anxiety providing her driver license causes, Ms. Doe avoids use of the license whenever possible, and instead tries to use her passport card if feasible. However, a driver license is often required for voting, applying for housing, obtaining employment, making certain large purchases, ordering alcohol, attending certain healthcare appointments, and other activities requiring identification.

76. On February 23, 2024, Ms. Doe visited the driver license office located at 150 Plaza Circle, Athens, TN 37303.

77. Ms. Doe sought to update her existing Tennessee driver license to reflect her correct gender identity of female.

78. Upon arrival at the driver license office, Ms. Doe was greeted by an employee who addressed her as a woman with appropriate she/her pronouns based on her sex characteristics.

79. Ms. Doe informed the employee at the counter that she would like to update the sex designator on her driver license and presented her previous driver license, passport card, and two proofs of residency. The employee consulted with her manager to determine the correct course of action. The employee indicated to Ms. Doe that she would be unable to change Ms. Doe's sex designator because of the Redefinition of Sex Rule that was in effect as of July 1, 2023, making it impossible for transgender people to

change sex designators on driver licenses based on Tennessee's new law SB 1440. The employee indicated that this would remain true even if Ms. Doe received an amended birth certificate that reflected an updated sex designator.

80. The Driver Services employee accepted Ms. Doe's request to change her eye color on the driver's license from grey to green without any documentation or questions.

81. Ms. Doe fears she can no longer reside in Tennessee without sacrificing her safety, privacy, and dignity.

IV. Allegations Specific to Chrissy Miller

82. Plaintiff Chrissy Miller is a thirty-eight-year-old woman who lives Cocke County, Tennessee. Ms. Miller was born in Ohio and has an Ohio birth certificate.

83. Ms. Miller is employed seasonally as a whitewater rafting guide. She has lived in Tennessee since she relocated for work in 2014.

84. Ms. Miller is transgender. She was assigned male at birth but has known that she is female since the age of five. She was diagnosed with gender dysphoria in 2023. Ms. Miller receives medical treatment for gender dysphoria through hormone therapy which causes her to have the same sex characteristics as other women.

85. To better reflect Ms. Miller's identity and sex characteristics, Ms. Miller legally changed her name on September 21, 2023 in the Cocke County Circuit Court in Newport, Tennessee. Ms. Miller's legal name is currently on her driver license.

86. Ms. Miller lives as a woman in her day-to-day life and is perceived by members of the community as a woman because of her female sex characteristics.

87. In or around mid-July of 2023, Ms. Miller went to the local driver license services center at 1220 Graduate Drive, in Sevierville, Tennessee, to request a change to the sex designator on her license from male to female.

88. An employee at the services center informed Ms. Miller that they could not grant her request “anymore” and that Ms. Miller would need a birth certificate that identified her sex as female if she wanted a sex designator of female on her driver license.

89. Ms. Miller then legally updated the sex designator on her Ohio birth certificate to “female” on November 28, 2023. EXHIBIT D. The Ohio probate court adjudicated her female and directed her birth certificate be updated accordingly—Ohio law recognizes that “[t]he new birth record, as well as any certified copies of it when properly authenticated by a duly authorized person, shall be prima-facie evidence in all courts and places of the facts therein stated.” Ohio Rev. Code Ann. § 3705.15(D)(1). And, “A certified copy of the birth record corrected or registered by court order as provided in this section shall have the same legal effect for all purposes as an original birth record.” Ohio Rev. Code Ann. § 3705.15(C).

90. After receiving her updated birth certificate, Ms. Miller set about updating her legal government records to reflect her correct sex designator as female. Ms. Miller’s United States passport correctly represents her sex as female. Ms. Miller has also updated her Social Security records to reflect her sex as female.

91. On January 22, 2024, Ms. Miller decided to update her Tennessee driver license as well and took her updated birth certificate to the Knoxville Driver Services and Reinstatement Center located at 209 Gore Road, Knoxville, TN.

92. The employees at the Knoxville driver service center were respectful to Ms. Miller when she appeared at the counter. However, after looking at Ms. Miller's paperwork and after she told them her request to update her sex designator to female, the employees' dispositions changed. The employees became very short with Ms. Miller and told her they could not grant her request.

93. About an hour or two after Ms. Miller left the Knoxville driver services center, the manager of the driver services center called her and told her they would not be able to update Ms. Miller's sex designator.

94. Ms. Miller was confused and so she returned to the Sevierville Driver Services Center at 1220 Graduate Drive, Sevierville, TN 37862 on January 23, 2024.

95. When Ms. Miller arrived at the Sevierville driver services center, she approached a clerk at the front desk and explained that she had her birth certificate updated and that she needed to update the sex designator on her driver license to match it. The clerk examined her birth certificate and accordingly issued her a driver license with the sex designator of female.

96. Ms. Miller was ecstatic to have all of her government identification documents reflect her accurate female sex characteristics. She quickly updated her license with her bank account and for her automobile and health insurance policies.

97. Ms. Miller had struggled to find work due to her driver license conflicting with her sex characteristics and appearance. She had taken career training to help bolster her resume, and she was relieved that her driver license now accurately reflected her sex characteristics and appearance so that she could continue applying for employment.

98. On April 24, 2024, Ms. Miller received a letter from Defendant Michael Hogan, dated April 16, 2024. The letter states:

On March 28, 2014, you applied for and were issued a Tennessee driver license using a birth certificate from the State of Ohio. The birth certificate listed your name as Christopher Lee Miller and your gender as a male. In addition to the birth certificate, you also surrendered a driver license from the State of Ohio listing your name as Christopher Lee Miller and your gender as male.

On January 23, 2024, you presented a birth certificate from the State of Ohio to change your gender from male to female. At the time of the transaction, you were asked if you had another birth certificate and you said, no. This was not correct based on the historical transaction and documentation from March 28, 2014.

Pursuant to Tennessee Code Annotated § 55-50-321(c)(1)(A), “each application for a driver license, instructional permit, intermediate driver license or photo identification license shall state the sex of applicant.”

Tennessee Code Annotated § 1-3-105(c), relevant to the term “Sex” means a person’s “Immutable Biological Sex” as determined by anatomy and genetics existing at the time of birth and evidence of a person’s biological sex.

As there was already a birth certificate on file with a gender designation prior to the issuance of your current license on, January 23, 2024, the license was issued in error. You will need to visit a driver license center to surrender the current license and be issued a new driver license free of charge with the gender from your original birth certificate on the face.

Failure to surrender your driver license issued January 23, 2024, within in [sic] thirty (30) days of this letter, will result in a cancellation of your

driving privilege, until you apply for the correct driver license listing your gender as defined by Tennessee law.

EXHIBIT C.

PETITION FOR COMMON LAW WRIT OF CERTIORARI

99. The common law writ of certiorari is available “where an inferior tribunal, board, or officer, exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.” Tennessee Code Annotated § 27-8-101; *and see* TN Const. Art 6, § 10 (“The Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation”).

100. The judicial review available under a common-law writ of certiorari is limited to determining whether the entity whose decision is being reviewed (1) exceeded its jurisdiction, (2) followed an unlawful procedure, (3) acted illegally, arbitrarily, or fraudulently, or (4) acted without material evidence to support its decision. *Heyne v. Metro. Nashville Bd. of Pub. Educ.*, 380 S.W.3d 715, 729 (Tenn. 2012).

101. The Tennessee Supreme Court has “explicitly approved the use of the common-law writ of certiorari to provide judicial relief from (1) fundamentally illegal rulings, (2) proceedings inconsistent with essential legal requirements, (3) proceedings that effectively deny parties their day in court, (4) decisions that are beyond the decision-

maker's authority, and (5) decisions that involve plain and palpable abuses of discretion.”
Id.

102. Defendants’ administrative action to enforce and apply a regulation that operates as a “rule” without undergoing the proper notice-and-comment rulemaking requirements and results in Defendants exceeding their jurisdiction and follows an unlawful procedure.

103. Defendants’ decisions denying Ms. Doe and Ms. Miller accurate driver licenses were fundamentally illegal, arbitrary, and fraudulent proceedings inconsistent with essential legal requirements. These decisions have no lawful process for meaningful agency appeal, and effectively deny Ms. Doe and Ms. Miller their right to have a court of record declare their legal sex. And these decisions are beyond Defendants’ decision-making authority and involve plain and palpable abuses of discretion.

104. Accordingly, Ms. Doe and Ms. Miller ask this Court to issue a common law writ of certiorari to review Defendants’ actions.

CAUSES OF ACTION

105. Ms. Doe and Ms. Miller ask the Court for a judgment declaring that the Redefinition of Sex Rule is a “rule” under the Tennessee Uniform Administrative Procedures Act because it is an agency statement of general applicability since it is capable of being applied to every member of a class: transgender people seeking to change sex designators on their driver licenses after July 1, 2023; and it “affects private rights, privileges or procedures available to the public” because it affects the rights, privileges, or procedures available to transgender license applicants who wish to have a

sex designator on their driver license that matches their gender identity when it is different from the sex they were assigned at birth. *See Emergency Med. Care Facilities, P.C. v. Div. of TennCare*, 671 S.W.3d 507 (Tenn. 2023); and *see Mandela v. Campbell*, 978 S.W.2d 531 (Tenn. 1998).

106. As a rule, the Redefinition of Sex Rule is void and of no effect because it was not properly promulgated under the Tennessee Uniform Administrative Procedures Act procedures for rulemaking.

107. Further, the Defendants' decisions denying Ms. Doe and Ms. Miller an accurate driver license that reflects their correct gender identity violates the Tennessee Uniform Administrative Procedures Act because they acted arbitrarily and capriciously.

COUNT I

The Redefinition of Sex Rule is a Void Rule Adopted in Violation of the Tennessee Uniform Administrative Procedures Act's Rulemaking Requirements

108. Plaintiffs incorporate all allegations of all preceding paragraphs as if fully set forth herein.

109. "The legal validity or applicability of a statute, rule or order of an agency to specified circumstances may be determined in a suit for a declaratory judgment...if the court finds that the statute, rule or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant." Tenn. Code Ann. § 4-5-225(a).

110. There is no other plain, adequate, and complete method for Ms. Doe and Ms. Miller to obtain the relief to which they are entitled without applying to this Court, and the language of Tenn. Code Ann. § 4-5-225(b) does not require Ms. Doe and Ms.

Miller to petition the agency for a declaratory order prior to coming to this Court.

Subsection (b) states that “A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue the order.” Here, the Defendants do not admit that regulation DLP-302 is a “rule.” They suggest that it is a “policy” instead which they have no authority under Tenn. Code Ann. § 4-5-225 to issue a declaratory order regarding as they do not interpret DLP-302 as a “statute, rule or order” subject to subsection (b). The exhaustion of administrative remedies doctrine is inapplicable under the circumstances of this case.

111. Nothing in Tenn. Code Ann. § 1-3-105(c) authorizes any action by Defendants. That definitional section states in full: “As used in this code, unless the context otherwise requires, ‘sex’ means a person's immutable biological sex as determined by anatomy and genetics existing at the time of birth and evidence of a person's biological sex. As used in this subsection (c), ‘evidence of a person's biological sex’ includes, but is not limited to, a government-issued identification document that accurately reflects a person's sex listed on the person's original birth certificate.” Tenn. Code Ann. § 1-3-105(c). The statute does not require exhaustion of administrative remedies.

112. The exhaustion of administrative remedies doctrine has recognized exceptions based on “equitable considerations of fairness to litigants and institutional competence.” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 845 (Tenn. 2008). The Tennessee Supreme Court has outlined “three broad exceptions to the non-statutory

exhaustion requirement: (1) when the administrative remedy would cause undue prejudice to subsequent assertion of a claim in court; (2) when the administrative remedy would be inadequate ‘because of some doubt as to whether the agency was empowered to grant effective relief’; and (3) when the administrative agency has been shown to be biased or has predetermined the issue.” *Id.* (citing *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992)).

113. First, requiring Ms. Doe and Ms. Miller to obtain a declaratory order or a denial of a declaratory order before bringing this claim would cause undue prejudice to subsequent assertion of a claim in court as they seek preliminary injunctive relief. Were Ms. Doe and Ms. Miller to petition Defendants for a declaratory order, the agency would have to either (a) convene a contested case hearing within sixty (60) days of being petitioned for the order, or (b) refuse to issue a declaratory order. *See* Tenn. Code Ann. § 4-5-223. Due to the emergent nature of Ms. Doe’s and Ms. Miller’s legal injuries, administrative exhaustion would cause undue prejudice to their rights to seek injunctive relief from this Court.

114. Second, a declaratory order would be inadequate because there is serious doubt as to whether Defendants are empowered to grant effective relief. Nothing in Tenn. Code Ann. § 1-3-105(c) authorizes any action by Defendants, including the authority to hold a contested case hearing regarding the legal sex of Ms. Doe or Ms. Miller. Defendants admit that there is no administrative appeal of their determination of Ms. Doe’s and Ms. Miller’s sex. *See* Exhibit B. It is based on their original birth certificates and there is no possibility of any relief. *Id.* “Exhaustion has not been required where the

challenge is to the adequacy of the agency procedure itself, such that [like here] the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff[s'] lawsuit. *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (cleaned up). There is no administrative remedy available to Ms. Doe or Ms. Miller and that issue is identical with the merits of this lawsuit.

115. Third, Defendants have been shown to be biased or have predetermined the issue. They believe that their policy is lawful and valid. Defendants' legal interest is aligned with a declaratory order that declares the validity of their action. Defendants have declared that they will not change Ms. Doe's or Ms. Miller's sex designators. Defendants base their decision on a law [Tenn. Code Ann. § 1-3-105(c)] that contains no language authorizing them to act, there is no appeal, and to require administrative review "would be to demand a futile act." *See McCarthy*, 503 U.S. at 148-49; *and see State v. Yoakum*, 201 Tenn. 180, 195 (Tenn. 1956); *and see Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466 (Tenn. 2004).

116. Ms. Doe and Ms. Miller seek a declaration from this Court that DLP-302 operates as a "rule" and thus must be promulgated through proper procedures under the UAPA before it can be enforced against them.

117. "In passing on the legal validity of a rule or order, the court shall declare the rule or order invalid [] if it finds that it...was adopted without compliance with the rulemaking procedures provided for [in the UAPA]..." Tenn. Code Ann. § 4-5-225(c).

118. Defendants are an agency subject to the requirements of rulemaking under the Tennessee Uniform Administrative Procedures Act. Tenn. Code Ann. §§ 55-50-

202(b), -321(i)(2). “Agency” means each state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases. Tenn. Code Ann. § 4-5-102(2).

119. The UAPA requires agencies to promulgate rules in accordance with its uniform procedures—namely, public notice, a public hearing, an opportunity for public comment, approval by the Attorney General, and filing with the Secretary of State. Tenn. Code Ann. §§ 4-5-202, -203, -204, -206, -211.

120. Any agency rule not adopted in compliance with these [notice and comment rulemaking] procedures is void and of no effect and shall not be effective against any person or party nor shall it be invoked by the agency for any purpose. Tenn. Code Ann. § 4-5-216.

121. The Redefinition of Sex Rule operates as a “rule” under the UAPA because it:

a. is an “agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency” as it implements SB 1440 and is capable of being applied to every member of a class, Tenn. Code Ann. § 4-5-102: that is, transgender people, including Ms. Doe and Ms. Miller, who seek to change the sex designator on their driver licenses after July 1, 2023; and

b. it “affects private rights, privileges or procedures available to the public” because it affects the rights, privileges, or procedures available to transgender driver

license applicants, including Ms. Doe and Ms. Miller, who wish to have a sex designator on their driver license that matches their gender identity, but is different from the sex they were assigned at birth. Tenn. Code Ann. § 4-5-102(12)(A). The procedures that should be available to Ms. Doe and Ms. Miller are outlined by the existing properly promulgated Rule 1340-01-13-.12(6) (published in Tenn. Comp. R. & Regs. (2023)), which allows a change of sex designator on a Tennessee driver license if an applicant submits “a statement from the attending physician that necessary medical procedures to accomplish the change in gender are complete.”

122. The Redefinition of Sex Rule was not adopted in compliance with the procedures for rulemaking under the UAPA and is thus void and of no effect.

COUNT II

The Defendants’ Denial Violates the Tennessee Uniform Administrative Procedures Act Because It Is Arbitrary and Capricious

123. Plaintiffs incorporate all allegations of all preceding paragraphs as if fully set forth herein.

124. The UAPA authorizes this Court to reverse or modify Defendants’ decision denying Ms. Doe’s and Ms. Miller’s requests to update the sex designator on their driver licenses under the Redefinition of Sex Rule if it is arbitrary and capricious. Tenn. Code Ann. § 4-5-322(h)(4).

125. Defendants’ refusal to update Ms. Doe’s and Ms. Miller’s sex designator on their driver licenses is not based on any course of reasoning or exercise of judgment, and disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion because it is an outright ban on any

transgender person, including Ms. Doe and Ms. Miller, updating the sex designator on their driver licenses to reflect their accurate gender identity post-July 1, 2023—no matter what evidence is provided by the applicant. There are no considerations of evidence, for instance, of whether the person has socially or medically transitioned, or whether there has been a legal determination of sex made through some other mechanism, like a court order.

126. Furthermore, Defendants act arbitrarily because there is no rational connection between which transgender people do get to have a driver license that accurately represents their sex characteristics, and transgender people who are denied such a license. For instance, if a transgender person applied for a sex designator change prior to July 1, 2023 and met the requirements, then they are allowed to have a sex designator that does not match their original birth certificate. Inconsistent application of the Definition of Sex Rule will necessarily happen when individuals from other states whose laws allow their birth certificates and driver licenses to reflect the holder's gender identity will be able to obtain Tennessee driver licenses that match their gender identity and sex characteristics when they move to Tennessee. It is only if a transgender person has a birth certificate on file with Defendants, with a sex designator that is different from the designation on their current license—or was born in Tennessee—and attempts to change their sex designator after July 1, 2023, where the Redefinition of Sex Rule will be enforced. There is no equally applied reasoning. If one happens to be born in a state that allows sex designator changes on a birth certificate, and has never lived in Tennessee and then moves here, then they would likely not be subject to the Redefinition of Sex Rule.

However, if a transgender person is born in Tennessee—the only state in the country which does not allow transgender people to change the sex designator on their birth certificate or (now) on their driver license, and that person applies to change their sex designator after July 1, 2023, then the Redefinition of Sex Rule applies. The rule is not applied consistently or in a rational way.

127. The decisions are arbitrary and capricious across-the-board denials for Ms. Doe and Ms. Miller, regardless of their individual situations, medical treatment, and/or whether they present and live their lives as women.

LACK OF LEGAL REMEDY

128. Ms. Doe's, Ms. Miller's, and other transgender applicants' harm is ongoing and cannot be alleviated except by injunctive relief.

129. There is no other remedy available at law.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

(1) Issue a common law writ of certiorari to review whether Defendants (a) exceeded its jurisdiction, (b) followed an unlawful procedure, (c) acted illegally, arbitrarily, or fraudulently, or (d) acted without material evidence to support its decision;

(2) Enter a judgment declaring that DLP-302 is a rule that is subject to the notice-and-comment rulemaking requirements of the Tennessee Uniform Administrative Procedures Act;

(3) Enter a judgment declaring that the Redefinition of Sex Rule violates the rulemaking procedures under the Tennessee Uniform Administrative Procedures Act, and is thus void and of no effect;

(4) Reverse the decisions of Defendants to deny any procedures to change the sex designator on Jane Doe's and Chrissy Miller's driver license, and remand to Defendants for further proceedings aligned with this Court's decision;

(5) Issue a temporary restraining order enjoining Defendants, their employees, agents and successors in office from requiring Chrissy Miller to surrender her current driver license, and from suspending Ms. Miller's driving privileges.

(6) Issue preliminary and permanent injunctions enjoining Defendants, their employees, agents and successors in office from enforcing the Redefinition of Sex Rule;

(7) Award Plaintiffs their costs and expenses, including reasonable attorney's fees pursuant to Tenn. Code Ann. §§ 29-14-110 and -111; and

(8) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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VERIFICATION

STATE OF TENNESSEE

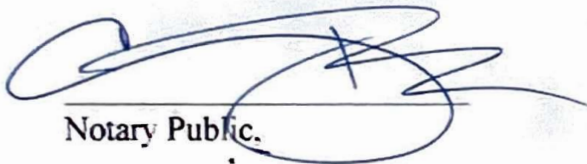
COUNTY OF SHELBY

I, LUCAS CAMERON-VAUGHN, being duly sworn, on oath say that I am one of the attorneys for the Plaintiffs Jane Doe and Chrissy Miller; that I am authorized sign on behalf of the Plaintiffs; and that the statements contained in the foregoing Second Amended Verified Complaint for Declaratory and Injunctive Relief and Petition for Judicial Review are true.



LUCAS CAMERON-VAUGHN

Subscribed and sworn to before me this 17th day of June, 2024.


Notary Public.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Second Amended Verified Complaint for Declaratory and Injunctive Relief and Petition for Judicial Review has been sent by U.S. Mail, postage pre-paid, or via electronic mail to the following:

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DATE: August 13, 2024

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