

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

JANE DOE; CHRISSY MILLER,)	
)	
Plaintiffs/Petitioners,)	
)	
vs.)	No. 24-0503-III
)	CHANCELLOR MYLES
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.)	

**PLAINTIFF-PETITIONERS’ MOTION FOR STAY OF AGENCY DECISION
AND MEMORANDUM IN SUPPORT**

Pursuant to Tennessee Code Annotated § 4-5-322(c), Plaintiff-Petitioners Jane Doe and Chrissy Miller respectfully move this Court for an order staying enforcement of the declaratory order issued by the Tennessee Department of Safety.

INTRODUCTION

On the evening of March 14, 2025, the Tennessee Department of Safety issued a declaratory order denying Plaintiff-Petitioners’ requested relief and determining that, “(1) the Department is legal bound to define ‘sex’ pursuant to Tenn. Code Ann. § 1-3-105(c); (2) The enactment of Tenn. Code Ann. § 1-3-105(c) nullified Department rule 1340-01-13-.12(6); (3) DLP-302(E)(3) is a policy pursuant to Tenn. Code Ann. § 4-5-102(2) and does not need to be promulgated as a rule; and (4) the Department possesses the legal authority to deny the Petitioners’

requested sex designator changes and to required [sic] the surrender of issued licenses that contain errors or defects.” (Ex. A).

A stay of the agency’s order is warranted because Petitioners are likely to prevail on the merits at judicial review, Petitioners will be irreparably harmed absent a stay, no others will be harmed if the Department grants the stay, and it is in the public interest to grant the stay. Petitioners, and other transgender people in Tennessee, face irreparable harm in being denied a correct and accurate driver license. And the public has a strong interest in agencies following the required procedures when those procedures affect their rights and present no harm to the Department. These factors warrant a stay.

BACKGROUND

1. Petitioners Jane Doe and Chrissy Miller are transgender women who seek to update the sex designators on their Tennessee driver licenses to reflect their medical and lived sex as female. *See* Decl. Order ¶¶ 15-25.

2. For decades, from 1996 and prior to July 1, 2023, Department Rule 1340-01-13-.12(6) 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.” *See* Decl. Order ¶ 10.

3. On July 1, 2023, Tennessee Code Annotated § 1-3-105(c) went into effect, stating: “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." See Decl. Order ¶¶ 6-8, *cf.* Tenn. Code Ann. § 1-3-105(c) (including full language).

4. There is no language in Tennessee Code Annotated § 1-3-105(c) directing agency action. See Tenn. Code Ann. § 1-3-105(c).

5. Subsequently, on July 3, 2023, the Department issued a document to employees titled "Guidelines to Proof of Identity," referenced as DLP-302(E)(3), which states:

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.

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.

Decl. Order p. 12.

6. The Department has not updated Rule 1340-01-13-.12(6) since [Tenn. Code Ann. § 1-3-105(c)] has been enacted, nor have they repealed the rule or promulgated new rules related to 1340-01-13-.12(6). Decl. Order ¶ 11.

7. Petitioner Chrissy Miller's request to update her sex designator to female was approved at the Sevierville Driver Services Center, where a clerk issued her a driver license with the sex designator of female on January 23, 2024. *See Decl. Order ¶¶ 21-22, 27.*

8. On April 16, 2024, Assistant Commissioner Michael Hogan sent Ms. Miller a letter stating that her license was issued in error because it contained a female sex designator and requiring her to surrender it within thirty (30) days or face cancellation of her driving privileges. *See Decl. Order ¶ 23.*

9. Petitioner Jane Doe's request to update her sex designator to female was denied by the Department. *See Decl. Order ¶ 26.*

PROCEDURAL HISTORY

10. Petitioners filed a Complaint for Declaratory Judgment and Injunctive Relief and Petition for Judicial Review in the Chancery Court of Davidson County, Tennessee on April 23, 2024, seeking relief from the actions of the Department. *Decl. Order ¶ 26.*

11. This Court enjoined the Department and its commissioners from requiring Ms. Miller to surrender her driver license or cancelling her driver license for failure to surrender the license. *See Decl. Order ¶ 27.*

12. The Court stayed the case to allow Petitioners to file a Petition for Declaratory Order, and for the Department to respond. *Decl. Order ¶ 28.*

13. On September 20, 2024, Petitioners filed a Petition for Declaratory Order with the Tennessee Department of Safety. *Decl. Order ¶ 29.*

14. On January 13, 2025, a contested case hearing was held in front of Dustin Brandon, Commissioner's Designee. *Decl. Order p. 1.*

15. Hearing Officer Brandon issued a Declaratory Order, dated March 14, 2025, which denied Petitioners' requested relief and determined that, "(1) the Department is legally bound to define 'sex' pursuant to Tenn. Code Ann. § 1-3-105(c); (2) The enactment of Tenn. Code Ann. § 1-3-105(c) nullified Department rule 1340-01-13-.12(6); (3) DLP-302(E)(3) is a policy pursuant to Tenn. Code Ann. § 4-5-102(2) and does not need to be promulgated as a rule; and (4) the Department possesses the legal authority to deny the Petitioners' requested sex designator changes and to required [sic] the surrender of issued licenses that contain errors or defects." (Exhibit A).

16. On March 24, 2025, Petitioners petitioned the Department for a stay of the declaratory order pursuant to Tennessee Code Annotated § 4-5-316.

17. The Department responded to the petition for a stay.

18. On April 28, 2025, Petitioners' counsel requested a timeframe for the Hearing Officer to issue a decision on the petition for a stay.

19. On April 30, 2025, the Hearing Officer advised the decision would issue by May 2, 2025.

20. However, to date, the Department has failed to issue a decision on the petition for a stay. (Ex. B).

21. Despite the fact that the Department has not issued a decision on the petition for a stay, this Court may decide this motion because Petitioners can show that "an agency ruling on a stay application cannot be obtained within a reasonable time." Tenn. Code Ann. § 4-5-322(c). Petitioners requested a stay from the agency on March 24, and it's been seven (7) weeks or forty-nine (49) days since the petition was filed with the agency. That is an unreasonable amount of time for the agency to decide whether or not to stay an order when Petitioners face irreparable harm every single day that the Department is allowed to enforce its order pending judicial review.

ARGUMENT

The decision to stay an agency's order is based on a four-factor balancing test. *State of Ohio ex rel. Celebrezze v. Nuclear Regul. Comm'n*, 812 F.2d 288, 290 (6th Cir. 1987). These factors are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *Id.* These factors are not prerequisites that must be met but are interrelated considerations that must be balanced together. *SawariMedia, LLC v. Whitmer*, 963 F.3d 595, 596 (6th Cir. 2020) (internal citations omitted). At a minimum, Petitioners must show “serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if a [stay] is issued.” *Ohio*, 812 F.2d at 290. Here, the balance of these factors warrants a stay.

I. Petitioners are likely to succeed on the merits, and at minimum, present serious questions on the merits.

A. No statute expressly authorizes the Department to deny sex marker changes to transgender applicants. Petitioners are likely to succeed on the merits of their claim, and at a minimum present serious questions, that the Department and Commissioner lack the authority to deny them updated sex designators on their driver licenses. Administrative agencies are creatures of statute, *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022), and must conform their actions to their enabling legislation. *BellSouth Telecommunications, Inc. v. Greer*, 972 S.W.2d 663, 680 (Tenn. Ct. App. 1997) (citing *Tennessee Pub. Serv. Comm'n v. Southern Ry.*, 554 S.W.2d 612, 613 (Tenn. 1977); *Pharr v. Nashville, C. & St. L. Ry.*, 208 S.W.2d 1013, 1016 (Tenn. 1948)). Any authority exercised by [an agency] must be as the result of an express grant of authority by statute or arise by necessary implication from the

expressed statutory grant of power. *Tennessee Pub. Serv. Comm'n v. S. Ry. Co.*, 554 S.W.2d 612, 613 (Tenn. 1977) (citing *Pharr*, 208 S.W.2d at 1016). The grant of power to an agency is strictly construed. *Id.* No statute expressly grants the Department the power to determine an applicant's sex based solely on their original birth certificate.

Every application for a driver license “shall state the ... sex ...” of the applicant. Tenn. Code Ann. § 55-50-321. “The applicant shall make certification on the application as to the applicant's age and identification, and, in addition, shall submit to the driver license examiner other documentation meeting the criteria established by rules promulgated by the commissioner as proof of age and identification, or present to the driver license examiner one (1) person who possesses a valid driver license issued in this state who shall attest, in writing, under oath, that the applicant has truthfully identified the applicant in the applicant's affidavit.” Tenn. Code Ann. § 55-50-321(b). Therefore, to establish identity (including sex), the Commissioner can only require documentation “established by rules” unless another license holder can attest to the person's identity.

Further, the Commissioner is only authorized to establish rules that “ensur[e] the safety and welfare of the traveling public,” Tenn. Code Ann. 55-50-202(a), including those persons who travel using a driver license. Listing the assigned sex on the original birth certificate for transgender license holders when they live and present as a different sex today does nothing to “ensure the safety and welfare of the traveling public”—and actually harms and endangers the Petitioners and other transgender license holders like them. *See* Section II, *infra*.

B. Acknowledging that the Department's enabling legislation does not authorize the blanket denial of accurate driver licenses to transgender people, the Department attempts to rely on Tennessee Code Annotated § 1-3-105(c) to justify its actions. However, Petitioners are likely to succeed and can at least show serious questions going to the merits of their claim, that the plain

language of Tennessee Code Annotated § 1-3-105(c) does not authorize the Department to deny all sex designator changes for transgender people, including Petitioners.

Every word in a statute is presumed to have meaning and purpose. *Keen v. State*, 398 S.W.3d 594, 610 (Tenn. 2012) (quoting *U.S. Bank, N.A. v. Tennessee Farmers Mut. Ins. Co.*, 277 S.W.3d 381, 386 (Tenn. 2009)). No word is “inoperative, superfluous, void or insignificant.” *State v. Deberry*, 651 S.W.3d 918, 925 (Tenn. 2022). Accordingly, Tennessee Code Annotated § 1-3-105(c) states:

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.

The words in a statute are as crucial as the words that are absent from it. Strangely, while Tennessee Code Annotated § 1-3-105(c) is a definitional statute, it also purports to describe certain evidence which may prove a person’s sex in some *unspecified* instances but not all. *See* Tenn. Code Ann. § 1-3-105(c) (“evidence of a person’s biological sex’ includes, but is not limited to [...]”). And it gives exceptions to those evidential considerations. *See* Tenn. Code Ann. § 1-3-105(c) (“unless the context otherwise requires [...]”). What it expressly *does not do* is delegate authority to the Department to ban all sex designator changes for transgender people and a court must credit this absent language. *See Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004).

Despite Commissioner Designee’s assertions that “[t]he enactment of a code-wide definition is of itself enabling legislation for state agencies...,” Decl. Order p. 8, Tennessee law mandates that “[a]ny authority exercised by [an agency] must be as the result of an express grant of authority by statute.” *Tennessee Pub. Serv. Comm’n v. S. Ry. Co.*, 554 S.W.2d 612, 613 (Tenn.

1977) (citing *Pharr*, 208 S.W.2d at 1016). There must be a delegation. And that delegation must “contain[] sufficient standards or guidelines to enable both the agency and the courts to determine if the agency is carrying out the legislature's intent.” *Bean v. McWherter*, 953 S.W.2d 197, 199 (Tenn. 1997).

That is not the case here. The Declaratory Order’s novel assertion that a statute that does not expressly direct agency action instead automatically “supersedes any rule that may have been promulgated by the Department and controls the Department’s actions ...” Decl. Order p. 13, contradicts well-established Tennessee law. *See Keen*, 398 S.W.3d at 610; *Deberry*, 651 S.W.3d at 925; *Bean*, 953 S.W.2d at 197. Here, the enabling legislation commands that the Commissioner may only require documentation “established by rules” unless another license holder can attest to the person’s identity. Tenn. Code Ann. § 55-50-321(b). Furthermore, the conclusion that Section 1-3-105(c) operates upon the Department by some invisible mechanism, unknown to other statutes and without express language, is without support in caselaw and the Declaratory Order relies on no authority to support this contention.¹

¹ Commissioner’s Designee attempts to ground the Department’s claim in another case, *Gore v. Lee*, 107 F.4th 548, 560 (6th Cir. 2024). *See* Decl. Order p. 9. However, that case is distinguishable in several important ways. Namely, *Gore* was a constitutional challenge, not a challenge under the UAPA, and concerned a statute with an explicit grant of authority to an agency to prohibit an amendment of the sex on Tennessee birth certificates for transgender people. Tenn. Code Ann. § 68-3-203(d) (“The sex of an individual shall not be changed on the original certificate of birth as a result of sex change surgery”). Importantly, the *Gore* court disclaimed any application of that case to Tenn. Code Ann. 1-3-105(c). *Gore*, 107 F.4th at 560 (discussing whether the birth certificate amendment law violated rational basis review due to animus, the court declined to examine Tenn. Code Ann. § 1-3-105(c): “But the reality is that the plaintiffs did not challenge [Tenn. Code Ann. 1-3-105(c)] or any accompanying regulations in this case. The new law also does not speak to the validity of the Volunteer State’s birth certificate amendment policy”).

The Declaratory Order grapples with the phrase “unless the context otherwise requires” in Section 1-3-105(c) by analyzing the word “context” through its definition in Merriam-Webster as “the interrelated conditions in which something exists or occurs: environment, setting.” Decl. Order p. 9. The Order construes this exception to apply only to “several instances in the Tennessee Code where this definition [of “sex”] would not be appropriate,” *id.*, where its use is not “to distinguish between male or female.” *See* Decl. Order p. 14, ¶ 4-5. However, the Declaratory Order offers no reasoned analysis of why “context” means “statutory context” and not the real-world circumstances where a determination of sex is required. The Department’s interpretation is flawed. The statute includes the qualifying language “unless the context otherwise requires,” indicating the legislature’s recognition that the definition would not be appropriate in all contexts. The context of driver licenses—which serve primarily as identification documents reflecting a person’s lived reality and identity rather than medical or biological historical records—requires a different interpretation.

Moreover, the Commissioner’s Designee does not account at all for the other qualifying language in the statute 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.” The Declaratory Order altogether bypasses any analysis of the phrase “but is not limited to.” This interpretation allows the Department to pick and choose which

Furthermore, the *Gore* court’s analysis hinged on the Tennessee Vital Records Act’s express restriction on birth certificates from public disclosure, treating them as confidential medical records that government officials are prohibited from revealing except in specific circumstances, Tenn. Code Ann. § 68-3-205(a). This is an entirely different function than driver licenses, which are specifically designed for regular public display and use as proof of identity in everyday life. *See Gore*, 107 F.4th at 563.

words in the statute have meaning and purpose without considering “every word.” *Keen*, 398 S.W.3d at 610. Lawful delegations require a “sufficient basic standard” accompanied by “a definite and certain policy and rule of action,” *Bean v. McWherter*, 953 S.W.2d 197, 199 (Tenn. 1997) (quoting *Lobelville Special School District v. McCanless*, 381 S.W.2d 273, 274 (Tenn. 1964), and must also “contain sufficient safeguards to prevent agencies from acting in an arbitrary manner.” *Id.* (citing *State v. Edwards*, 572 S.W.2d 917, 919 (Tenn.1978); *Tasco Developing and Building Corp. v. Long*, 212 Tenn. 96, 368 S.W.2d 65 (1963)).

Assuming, *in arguendo*, that DLP-302(E)(3) is authorized by Tenn. Code Ann. § 1-3-105(c) [which Petitioners do not agree it is], the Commissioner’s Designee does not explain why DLP-302(E)(3) requires that the sex listed on a driver license can only reflect what is on an original birth certificate despite clear language in Tennessee Code Annotated § 1-3-105(c) that explicitly states that an original birth certificate is not the only “evidence of a person’s biological sex.” The Department uses selective language from the statute to support its actions without including the exceptions.

C. There are serious questions as to whether the Department exceeded its statutory authority by implementing DLP-302(E)(3) without following proper rulemaking procedures. Even if the Department had statutory authority to act [which Petitioners refute] the Tennessee Uniform Administrative Procedures Act (“UAPA”) “create[s] safeguards even narrower than the constitutional ones, against arbitrary official encroachment on private rights.” *Emergency Medical Care Facilities, P.C. v. Division of TennCare*, 671 S.W.3d 507, 509 (Tenn. 2023) (quoting *U.S. v. Morton Salt Co.*, 338 U.S. 632, 644 (1950)). Despite the Department’s enabling regulation that commands them to require documentation “established by rules” to prove identity (unless another license holder can attest to the person’s identity), Tenn. Code Ann. § 55-50-321(b),

Commissioner’s Designee opines that DLP-302(E)(3) is a “policy” and not a “rule” under the UAPA, and thus does not require notice-and-comment procedures, because it is merely restating [Tenn. Code Ann. § 1-3-105(c)], Decl. Order p. 14, but this position misses the safeguards enshrined in the UAPA.

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. *Emergency Med. Care Facilities, P.C.*, 671 S.W.3d at 510; *see also* Tenn. Code Ann. §§ 4-5-202, -203, -204, -206, -211. “Any agency rule not adopted in compliance” with these procedures “shall be void and of no effect.” *Id.* (finding TennCare’s statutory authority did not exempt it from rulemaking requirements); *see also* Tenn. Code Ann. § 4-5-216.

A “rule” under the UAPA is:

any agency regulation, standard, statement, or document of general applicability that is not a policy [] that: (A) describes the procedure or practice requirements of an agency; or (B) implements, prescribes, or interprets an enactment of the general assembly or congress or a regulation adopted by a federal agency. ‘Rule’ includes the establishment of a fee and the amendment or repeal of a prior rule...

Tenn. Code Ann. § 4-5-102(12). But the UAPA also enumerates certain exceptions to this definition. *Emergency Med. Care Facilities, P.C.*, 671 S.W.3d at 510. As relevant here, “policy” is defined as:

any statement, document, or guideline prepared or issued by any agency pursuant to its delegated authority that merely defines or explains the meaning of a statute or rule. ‘Policy’ also means any statement, document, or guideline concerning only the internal management of state government that does not affect private rights, privileges, or procedures available to the public...

Tenn. Code Ann. § 4-5-102(10). Thus, agency statements that fall within [the policy] exception need not be promulgated through the rulemaking process. *Emergency Med. Care Facilities, P.C.*,

671 S.W.3d at 510. The Declaratory Order asserts that DLP-302(E)(3) falls within the policy exception, for a few reasons.

The Declaratory Order opines that “[t]he rulemaking process pursuant to Title 4, Chapter 2 is not applicable because DLP-302 is a policy, not a rule.” Decl. Order p. 16 ¶ 13. And “DLP-302(E)(3) is a policy pursuant to Tenn. Code Ann. § 4-5-102 because it is substantially repetitious of Tenn. Code Ann. § 1-3-105(c) and is merely an internal policy of the Department’s internal operations.” Decl. Order p. 16 ¶ 11. Further, the Declaratory Order states “DLP-302(E)(3) does not affect the private rights of citizens, as there is no “right” to change one’s sex designator on a driver license...” Decl. Order p. 16 ¶ 12.

However, DLP-302(E)(3) is a “rule” subject to the rulemaking requirements of the UAPA, not a “policy” because it is a statement of general applicability that affects the “private rights, privileges, or procedures available to the public” to change the sex designation on their driver licenses under Rule 1340-01-13-.12(6). *See* Tenn. Code Ann. § 4-5-102. DLP-302(E)(3) meets the definition of a rule for two reasons:

- (1) It is a statement of general applicability that it is “capable of being applied or is relevant to an entire class or category.” *Emergency Med. Care Facilities, P.C.*, 671 S.W.3d at 514. The DLP-302(E)(3) ban on changes of sex designators applies to all people who wish to update the sex designator on their driver licenses—that is, transgender license applicants in Tennessee.
- (2) It affects the “private rights, privileges, or procedures available to the public.” The “procedures available to the public” were clear in Rule 1340-01-13-.12(6), which allowed a sex designator change on a driver license if an applicant submitted “a statement from the attending physician that necessary medical procedures to accomplish the change in gender are complete.”

DLP-302(E)(3) applies to a class of people and affects the “private rights, privileges, or procedures available to the public.” However, DLP-302(E)(3) was never promulgated through the rulemaking process although it abrogated the procedures available to the public in Rule 1340-01-13-.12(6).

“An agency statement ‘concerns only the internal management of state government,’ [] when it relates only to the management or control of the State itself rather than to external parties or relationships with external parties.” *Emergency Med. Care Facilities, P.C.*, 671 S.W.3d at 515. Thus, under the UAPA, DLP-302(E)(3) operates as a rule and is “void and of no effect.” Tenn. Code Ann. § 4-5-216.

II. Petitioners will suffer irreparable harm absent a stay, while the Department will suffer no harm if a stay issues.

If not stayed, the Declaratory Order will cause immediate and concrete harm to the Petitioners Jane Doe and Chrissy Miller and other transgender driver license applicants. No money damages can compensate Ms. Doe and Ms. Miller for their injuries. *See Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002). Ms. Doe and Ms. Miller will suffer actual and imminent injury in the form of emotional and psychological harm in the absence of a stay—while the Department will suffer no harm if a stay issues. This is evidenced by the fact that the Department has operated under Rule 1340-01-13-.12(6) for decades since 1996 without issue.

All people deserve the freedom to live their lives safely and with dignity. Ms. Doe and Ms. Miller risk bodily harm, harassment, and discrimination every time they are forced to use a driver license that reveals their status as transgender women. An accurate driver license is far more than a document for operating a vehicle—it is a cornerstone of daily life and identity. For transgender people, having identification that reflects their lived sex is essential for safety as well as the practical necessities of life.²

² Megan B. Maier, *Altering Gender Markers on Government Identity Documents: Unpredictable, Burdensome, and Oppressive*, 23 U. Pa. J.L. & Soc. Change 203 (2020), <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1245&context=jlasc> (last accessed May 11, 2025).

The dangers transgender people face due to inaccurate identification documents are both pervasive and severe. When presenting identification that conflicts with their lived sex, transgender people encounter situations that range from uncomfortable to life-threatening.³ During routine traffic stops, TSA screenings, or any interaction where identification is required, an identity document such as a driver license that contradicts one’s appearance can trigger suspicion, invasive questioning, and even accusations of fraud. These encounters frequently escalate to public humiliation, verbal harassment, or detention—and potentially can lead to physical assault or even death.⁴

When applying for jobs, housing, or financial services, mismatched documents can force transgender people to disclose their transgender status to strangers, leaving them vulnerable to discrimination in areas fundamental to survival and stability. Further, anxiety about potential confrontations, the repeated need to explain personal medical history to strangers, and the institutional erasure of one’s identity contribute to heightened rates of stress, depression, and suicidal ideation among transgender people with inaccurate identification documents.⁵ This persistent state of vulnerability creates barriers to full participation in public life, effectively

³ Human Rights Campaign Foundation, *The Epidemic of Violence Against the Transgender & Gender-Expansive Community in the U.S.: The 2024 Report* (Nov. 2024), <https://reports.hrc.org/an-epidemic-of-violence-2024> (last accessed May 11, 2025).

⁴ *Id.*

⁵ Ayden Scheim et al., *Gender-concordant identity documents and mental health among transgender adults in the USA: a cross-sectional study*, *The Lancet. Public health*, 5(4), e196–e203 (2020), [https://doi.org/10.1016/S2468-2667\(20\)30032-3](https://doi.org/10.1016/S2468-2667(20)30032-3) (last accessed May 11, 2025).

forcing many transgender individuals to limit their daily activities or accept risks to their safety and wellbeing that others never have to consider.

Involuntary disclosure of a person’s transgender status “exposes transgender individuals to a substantial risk of stigma, discrimination, intimidation, violence, and danger.” *Arroyo Gonzalez v. Nevares*, 305 F.Supp.3d 327, 333 (D.P.R. 2018); *see also F.V. v. Barron*, 286 F. Supp. 3d 1131, 1137 (D. Idaho 2018), *decision clarified sub nom. F.V. v. Jeppesen*, 466 F. Supp. 3d 1110 (D. Idaho 2020), and *decision clarified sub nom. F.V. v. Jeppesen*, 477 F. Supp. 3d 1144 (D. Idaho 2020). As numerous courts have recognized, “[t]he hostility and discrimination that transgender individuals face in our society today is well documented.” *Brocksmith v. United States*, 99 A.3d 690, 698 n.8 (D.C. 2014); *see also Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (“There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity.”); *Karnoski v. Trump*, 2018 WL 1784464, at *10 (W.D. Wash. Apr. 13, 2018) (“The history of discrimination and systemic oppression of transgender people in this country is long and well-recognized.”); *Love v. Johnson*, 146 F.Supp.3d 848, 856 (E.D. Mich. 2015) (noting “there is a great deal of animosity towards the transgender community”); *Adkins v. City of N.Y.*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015) (“[T]ransgender people have suffered a history of persecution and discrimination...this is ‘not much in debate.’) (citation omitted). Ms. Doe’s and Ms. Miller’s harms include other tangible harms such as the risk of bodily harm and harassment every time they use a driver license that reveals their status as transgender women or where the viewer of the license does not understand why the sex listed on the license does not match the person in front of them. Further, without a stay, Ms. Doe and Ms. Miller will be forced to reveal private medical information and deeply personal information anytime they present their driver licenses.

Ms. Doe has had to live through harassing and deeply harmful conduct when forced to disclose her transgender status. Doe Decl. ¶¶ 19-23. Ms. Doe has been denied job opportunities, called slurs and been refused service. *Id.* She rightfully fears harassment, discrimination and violence because there is significant risk to her if her transgender status is revealed.

Ms. Miller has also personally experienced harassment and discrimination firsthand. Family members have rejected her. Miller Decl. ¶ 11. Coworkers and employers have discriminated against her at work. Miller Decl. ¶¶ 13-16. Her experience shows that she is harmed when she is forced to submit identification to strangers that conflicts with her appearance. *See* Miller Decl. ¶¶ 50. She has already used her driver license to update her personal accounts. Miller Decl. ¶ 52. Ms. Miller also has a birth certificate, United States passport, and social security record that all identify her correctly as female. Miller Decl. ¶¶ 17-23. Ms. Miller rightfully fears physical and violent altercations at otherwise seemingly inconsequential moments of her life if she is forced to use a driver license with the wrong sex designator that conflicts with her other government identification. Miller Decl. ¶ 51.

Without a driver license, Ms. Miller will be unable to access the necessities of daily life. Ms. Miller will not get a license that incorrectly identifies her as a man and will lose the ability to drive. The United States Supreme Court has recognized for forty-seven years that “driving an automobile [is] a virtual necessity for most Americans.” *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). Driving is “a basic, pervasive, and often necessary mode of transportation to and from one’s home, workplace, and leisure activities.” *Delaware v. Prouse*, 440 U.S. 648, 662 (1979). “Once [driver’s] licenses are issued...their continued possession may become essential in the pursuit of a livelihood.” *Bell v. Burson*, 402 U.S. 535, 539 (1971). And for Ms. Miller, it is the only option since she lives in a rural area. Miller Decl. ¶ 44. She must drive to the grocery store to buy

food. *Id.* She must drive several hundred miles several times a month to obtain necessary medical care. *Id.* Without the use of a driver license, Ms. Miller will not be able to access the essential requirements of her daily life.

If a stay issues, the Department can identify drivers accurately within its licensing scheme and provide Petitioners with accurate sex designators. Accordingly, their harm is nonexistent, and has been. Indeed, the Chancery Court already enjoined the Department from requiring Ms. Miller to surrender her current driver license or cancelling it, demonstrating that a stay is practical and not harmful to the Department's operations. Ms. Doe and Ms. Miller are subject to irreparable harm while the Department will suffer no harm. Thus, a stay is warranted.

III. The public interest favors a stay.

The public interest inherently favors the lawful application of statutory authority. That is why the legislature “established important guardrails for administrative agencies by enacting the Uniform Administrative Procedures Act.” *Emergency Med. Care Facilities, P.C. v. Div. of TennCare*, 671 S.W.3d 507, 509 (Tenn. 2023). One of those guardrails is that agencies engage in mandatory notice-and-comment rulemaking, a process that gives the public and other affected parties an opportunity to weigh in. *Id.* Furthermore, the legislature has established that courts may reverse or modify an agency decision if the rights of the petitioner have been prejudiced by an agency action “(1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) [] unsupported by evidence that is both substantial and material in the light of the entire record...” *See* Tenn. Code Ann. § 4-5-322(h). Ms. Doe, Ms. Miller, and all Tennessee citizens have a paramount interest in government agencies acting within their prescribed authority. Allowing

transgender individuals to have identification documents that accurately reflect their lived sex enhances public safety by reducing the potential for confusion, suspicion, harassment, or violence when identification documents are presented. Thus, a stay is warranted here.

CONCLUSION

For all the above reasons among others, the Court should stay the Declaratory Order pending judicial review.

Petitioners request that the Court decide this motion on the papers pursuant to Tennessee Code Annotated § 4-5-322(c), but if the Court sees fit to set a hearing date for this motion, Petitioners ask that it be set as soon as is convenient to the Court.

Dated: May 12, 2025

Respectfully submitted,

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EXHIBIT A

Declaratory Order of the Tennessee Department
of Safety and Homeland Security

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:)
)
IN RE: PETITION FOR) **TDOSHS CASE No. 2024-02**
DECLARATORY ORDER)
BY JANE DOE AND CHRISSEY)
MILLER)
)

DECLARATORY ORDER

A contested case hearing was held in this matter on January 13, 2025, pursuant to Tenn. Code Ann. § 4-5-223, before Dustin Brandon, Commissioner’s Designee, sitting for the Commissioner of the Tennessee Department of Safety. This case is the result of a Petition for Declaratory Order filed by Petitioners on September 20, 2024. The Petitioners were represented by attorneys Lucas Cameron-Vaughn, Stella Yarbrough, and Maureen T. Holland. The Department was represented by attorneys Lizabeth Hale, Elizabeth Stroecker, and Karen Litwin.

Findings of Fact¹

1. The Department of Safety and Homeland Security (“Department”) oversees the establishment and enforcement of rules and policies with respect to issuing driver licenses to Tennessee drivers.
2. The Department administers the Uniform Classified and Commercial Driver License Act and oversees every application for a driver license. Tenn. Code Ann. § 55-50-201.

¹ Counsel for the Petitioners and the Department submitted an agreed upon Stipulation of Facts on December 10, 2024. These Findings of Fact are based on the December 10, 2024, stipulation unless inconsistent with established in the record.

3. The Department is authorized by Tennessee law to promulgate rules necessary to administer driver license. Tenn. Code Ann. § 55-50-202.
4. Jeff Long (the “Commissioner”) is the appointed Commissioner of the Department and oversees the Tennessee Driver Service Division as part of his responsibilities.
5. Commissioner Long is authorized to establish administrative rules and regulations concerning the licensing of persons to operate motor vehicles in Tennessee.
6. On April 21, 2023, the Tennessee General Assembly passed a bill (“SB 1440”) which defines “sex” throughout the Tennessee Code, “unless the context otherwise requires,” as “a person’s immutable biological sex as determined by anatomy and genetics existing at the time of birth” and further indicates that “evidence of a person’s biological sex includes, but is not limited to, a government issued document that accurately reflects a person’s sex listed on the person’s original birth certificate.”
7. On May 17, 2023, SB 1440 was signed into law by Governor Bill Lee and was published as 2024 Public Chapter No. 486.
8. On July 1, 2023, 2024 Public Chapter No. 486 became effective and is codified at Tenn. Code Ann. § 1-3-105(c).
9. Prior to passage of 2024 Public Chapter No. 486, the General Assembly had not passed a uniform definition of “sex” in the Tennessee code.
10. Since 1996, and prior to the enactment of 2024 Public Chapter No. 486, the Department, as part of Rule 1340-01-13-.12(6), 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.”

11. The Department has not updated Rule 1340-01-13-.12(6) since 2024 Public Chapter No. 486 has been enacted, nor have they repealed the rule or promulgated new rules related to 1340-01-13-.12(6).
12. On July 3, 2023, the Department updated its internal policy to comply with Tenn. Code Ann. § 1-3-105(c) and issued a document to employees titled “Guidelines to Proof of Identity.” This internal policy, referenced as DLP-302(E)(3), stated that the Department will no longer “accept requests for gender marker changes that are inconsistent with someone’s designated sex on their original birth certificate.”
13. The Department is primarily responsible for the creation, distribution, and enforcement of DLP-302(E)(3).
14. The text of DLP-302(E)(3) states 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.”
15. Petitioner Chrissy Miller is a thirty-eight-year-old person who lives in Cocke County, Tennessee. Petitioner Miller was born in Ohio and has an Ohio birth certificate.
16. Petitioner Miller is transgender and was assigned male at birth.
17. Petitioner Miller has lived in Tennessee since 2014.
18. Petitioner Miller legally changed Petitioner Miller’s name on September 21, 2023, in the Cocke County Circuit Court in Newport, Tennessee. Petitioner Miller’s legal name is currently on Petitioner Miller’s driver license.
19. On January 22, 2023, Petitioner Miller attempted to obtain a new driver license with a different “sex” designator. Petitioner Miller submitted an updated birth certificate from

Ohio to the Knoxville Driver Services and Reinstatement Center located at 209 Gore Road, Knoxville, Tennessee.

20. About an hour or two after Petitioner Miller left the Knoxville driver services center, the manager of the driver services center called Petitioner Miller and advised that they would not be able to update Petitioner Miller's sex designator.
21. Petitioner Miller then went to the Sevierville Driver Services Center located at 1220 Graduate Drive, Sevierville, Tennessee, on January 23, 2024, after being informed the previous day that a driver license with an updated sex designator would not be able to be updated.
22. At the Sevierville Driver Services Center, a clerk issued Petitioner Miller a driver license with the sex designator of female.
23. On April 24, 2024, Petitioner Miller received a letter from then Assistant Commissioner 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 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 the 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 [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.

24. Petitioner Jane Doe² is transgender and lives in Monroe County, Tennessee.
25. Petitioner Doe’s request to update Petitioner Doe’s sex designator to female was denied by the Department.
26. Petitioners filed a Complaint for Declaratory Judgment and Injunctive Relief and Petition for Judicial Review in the Chancery Court of Davidson County, Tennessee on April 23, 2024, seeking relief from the actions of the Department.
27. Chancellor Myles in Part III of the Chancery Court of Davidson County enjoined the Department and its commissioners from requiring Petitioner Miller to surrender Petitioner Miller’s current driver license or cancelling Petitioner Miller’s driver license for failure to surrender the driver license issued on January 23, 2024.³

² Petitioner Doe is proceeding under a pseudonym, subject to a protective order in the related matter of *Jane Doe et. al. vs. Tennessee Department of Safety and Homeland Security et. al.*, Davidson County Chancery Court No. 24-0503-III.

³ Counsel’s stipulated fact number twelve (in the Stipulated Facts pleading) indicates that the failure of Petitioner Miller to surrender the driver license issued on January 23, 2024, would result in a “suspension” of Petitioner Miller’s driving privileges; however, the letter from Assistant Commissioner Hogan dated April 16, 2024, indicates that the driver license issued on January 23, 2024, would be “cancelled.” It is important to distinguish a “cancellation” versus a “suspension.” “Cancellation of a driver license means the annulment or termination by formal action of the department of a person’s driver license because of some error of defect in the license or application or because the licensee is no longer entitled to *that* license.” (*emphasis added*). Tenn. Code Ann. § 55-50-201(5). “Suspension of a driver license means the temporary withdrawal by formal action of the department of a person’s driver license or privilege to operate a motor vehicle on the public highways, *which temporary withdrawal shall be for a period specifically designated by the department, not to exceed six (6) months for any first offense, except as provided otherwise under law.*” (*emphasis added*). Tenn. Code Ann. 55-50-102(55).

28. The Chancery Court stayed the case to allow Petitioners to file a Petition for Declaratory Order, and for the Department to respond.
29. On September 20, 2024, Petitioners filed a Petition for Declaratory Order with the Tennessee Department of Safety.
30. On October 1, 2024, Commissioner Long appointed Dustin Brandon as the Hearing Officer to hold a contested case hearing to issue a Declaratory Order.

LEGAL ANALYSIS

I. Separation of Powers

The Tennessee Constitution mirrors the United States Constitution regarding the separation of powers for the executive, legislative, and judicial branches of government. “The powers of the Government shall be divided into three distinct departments: Legislative, Executive, and Judicial.” Tenn. Const. art. II, § 1. “No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.” Tenn. Const. art. II, § 2. In general, the “legislative” power” is the authority to make, order, and repeal law; the “executive power” is the authority to administer and enforce law; and the “judicial power” is the authority to interpret and apply law. The Tennessee constitutional provision prohibits an encroachment by any of the departments upon the powers, functions, and prerogatives of the others. Richardson v. Young, 125 S.W. 664 (1910).

The Tennessee Constitution bestows power in the legislative branch to pass bills to become law. “A bill shall become law when it has been considered and passed on three different days in each House and on third and final consideration has received the assent of a majority of all members to which each House is entitled under this Constitution, when the respective

speakers have signed the bill with the date of such signing appearing in the Journal, and when the bill has been approved by the Governor or otherwise passed under the provisions of this Constitution.” Tenn. Const. art. II, § 18.

The Tennessee Constitution bestows power in the executive branch to execute the laws passed by the legislature. “The Supreme Executive power of this state shall be vested in a Governor.” Tenn. Const. art. III, §1. “He shall take care that the laws be faithfully executed.” Tenn. Const. art. III, § 10. “There shall be a chief executive officer of each of the administrative departments of state government created by § 4-3-101.” Tenn. Code Ann. § 4-3-111. “The commissioners of the administrative departments shall constitute a cabinet or advisory staff to the governor on all matters of state administration.” Tenn. Code Ann. § 4-3-122(a). “These departments shall be vested respectively with such powers and required to perform such duties as are set forth in this chapter and shall be charged with the administration, execution and performance of such laws as the general assembly may enact from time to time.” Tenn. Code Ann. § 4-3-103.

II. Tenn. Code. Ann. § 1-3-105(c)

Prior to passage of 2024 Public Chapter No. 486, the Tennessee General Assembly had not passed a uniform definition of “sex” in the Tennessee Code. On April 21, 2023, the Tennessee General Assembly passed “SB 1440.” “SB 1440” was signed into law by Governor Bill Lee on May 17, 2023, and was published as 2024 Public Chapter No. 486. 2024 Public Chapter No. 486 went into effect July 1, 2023, and is codified at Tenn. Code Ann. § 1-3-105(c).

Tenn. Code Ann. § 1-3-105(c) provides, “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 persons biological sex” includes, but is not limited to, a government-issued identification document that accurately reflects a person’s sex listed on their original birth certificate.” To date, Tenn. Code Ann. § 1-3-105(c) has not been amended, repealed, or overturned, thus it is controlling law.

The enactment of Tenn. Code Ann. § 1-3-105(c) created a new definition of “sex” in the Tennessee Code, from July 1, 2023, forward, to be used “*in this code.*” Tenn. Code Ann. § 1-3-105(c) (emphasis added). In passing and enacting Tenn. Code Ann. § 1-3-105(c), the Tennessee General Assembly intended for this definition of “sex” to apply to every usage of the word “sex” in the Tennessee Code, unless “the context otherwise requires.” *Id.* The placement of this definition in Tenn. Code Ann. § 1-3-105(c), “Definitions of terms used in this code” is clear intent that the General Assembly intended for this definition to apply to the use of “sex” throughout the entire code. If the General Assembly had intended for this definition to apply to a narrower portion of the Tennessee Code, they had the ability to specify where it applied. See, e.g., Tenn. Code Ann. § 4-5-102 (“As used in this chapter, unless the context otherwise requires . . .”); Tenn. Code Ann. § 39-11-106 (“As used in this title, unless the context requires otherwise . . .”); Tenn. Code Ann. § 55-8-101 (“As used in this chapter and chapter 10, parts 1-5, of this title, unless the context otherwise requires . . .”); Tenn. Code Ann. § 55-50-102 (“As used in this chapter, unless the context otherwise requires . . .”).

The enactment of a code-wide definition is of itself enabling legislation for state agencies to have that definition apply to terms within the agency’s statutory purview. In this instance, the enactment of Tenn. Code Ann. § 1-3-105(c) meant as of its effective date, it was the controlling definition of “sex” in the Tennessee Code and applied to all Tennessee agencies. It is important to point out that “The States have considerable discretion in defining the terms used in their own

laws and in deciding what records to keep.” Gore v. Lee, 107 F.4th 548, 560 (6th Cir. 2024).

Once Tenn. Code Ann. § 1-3-105© went into effect on July 1, 2023, it not only became state law for the purposes of defining “sex;” it also superseded any regulations already promulgated that did not comply with the statute.

The term “sex” is polysemous and is defined as, “(1)(a) either of the two major forms of individuals that occur in many species and that are distinguished respectively as female or male especially on the basis of their reproductive organs and structures; (b) the sum of structural, functional, and sometimes behavioral characteristics of organisms that distinguish males and females; (c) the state of being male or female; (d) males or females considered as a group; (2)(a) sexually motivated phenomena or behavior; (b) sexual intercourse.” “Sex.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/sex>. Accessed 14 Mar. 2025.

“Context” is defined as “the interrelated conditions in which something exists or occurs: environment, setting.” “Context.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/context>. Accessed 14 Mar. 2025. There are several instances in the Tennessee Code where this definition would not be appropriate, for example, Tenn. Code Ann. § 39-13-309 sets out the offense for trafficking a person for a commercial sex act. While the word sex is used, the context would not invite the term used in Tenn. Code Ann. § 1-3-105(c), and the General Assembly has also provided context through defining a “commercial sex act” in Tenn. Code Ann. § 39-13-301(4). Context does not mean that if there is an existing rule that is in contravention to a new statute, then a state agency should ignore the statute in favor of its existing rules.

In addition to Tenn. Code Ann. § 39-13-309 and § 39-13-304, the term “sex” is used in Tenn. Code Ann. § 55-50-353, which provides:

- (a) When the department issues or renews a driver license or photo identification card to a sexual offender, violent sexual offender or violent juvenile sexual offender as required by § 40-39-213, the driver license or photo identification card shall bear a designation sufficient to enable a law enforcement officer to identify the bearer of the license or card as a sexual offender, violent sexual offender, or violent juvenile sexual offender.
- (b) When the department issues or renews a driver license or photo identification license to a person convicted of a human trafficking offense, as defined in § 39-13-314, the driver license or photo identification license must bear a designation sufficient to enable a law enforcement officer to identify the bearer of the license as a person who has been convicted of a human trafficking offense.

“Sex” as used in Tenn. Code Ann. § 55-50-353 would be an exception to “or as otherwise required” set out in Tenn. Code Ann. § 1-3-105(c). The term “sex” in this context is not being used to distinguish between male or female, but rather, distinguish that a licensee has been convicted of a criminal offense that was “sexual” in nature and been adjudicated as a “sexual offender.”

The Tennessee Supreme Court has consistently held that in order to carry out the intent of the General Assembly, the plain meaning of the language should be given full effect. When dealing with statutory interpretation, well-defined precepts apply. “In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. In re C.K.G., 173 S.W.3d 714, 722 (Tenn.2005). When a statute is clear, we apply the plain meaning without complicating the task. Eastman Chem. Co. v. Johnson, 151 S.W.3d 503, 507 (Tenn.2004). Our obligation is simply to enforce the written language. Abels ex rel. Hunt v. Genie Indus. Inc., 202 S.W.3d 99, 102 (Tenn.2006). When a statute is ambiguous, however, we

may reference the broader statutory scheme, the history of the legislation, or other sources. Parks v. Tenn. Mun. League Risk Mgmt. Pool, 974 S.W.2d 677, 679 (Tenn.1998). We presume the General Assembly was aware of its prior enactments at the time it passed the legislation. Owens v. State, 908 S.W.2d 923, 926 (Tenn.1995).” Colonial Pipeline Co. v. Morgan, 263 S.W.3d 827, 836 (2008).

III. Uniform Commercial Driver License Act

“The commissioner is authorized to establish administrative rules and regulations concerning the licensing of persons to operate motor vehicles, in this state, for the purpose of ensuring the safety and welfare of the traveling public....” Tenn. Code Ann. § 55-50-502(2). The Department has promulgated the rules contained in Rule 1340-01-13-.01 through .25 to assist in the administration of the Act.

Tenn. Code Ann. § 55-50-321(c)(1)(A) requires every application for a driver license to state the “full name, date and place of birth, sex, county of residence, residence address...” of the applicant. In 1996, when promulgating the rules to administer the Act, the Department included what is currently Rule 1340-01-13-.12(6), which states that:

The following document is required for gender changes:

- (a) A statement from the attending physician that necessary medical procedures to accomplish the change in gender are complete.

Prior to July 1, 2023, this rule promulgated by the Department allowed it to change a person’s sex designator on their driver license, when presented with the required documentation.

Tenn. Code Ann. § 55-50-321(c)(1)(A) requires every application for a driver license to state the “full name, date and place of birth, sex, county of residence, residence address...” of the applicant. Prior to the passage of Tenn. Code Ann. § 1-3-105(c), there was no definition in the

Tennessee Code of “sex” overall, nor in Tenn. Code Ann. § 55-50-102, which contains definitions specific to the Act. However, once Tenn. Code Ann. § 1-3-105(c) went into effect on July 1, 2023, the context of the term “sex” required that “sex” mean 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. It further required the Department, when determining the appropriate sex marker, to rely on documents that “accurately reflect a person’s sex listed on their original birth certificate.

IV. Driver License Policy 302

DLP-302(E)(3) states:

3. Gender Changes: Pursuant to Public Chapter 486 [sic] 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.
 - 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.

The General Assembly has defined both “rule” and “policy” for the purposes of the Uniform Administrative Procedures Act (“UAPA”). Under the UAPA, a “rule” is “any agency regulation, standard, statement, or document of general applicability that is not a policy,” but excludes, *inter alia*, intra-agency memoranda and general policy statements that are substantially

repetitious of existing law. Tenn. Code Ann. § 4-5-102(12). A “policy” is any statement, document, or guideline prepared or issued by any agency pursuant to its delegated authority that merely defines or explains the meaning of a statute or a rule. Tenn. Code Ann. § 4-5-102(10).

“As defined in the UAPA, a “policy” is “a set of decisions, procedures and practices pertaining to the *internal operation* or actions of an agency.” Tenn.Code Ann. § 4-5-102(10) (emphasis added). By contrast, a “rule” means “each agency statement of general applicability that implements or prescribes law or policy,” expressly including an “amendment or repeal of a prior rule ... [,]” but **excluding “[g]eneral policy statements that are substantially repetitious of existing law”** and “[s]tatements concerning only internal management of state government and not affecting private rights, privileges or procedures available to the public.” *Id.* §§ 4-5-12, 12(A) (emphases added), and 12(D). Thus, “a policy is not a rule under the UAPA if the policy concerns internal management of state government and if the policy does not affect the private rights, privileges, or procedures available to the public.” Mandela v. Campbell, 978 S.W.2d 531, 534 (Tenn.1998)” *Occupy Nashville v. Haslam, 949 F.Supp.2d 777, 794.*

The language of DLP-302(E)(3) is substantially repetitious of Tenn. Code Ann. § 1-3-105(c) that requires the use of a “a government-issued identification document that accurately reflects a person’s sex listed on the person’s original birth certificate” as evidence of a person’s sex. Subpart “b” is merely internal policy to be applied if a Department employee has a question regarding any documentation or information required by statute, to protect the driver license examiners in the event of concerns regarding the information presented on the documents and to ensure that all applicants are being reviewed and treated consistently per the law.

Tenn. Code Ann. § 1-3-105(c), as a state statute, supersedes any rule that may have been promulgated by the Department and controls the Department’s actions with regard to the driver

license, and DLP-302 is merely a policy which is restating that statute. Rule 1340-01-13-.12(6) has been rendered null by the passage of Tenn. Code Ann. § 1-3-105(c) and cannot be used to change a person's sex designator.

CONCLUSIONS OF LAW

1. The enactment of Tenn. Code Ann. § 1-3-105(c) established a new definition of "sex" in the Tennessee Code.
2. The definition of "sex" pursuant to Tenn. Code Ann. § 1-3-105(c) encompasses Title 55 of the Tennessee Code, which was previously undefined.
3. The plain language of Tenn. Code Ann. § 1-3-305(c) is clear and unambiguous in its application to Title 55 of the Tennessee Code by defining "sex" as:

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.

4. The context of "sex" as written in Title 55, excluding Tenn. Code Ann. § 55-50-353(e), is in fact consistent with Tenn. Code Ann. § 1-3-305(c), to distinguish between male and female listed on a driver license application and driver license as required by Tenn. Code Ann. § 55-50-301(b)(1).
5. The context of "sex" as written in Tenn. Code Ann. § 55-50-353(e) is not to distinguish between male or female, but rather, to distinguish that a licensee has been convicted of a criminal offense that was "sexual" in nature and has been adjudicated as a "sexual offender."

Tenn. Code Ann. § 55-50-321 requires that any applicant for a Tennessee driver license must place their sex on the application. This is then placed onto their driver license. This

use of the term “sex” is subject to the definition set forth in Tenn. Code Ann. § 1-3-105(c), meaning that the sex placed on the application and the license must be the person’s immutable biological sex as determined by anatomy and genetics at the time of birth.

6. The Department did not arbitrarily make decisions to “ban” or prevent Petitioners or anyone from obtaining a driver license. The Department, as legally required, complied with Tenn. Code Ann. § 1-3-105(c).
7. Department rule 1340-01-13-.12(6) was abrogated by the enactment of Tenn. Code Ann. § 1-3-305(c), making Tenn. Code Ann. § 1-3-105(c) the prevailing authority to define “sex” throughout the Tennessee Code, including Title 55.
8. Department Rule 1340-01-13-.12(6) is obsolete through the passage of Tenn. Code Ann. § 1-3-105(c). As the Tennessee Supreme Court has noted, “any administrative rule ... must give way to a statute in express contravention”. Hobbs v. Hobbs, 27 S.W.3d 900, 903 n. 1 (Tenn.2000). See also, Wright v. Tennessee Peace Officer Standards and Training Commission, 227 S.W. 3d 1 (Tenn. Ct. App. 2008) (“administrative regulations cannot overrule a statute”).
9. Tenn. Code Ann. § 1-3-105(c), as a state statute, supersedes any rule that may have been promulgated by the Department and controls the Department’s actions with regard to the driver license. Rule 1340-01-13-.12(6) has been rendered null by the passage of Tenn. Code Ann. § 1-3-105(c).
10. While Petitioners argue “there is no triggering mechanism contained in Tenn. Code Ann. § 1-3-105(c)” the plain language of Tenn. Code Ann. § 1-3-105(c) directs that beginning July 1, 2023, the definition applies to “any place the word “sex” is used in the Tennessee

Code.” The enactment of a code-wide definition is of itself enabling legislation for state agencies to have that definition to apply to terms within the agency’s statutory purview.

11. DLP-302(E)(3) is a policy pursuant to Tenn. Code Ann. § 4-5-102 because it is substantially repetitious of Tenn. Code Ann. § 1-3-105(c) and is merely an internal policy of the Department’s internal operations.
12. DLP-302(E)(3) does not affect the private rights of citizens, as there is no “right” to change one’s sex designator on a driver license. In addition, DLP-302 does not provide any special benefits to applicants due to their sex. It does not impose one rule for males and another for females. Nor does it prefer one sex over another when individuals request to change the sex indicator on their driver license. The policy treats the sexes equally.
13. The rulemaking process pursuant to Title 4, Chapter 2 is not applicable because DLP-302 is a policy, not a rule.
14. The Department did not exceed its statutory by implementing DLP-302. Instead, the Department complied with statutory requirements by applying the definition of “sex” pursuant to Tenn. Code Ann. § 1-3-105(c).
15. The Department took the appropriate action in denying Petitioner Doe’s request to change the sex designator on Petitioner Doe’s driver license. Petitioner Doe failed to produce an original birth certificate listing the immutable biological sex as determined by anatomy and genetics existing at the time of birth.
16. Petitioner Miller failed to produce an original birth certificate listing the immutable biological sex as determined by anatomy and genetics existing at the time of birth.

17. The Department took appropriate action pursuant to Tenn. Code Ann. § 55-50-201(5) in requiring Petitioner Miller to correct the information listed on the driver license issued in error on January 23, 2024. The actions by the Department were not punitive. Contrarily, in the April 16, 2024, letter issued by then Director Hogan, Petitioner Miller was advised that a new driver license with the correct information would be issued “free of charge.”

CONCLUSION

Based on the foregoing findings of fact and conclusions of law, it is determined that: (1) the Department is legally bound to define “sex” pursuant to Tenn. Code Ann. § 1-3-105(c); (2) The enactment of Tenn. Code Ann. § 1-3-105(c) nullified Department rule 1340-01-13-.12(6); (3) DLP-302(E)(3) is a policy pursuant to Tenn. Code Ann. § 4-5-102(2) and does not need to be promulgated as a rule; and (4) the Department possesses the legal authority to deny the Petitioners’ requested sex designator changes and to required the surrender of issued licenses that contain errors or defects. Petitioners’ requested relief is **DENIED**.

It so ordered: March 14, 2025



Dustin Brandon
Commissioner’s Designee
State of Tennessee Dept. of Safety
And Homeland Security

CERTIFICATE OF SERVICE

Comes now the Commissioner's Designee of the Tennessee Department of Safety, by and through the undersigned, and certifies that a true and correct copy of the above Declaratory Order has been sent to all known interested parties.

Attorney Lucas Cameron-Vaughn
Attorney Stella Yarbrough
ACLU Foundation of Tennessee
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Nashville, TN 37212
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On this the 14th day of March, 2025.



Dustin Brandon
Commissioner's Designee
State of Tennessee Dept. of Safety
And Homeland Security

EXHIBIT B

April 30, 2025 Email from Commissioner's
Designee regarding decision on Petition to Stay

From: [Dustin Brandon](#)
To: [Lucas Cameron-Vaughn](#)
Cc: [Stella Yarbrough](#); maureen@hollandattorney.com; [Lizabeth Hale](#); [Karen Litwin](#); [Elizabeth Stroecker](#)
Subject: RE: In re. Doe v. TDOS (Case no. 2024-02) Petition for Stay of Declaratory Order
Date: Wednesday, April 30, 2025 4:23:15 PM
Attachments: [image001.png](#)
[image002.png](#)

Mr. Cameron-Vaughn,

I will have the order issued by the end of the week.

Respectfully,



Dustin Brandon
Associate Counsel
4120 Cummings Hwy.
Chattanooga, TN 37419
Ph 615.767.4410 Fax 423.821.0722
Dustin.brandon@tn.gov

From: Lucas Cameron-Vaughn <Lucas@aclu-tn.org>
Sent: Monday, April 28, 2025 4:23 PM
To: Dustin Brandon <Dustin.Brandon@tn.gov>
Cc: Stella Yarbrough <SYarbrough@aclu-tn.org>; maureen@hollandattorney.com; Lizabeth Hale <Lizabeth.Hale@tn.gov>; Karen Litwin <Karen.Litwin@tn.gov>; Elizabeth Stroecker <Elizabeth.Stroecker@tn.gov>
Subject: [EXTERNAL] RE: In re. Doe v. TDOS (Case no. 2024-02) Petition for Stay of Declaratory Order

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Designee Brandon,

Can you please give us an update as to when you plan to issue your decision on the Petition for Stay of Declaratory Order?

Thank you,

Lucas

Lucas Cameron-Vaughn (he/him)

Senior Staff Attorney

American Civil Liberties Union Foundation of Tennessee

P.O. Box 120160

Nashville, Tennessee 37212

615-645-5067 (Direct line)

www.aclu-tn.org



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From: Dustin Brandon <Dustin.Brandon@tn.gov>

Sent: Monday, March 24, 2025 7:01 PM

To: Lucas Cameron-Vaughn <Lucas@aclu-tn.org>

Cc: Stella Yarbrough <SYarbrough@aclu-tn.org>; maureen@hollandattorney.com; Lizabeth Hale <Lizabeth.Hale@tn.gov>; Karen Litwin <Karen.Litwin@tn.gov>; Elizabeth Stroecker <Elizabeth.Stroecker@tn.gov>

Subject: RE: In re. Doe v. TDOS (Case no. 2024-02) Petition for Stay of Declaratory Order

Received.

Thanks!



Dustin Brandon

Associate Counsel

4120 Cummings Hwy.

Chattanooga, TN 37419

Ph 615.767.4410 Fax 423.821.0722

Dustin.brandon@tn.gov

From: Lucas Cameron-Vaughn <Lucas@aclu-tn.org>

Sent: Monday, March 24, 2025 3:59 PM

To: Dustin Brandon <Dustin.Brandon@tn.gov>

Cc: Stella Yarbrough <SYarbrough@aclu-tn.org>; maureen@hollandattorney.com; Lizabeth Hale <Lizabeth.Hale@tn.gov>; Karen Litwin <Karen.Litwin@tn.gov>; Elizabeth Stroecker <Elizabeth.Stroecker@tn.gov>

Subject: [EXTERNAL] In re. Doe v. TDOS (Case no. 2024-02) Petition for Stay of Declaratory Order

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Good afternoon,

Please see the attached Petition for Stay of Declaratory Order and Memorandum in Support—submitted pursuant to Tenn. Code Ann. 4-5-316.

Sincerely,

Lucas

Lucas Cameron-Vaughn (he/him)

Staff Attorney

American Civil Liberties Union Foundation of Tennessee

P.O. Box 120160

Nashville, Tennessee 37212

615-320-7142

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From: Dustin Brandon <Dustin.Brandon@tn.gov>

Sent: Friday, March 14, 2025 7:13 PM

To: Lucas Cameron-Vaughn <Lucas@aclu-tn.org>; Stella Yarbrough <SYarbrough@aclu-tn.org>; maureen@hollandattorney.com; Lizabeth Hale <Lizabeth.Hale@tn.gov>; Elizabeth Stroecker <Elizabeth.Stroecker@tn.gov>; Karen Litwin <Karen.Litwin@tn.gov>

Subject: In re. Doe v. TDOS (Case no. 2024-02) Declaratory Order

Good evening,

Please find attached the Declaratory Order for the above captioned case.

Respectfully,



Dustin Brandon

Commissioner's Designee

4120 Cummings Hwy.

Chattanooga, TN 37419

Ph 615.767.4410 Fax 423.821.0722

Dustin.brandon@tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been sent by U.S. Mail, postage pre-paid, or via electronic mail to the following:

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Hollie Parrish
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Attorneys for Respondents

DATE: May 12, 2025

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn