

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

JANE DOE; and)	
CHRISSY 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.)	

EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

COMES NOW Plaintiff Chrissy Miller ("Ms. Miller"), pursuant to Rule 65.03 of the Tennessee Rules of Civil Procedure and move this Honorable Court for an emergency temporary restraining order enjoining Defendants Jeff Long, Michael Hogan, and the Tennessee Department of Safety and Homeland Security from revoking Ms. Miller's driver license, suspending her driving privileges, and enforcing the "Redefinition of Sex Rule".

1. Ms. Miller is entitled to an emergency temporary restraining order as Ms. Miller will be immediately and irreparably harmed by the loss of her driving privileges and the loss of her driver license with a female sex designator. Tennessee Rule of Civil Procedure 65.01 provides this Court the authority to issue a temporary restraining order to enjoin Defendants. A temporary restraining order may issue when:

specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition

Tenn. R. Civ. P. 65.03(A). Tennessee trial courts consider four factors in determining whether to issue a temporary injunction: (1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest. *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020) (cleaned up). All four factors weigh in favor of a temporary restraining order here.

I. FACTS

Ms. Miller is a thirty-eight-year-old woman who lives in a rural area outside Del Rio, Tennessee. Miller Decl. ¶ 3. She is transgender. Miller Decl. ¶ 5. This means Ms. Miller was assigned male at birth but lives her life as the woman she knows herself to be. Miller Decl. ¶¶ 5, 8; First Amend. Compl. ¶ 50. Ms. Miller has been diagnosed with gender dysphoria and receives medical treatment for this condition. Miller Decl. ¶ 9; First Amend. Compl. ¶¶ 52-61. Ms. Miller's medical treatment includes hormone therapy

which causes her to have the same secondary sex characteristics as other women. First Amend. Compl. ¶ 81.

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. First Amend. Compl. ¶ 84. 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. First Amend. Compl. ¶ 85. Ms. Miller was born in Ohio and has an Ohio birth certificate. First Amend. Compl. ¶ 79. In order to change the sex designator on her driver license, Ms. Miller legally updated the sex designator on her Ohio birth certificate to “female” on November 28, 2023. First Amend. Compl. ¶ 86. 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.” *Id.*; 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.” *Id.*; Ohio Rev. Code Ann. § 3705.15(C).

After receiving her updated birth certificate, Ms. Miller set about updating her government-issued identification records to reflect her correct sex designator as female. First Amend. Compl. ¶ 87. Ms. Miller’s United States passport correctly represents her sex as female. *Id.* Ms. Miller has also updated her Social Security records to reflect her

sex as female. *Id.* On January 23, 2024, Ms. Miller returned to the Sevierville Driver Services Center to update her last identity document, her driver license. First Amend. Compl. ¶ 91; Miller Decl. ¶ 35. 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. First Amend. Compl. ¶ 92. Ms. Miller was ecstatic when she left the driver service center after obtaining her new license. First Amend. Compl. ¶ 93. She felt elated—like she was floating after a huge weight had been lifted. Miller Decl. ¶ 37. Clearing this final hurdle was one of the best moments of her life. *Id.*

Defendants Threaten to Cancel Driving Privileges

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* First Amend. Compl. ¶¶ 31-32; First Amend. Compl. EXHIBIT A. The Redefinition of Sex Rule reads:

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.

First Amend. Compl. ¶ 32.

On April 24, 2024, Ms. Miller received a letter from Defendant Michael Hogan in his role as assistant commissioner of the driver services division of the Tennessee Department of Safety and Homeland Security, dated April 16, 2024. First Amend.

Compl. ¶ 95. 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.

First Amend. Compl. ¶ 95; *and see* First Amend. Compl. EXHIBIT C. When Ms. Miller read the letter, she was speechless and wept off and on for days. Miller Decl. ¶ 42. Ms. Miller does not know whether she has thirty days from when she received the letter or thirty days from when the letter was dated to surrender her license. Miller Decl. ¶ 41. If Ms. Miller has thirty days after the letter was issued, she will have to surrender her license by May 16, 2024 or lose her driving privileges. *Id.*

Ms. Miller desperately needs a driver license and will face significant hardship without one. Miller Decl. ¶ 43. Ms. Miller has already updated her driver insurance, health insurance and other official documents that require a driver license number with her driver license that was issued on January 23, 2024. Miller Decl. ¶ 52. Her daily life will become impossible to live without the ability to drive. *Id.* Ms. Miller lives in a rural area and must drive thirty minutes’ distance to work every day. Miller Decl. ¶ 44. It takes

her fifteen minutes to drive to the nearest grocery store. *Id.* And she must drive to Nashville (a four-hour drive) several times a month for medical care. *Id.* Ms. Miller currently works seasonally as a white-water rafting guide in the Great Smoky Mountains. Miller Decl. ¶ 4. She was planning to use her accurate driver license to apply for full-time employment over the next few weeks without having to fear discrimination because of her transgender status. First Amend. Compl. ¶ 94; Miller Decl. ¶¶ 45, 47.

Because Ms. Miller faced hostility as a transgender woman at her last job, it is extremely important to her not to have to disclose her transgender status when applying for jobs. Miller Decl. ¶ 48.

Ms. Miller reasonably fears physical and violent altercations might arise at any of the seemingly inconsequential moments if she has to use a driver license with the wrong sex designator such as checking into a hotel, renting a car, ordering a drink, entering a bar. Miller Decl. ¶ 51. Ms. Miller is aware of the risk of violence transgender women face in Tennessee. *Id.*; First Amend. Compl. ¶¶ 64-67. In fact, transgender people are over four times more likely than non-transgender people to experience violent victimization. First Amend. Compl. ¶ 67.

Only certain violations in Tennessee result in revocation or suspension of a driver license. Tennessee Department of Safety and Homeland Security, *Reinstatements*, <https://www.tn.gov/safety/driver-services/reinstatements.html#Violations>. These violations are codified in Tennessee law. For instance, a driver who is convicted of the crime of driving under the influence will have their driving privileges revoked for a period of 1-8 years. *Id.*; and see Tenn. Code Ann. §§ 55-10-401, -404. A driver who is

convicted of the crime of hit and run/leaving the scene of an accident with a fatality will have their driving privileges revoked for a period of one year. *Id.*; Tenn. Code Ann. § 55-10-501. A driver who is convicted of speed/contest racing will have their driving privileges revoked for a period of one year. *Id.*; Tenn. Code Ann. § 55-10-502. Violators must pay a restatement fee for these violations of \$68 or \$103. *Id.* There is a \$75 fee for failure to surrender a license.

II. ARGUMENT

Plaintiffs are likely to succeed on the merits as the Redefinition of Sex Rule was promulgated without the proper procedures required under the Uniform Administrative Procedures Act. Tenn. Code Ann. §§ 4-5-101 seq. As such, any “rule not adopted in compliance with this chapter shall be 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. Defendants’ enforcement of the rule is not only unlawful but it also places Ms. Miller at risk of physical harm, abuse, harassment, social stigma, and forces public disclosure of medical status. (First Amend. Compl. ¶¶ 63-67). Defendant Hogan issued a letter to Ms. Miller stating that if she did not return her validly issued driver license which bears a female gender marker within 30 days her driving privileges would be revoked sua sponte. (First Amend. Compl. EXHIBIT C.1 – C.2).¹ Absent a grant of this temporary restraining order, Ms. Miller will suffer the irreparable injury of losing her ability to legally drive, maintain an accurate driver license, and will be exposed to an

¹ It must be noted that the letter does not make it clear as to whether revocation would take place 30 days from the issuance or 30 days from the receipt of the letter.

increased risk of physical harm, abuse, harassment, social stigma, and forces public disclosure of medical status.

Defendants are not harmed by the issuance of a temporary restraining order as there is no legitimate interest in enforcing a rule that is unlawful and void ab initio. Likewise, the issuance of a temporary restraining order will not frustrate the well-accepted purpose of the issuance of driver licenses: ensuring accurate identification of individuals and ensuring that the licensee is competent to operate a motor vehicle. Furthermore, the public interest is served by ensuring that all agency actions are promulgated in keeping with rigid statutory requirements and that the public will not be subject to unlawful enforcement of improperly promulgated rules. Thus, the Court should grant Plaintiff Chrissy Miller's request and enjoin Defendants from requiring that she relinquish her driver license to Defendants, and from revoking Ms. Miller's driving privileges until a temporary injunction motion can be heard.

In further support of this Motion, Plaintiff relies upon the Plaintiffs' First Amended Verified Complaint for Emergency Injunctive and Declaratory Relief, Declaration of Chrissy Miller in Support of Plaintiffs' Motion for a Temporary Restraining Order, and any such further briefing, argument and evidence as may be submitted in this matter.

2. Plaintiffs further request that the requirement of bond be waived.
3. Plaintiffs additionally move the Court to schedule a hearing on this Emergency Motion for a Temporary Restraining Order as soon as feasible on the Court's calendar. Counsel for Defendants have been notified that Plaintiffs are seeking this relief and all

sides will avail themselves to the Court at a time and date convenient to the Court.

Plaintiffs attach a proposed restraining order pursuant to Local Rule 19.02. Plaintiffs also attach a proposed Order Setting Hearing Date for Plaintiffs' Emergency Motion for a Temporary Restraining Order and pray the Court finds good cause to specially set this matter for hearing.

Respectfully submitted,

/s/ Jeff Preptit

ACLU FOUNDATION OF TENNESSEE
JEFF PREPTIT (BPR No. 038451)
STELLA YARBROUGH (BPR No. 033637)
LUCAS CAMERON-VAUGHN (036284)
P.O. Box 120160
NASHVILLE, TN 37212
Telephone: 615/320-7142
615/691-7219 (fax)
jpreptit@aclu-tn.org
syarbrough@aclu-tn.org
lucas@aclu-tn.org

/s/ Maureen T. Holland

Maureen Truax Holland (15202)
HOLLAND AND ASSOCIATES, PC
1429 Madison Avenue
Memphis, Tennessee 38104
(901) 278-8120
maureen@hollandattorney.com

Date: 1 May 2024

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing Emergency Motion for a Temporary Restraining Order has been forwarded via electronic mail to the following this 1st day May of 2024.

Cody N. Brandon
Steven J. Griffin
Liz Evan
Office of the Tennessee Attorney General and Reporter
500 Dr. Martin Luther King Jr. Blvd
Nashville, TN 37219
(615) 532-7400
Cody.brandon@ag.tn.gov
Steven.griffin@ag.tn.gov
Liz.evan@ag.tn.gov

Attorneys for Defendants

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn